insurance europe

BREXIT KEY MESSAGES: TRANSITIONALS

Transitional arrangements needed in the Brexit context

Executive summary

Once the UK has left the EU, it will no longer be directly covered by the EU's regulatory framework for financial services. This framework currently allows a substantial number of EU27-based consumers to access financial services products in the UK, and vice versa.

As there is no clear view of the future relationship between the EU27 and the UK yet, there is considerable uncertainty for businesses that offer cross-border contracts, and a significant risk posed to consumers. Insurance Europe strongly supports a transitional arrangement that would help avoid a cliff-edge scenario and allow insurers to fulfil their obligations to consumers on a cross-border basis.

A transitional arrangement is crucial to ensure there is business continuity until legal clarity on the future relationship is reached. Such an arrangement should ensure that the UK remains covered by existing EU law and the supervisory framework while the EU27 and the UK negotiate the future relationship.

In addition, once the final relationship between the EU27 and the UK has been decided, time must be allowed for insurers to adapt their contingency plans and to reorganise their business according to the new regulatory framework based on sound legal certainty. Such an arrangement should, among other things, allow sufficient time for insurers to apply for and receive third-country branch authorisation, or to set up subsidiaries.

Therefore, Insurance Europe urges both the EU27 and the UK to reach political agreement on the transitional arrangement as soon as possible, ahead of the Brexit date. It is likewise crucial that supervisors take similar actions to ensure consumers and businesses alike are not negatively impacted.

1 Introduction

On 15 December 2017, the EU27 agreed that sufficient progress had been made during the first phase of negotiations on the UK's departure from the EU. At the same time, it was decided that talks could move to the second phase, guided by a new set of negotiating guidelines issued by the Commission on 20 December 2017. In particular, these new guidelines allowed the EU27 and the UK to discuss the transitional arrangement.

The Brexit negotiations are taking place under significant time pressure, given the 29 March 2019 deadline, after which the UK will become a third country. With little clarity concerning the future relationship between the EU27 and the UK, market participants are making crucial decisions in the coming months based on little certainty.

In this context, a transitional arrangement will be essential to avoid a cliff-edge scenario once the UK becomes a third country, and to protect businesses and consumers alike. Transitional arrangements should therefore form part of the withdrawal agreement, which the European Council aims to finalise by October 2018, to ensure the financial stability of the EU27 and the UK. However, although essential, the transitional arrangement must be clearly defined, limited in time and subject to EU law.

2 How transitional arrangements would help avoid a cliff-edge scenario

The current EU framework for financial services allows a substantial number of EU27-based consumers to access financial services products in the UK, and vice versa. With little clarity concerning the future relationship between the EU27 and the UK, there is considerable uncertainty for businesses with cross-border operations and a significant risk to consumers.

Insurers are actively preparing for Brexit, but they are facing significant time pressure. A transitional arrangement would offer the necessary time to complete essential contingency planning in a number of areas:

- **Structural changes**: Insurers providing services to consumers from the EU27 to the UK and vice versa have identified a need to set up branches or subsidiaries and apply for the right authorisation. Insufficient legal clarity and the significant workload will likely impact regulators' ability to handle all applications before the withdrawal date.

- **Portfolio transfer**: Should insurers need to transfer portfolios, there is considerable risk of delay and uncertainty for consumers. Regulators and courts do not have the capacity to handle the amount of business that would have to be moved in a very short space of time.

- **Product-specific considerations**: The highly-tailored nature of insurance products means that some will require adjustments to ensure they remain valid after Brexit.

- **Data flows**: Once the UK becomes a third country, the transfer of personal data with the EU27 without specific safeguards being in place will no longer be permitted. To maintain data flows, the European Commission would need to issue an "adequacy decision" under the General Data Protection Regulation (GDPR) and the UK would need to reciprocate. In the absence of this, consumers would experience significant adverse effects.

In the case of each point set out above, there may not be enough time left before 29 March 2019 for all regulatory procedures to be completed in time.

A transitional arrangement is the only way to guarantee that services offered to consumers are not disrupted.

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