

## Brexit: An Update for the Cross-Border Re/Insurance Sector

**APCIA Brexit Webinar**  
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# Agenda

1. Recap
2. Post-Brexit
3. Consequences for the EU Passport
4. Options
5. Supervisory Guidance: Current Status
6. Annexes



# The Single Market: Recap

 EEA (non EU)

 EU 28

Single Market:

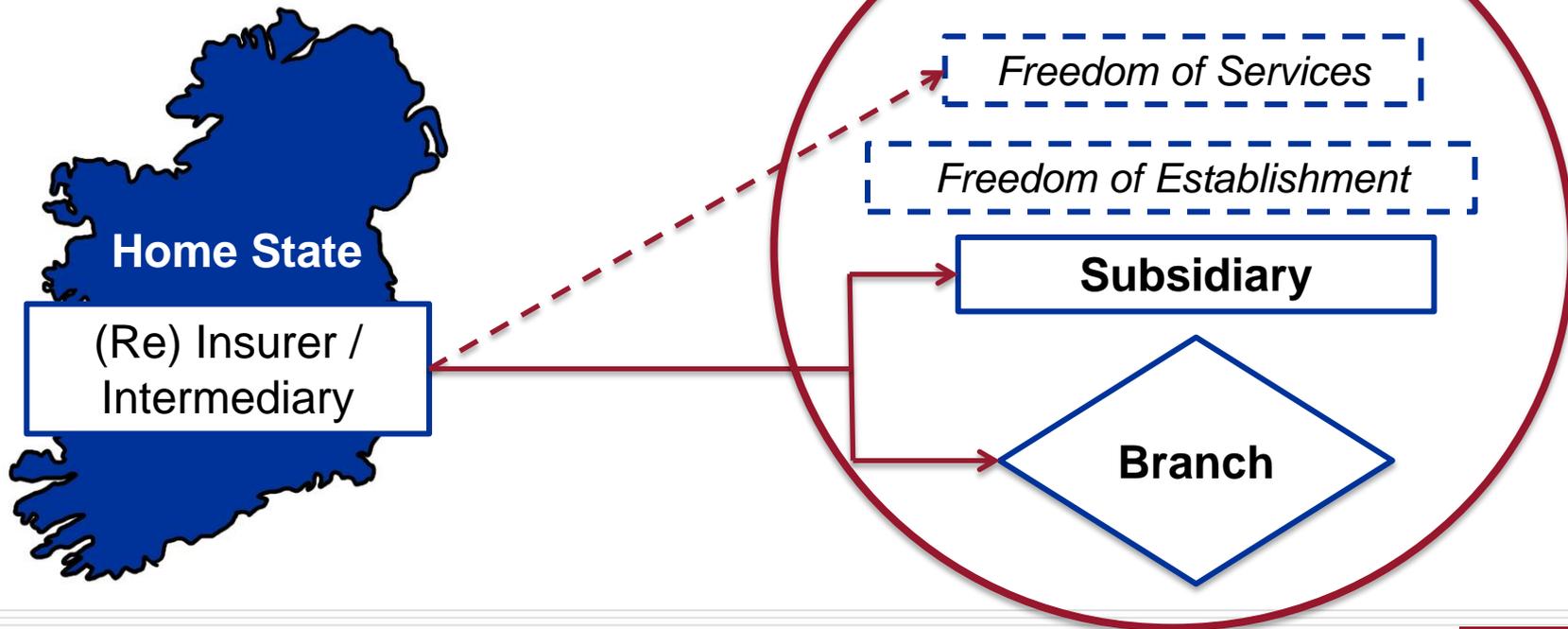
## Single Market principles:

- Liberalisation and harmonisation
- Mutual recognition of prudential supervision
- Single licence and EU passport
- Local conduct of business/general good



# EU Treaty-Guaranteed Passport Rights: Recap

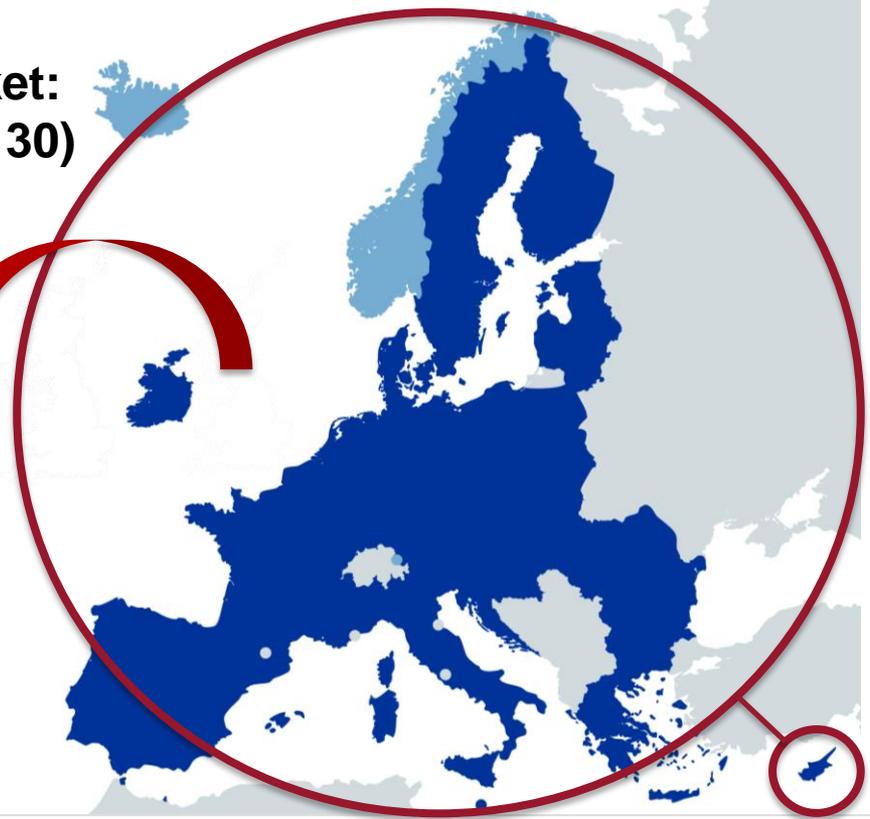
Ireland as a home State example:



# Post-Brexit (1/3): UK as a “Third Country”

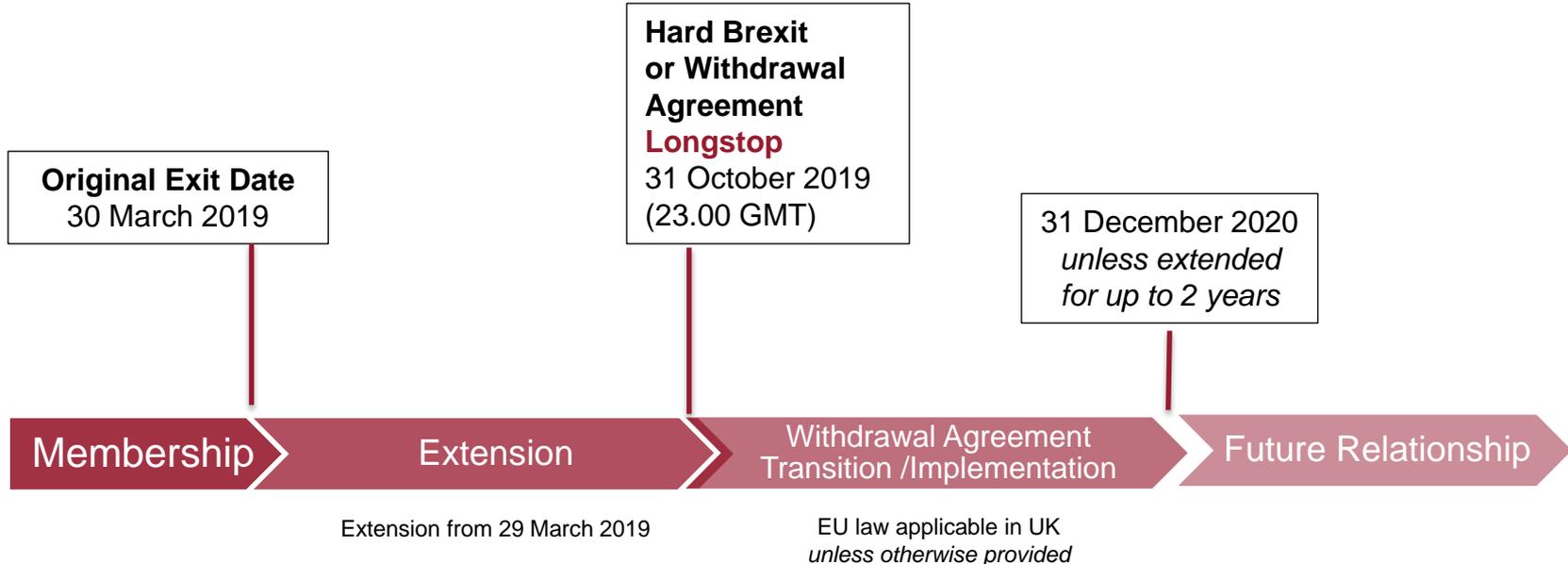
**Single Market:  
(EU 27/EEA 30)**

**Third Country:**



# Post-Brexit (2/3): Timelines

- UK becomes a third country
- Impact will depend on (i) existence and (ii) content of Withdrawal Agreement (and Political Declaration)



# Post-Brexit (3/3): Hard / No Deal Brexit

## No agreement reached by withdrawal date:

*“All Union primary and secondary law **ceases to apply** to the United Kingdom...” from withdrawal date*

(EC Notice to Stakeholders)

## UK third country:

- WTO tariffs will apply
- No mutual recognition (certifications, authorisations, standards for circulation of goods)
- Trade deals to be negotiated
- Whither services, including financial services and re/insurance? GATS?

## UK European Union (Withdrawal) Act 2018 applies:

- Repeal of 1972 European Communities Act
- Retention of existing EU law
- Mechanism to deal with “deficiencies” - during a 2 year period UK must enact legislation covering areas formerly governed by EU law

# Consequences for the EU Passport (1/3)

## Options post withdrawal:

- Passport is maintained through the UK's continued membership of the EEA (cf. “Norway model”) or a bespoke arrangement; or
- Passport is lost: uncertainty as to how existing business will be treated

# Consequences for the EU Passport (2/3)

## Possible impact on insurance portfolios:

- New business:
  - Save for transitional measures, new business cannot be written
  - Renewals as well as policy review/adjustments
- Whether paying claims constitutes carrying on re/insurance business. As a general rule, insurers' risk-management systems should comprise,  
*"strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies"*  
(Article 44, Solvency II Directive)
- International programmes / coinsurance or coreinsurance
- Pools
- Portfolio transfers

# Consequences for the EU Passport (3/3)

## Possible impact on portfolios in run off:

- Whether an EEA re/insurer can continue to manage a portfolio in run off
- Whether paying claims constitutes carrying on re/insurance business even in the context of run off

NB: “Run-off” is not legally defined

# Options (1/3): “UK outwards”/“EU27/EEA30 inwards”

## Preliminary considerations:

- Limited provisions on treatment of EU branches of third country re/insurers under Solvency II texts
- Parent undertakings outside the EU: supervision and equivalence
- As at end 2018, around 40 re/insurers had announced relocation/restructuring, e.g. Lloyd’s, Standard Life and Chubb (source: KPMG)

## For UK re/insurers:

- Sale of EU/EEA business
- Run-off of EU/EEA business (with limitations previously noted)
- Fronting
- Portfolio transfer to EU27/EEA30 re/insurer
- Establish branch in the EU27/EEA30 – no passport
- Establish subsidiary in the EU27/EEA30 - passport
- Merger/acquisition and transfer

For UK re/insurance intermediaries: variations on above; NB: IDD on “use the services of registered intermediaries”

# Options (2/3): “UK inwards”/“EU27/EEA30 outwards”

## For EU27/EEA30 insurers/reinsurers:

- Sale of UK business
- Run-off of UK business (with limitations previously noted)
- Fronting
- obtain UK branch authorisation
- Obtain UK subsidiary authorisation
- Merger/acquisition and transfer

For EU27/EEA30 re/insurance intermediaries: cf. above

## UK Temporary Permission Regime:

- UK unilaterally decided to implement TPR
- Objective: to allow firms that wish to continue carrying out business in the UK in the longer term to operate in the UK for a limited period after withdrawal while they seek authorisation from UK regulators
- 10 May: extension to 30 October, 2019

# Options (3/3): UK Outwards/Inwards

## **Other issues to consider:**

- Complaints regime
- Insurance guarantee schemes
- Staff
- Data
- Distribution and claims management
- Commercial contracts
- Intellectual property

# Supervisory Guidance (1/3): Current Status

## EIOPA:

- **21 December 2017** – Opinion on service continuity in light of the withdrawal of the United Kingdom from the European Union
- **18 May 2018** – Opinion on the solvency position of insurance and reinsurance undertakings in light of the withdrawal of the United Kingdom from the European Union
- **28 June 2018** – Opinion addressed to national supervisory authorities about the duty of insurance undertakings and insurance intermediaries to inform customers about the possible impact of the withdrawal of the United Kingdom from the European Union
- **5 November 2018** – EIOPA calls for immediate action to ensure service continuity in cross-border insurance
- **19 February 2019** – EIOPA calls upon national supervisory authorities to minimise the detriment to insurance policyholders and beneficiaries in case of a no withdrawal agreement between the United Kingdom and the European Union
- **5 March 2019** – EIOPA and its Members agree on No-deal Brexit Memoranda of Understanding with the Bank of England and the Financial Conduct Authority

# Supervisory Guidance (2/3): Current Status

## European Commission:

- **18 February 2018:** Preparedness notices: withdrawal of the United Kingdom and EU rules in the field of Insurance/Reinsurance
- **19 December 2018:** Questions and answers: the consequences of the United Kingdom leaving the European Union without a ratified Withdrawal Agreement (no deal Brexit)
- **12 June 2019:** fifth Brexit Preparedness Communication:
  - *“The Commission does not plan any new measures ahead of the new withdrawal date”*
  - *“Insurance firms, payment services providers and other financial service operators which remain unprepared regarding certain aspects of their business (for example contract management and access to infrastructures) are strongly encouraged to finalise their preparatory measures by 31 October 2019”*

# Supervisory Guidance (3/3): Current Status

## National legislative reactions have been piecemeal:

- UK TPR: a unilateral concession
- Spain: temporary run-down regime
- France: transitional provisions (meantime)
- Germany: temporary regime
- Italy: Temporary permissions regime

Please see Annex for details

- Belgium: managing general agents in relation to Lloyd's of London

# EU's Update on Equivalence Policy ahead of Brexit

## Commission Communication on equivalence in the area of financial services:

- Further confirmation that “*equivalence decisions are unilateral and discretionary acts of the EU*” taken “*in accordance with the Union priorities and the interests of EU financial markets*”
- Link between equivalence framework and the broader policy objectives and priorities
- Stronger assurances from “high-impact” third countries
- No “*uniform assessment and decision-making process*” in various areas of equivalence

“*An EU determination of reinsurance equivalence under Solvency II is vital in case a future agreement does not provide adequate EU market access for UK-based reinsurers*” (London Market Group, 29 July, 2019)

# Risk of Political Stalemate

*“I can confirm, as it has been repeated several times, we will not be renegotiating the withdrawal agreement. Full stop.”* (European Commission, 26 June, 2019)

*“No deal will never be the EU’s choice, but we all have to be ready for all scenarios”*  
(EU Chief Negotiator, Michel Barnier, 25 July, 2019)

*“It’s got to be, we need a new withdrawal agreement – if we’re going to go out on the basis of a withdrawal agreement. [...] We are getting ready to come out on 31 October, come what may”* (UK PM Boris Johnson, 25 June, 2019)

*“No-deal is a very real prospect. We must ensure we are ready”* (UK Minister in charge of no-deal preparations, Michael Gove, 28 July, 2019)

## **Spain's Royal Decree 5/2019 of 1 March 2019, Article 19 (Contract Continuity)**

- Temporary regime: original authorisation/registry granted by the UK provisionally kept in force during 9 months after the UK withdrawal date from the EU for contracts concluded before that date for the purpose of:
  - Carrying out their orderly termination or assignment to a duly authorised entity, in accordance with the relevant contractual clauses,
  - Apply for authorisation in Spain under any permitted legal regime.

## France Ordinance n°2019-75 of 6 February 2019

- Transitional measures only (future regime uncertain):
- Valid for 12 months as of Brexit for insurance contracts entered into before Brexit on the basis of the insurance passport.
  - A new article L. 310-2-3 of the Insurance Code is created:
  - Insurance contracts covering French risks may not be amended if such amendment entails the collection of additional premiums.
  - Mid-term adjustments are not generally prohibited unless they generate an increase in premiums.
  - All renewals, including automatic ones, are prohibited.
  - Payment of claims does not constitute a breach (during transition period only, future uncertain).

## Germany Brexit-Steuerbegleitgesetz of 25 March 2019

- Temporary regime enabling the *Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)*, the German regulator, to extend passport rights for UK insurers for up to 21 months to allow an orderly wind-up.
- Underwriting of new business is explicitly excluded and the insurers will be required to terminate existing contracts, obtain a new authorisation, or transfer the business to a licensed risk carrier
- The provision also enables BaFin to issue a general ruling, extending passport rights for all UK insurers through one administrative decision for a certain period.

**The decree containing the Italian transitional regime was published in the Official Gazette and on 26 March, 2019 it entered into force (the Decree).**

- A TPR regime of 18 months will be available for UK insurers.
- During the transitional period provided, insurance intermediaries (including those active in the business of providing supplementary pensions) will be able to continue to operate according to existing laws and regulations.
- Such a scenario is envisioned for both British firms carrying out activity in Italy, and Italian firms carrying out activity in the United Kingdom.
- The protection of those intermediaries' depositors and investors will also be guaranteed on a continuous basis throughout the aforementioned transitional period.

# Questions?



# Contact Information

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