



Brexit: EU legal and regulatory options for the re/insurance sector

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Step toe

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Topics for discussion

- Current state of play
- EU single market and Solvency II
- Options for the UK and the EU and consequences for re/insurance
- Preparing for Brexit
- Case studies
- Next steps

Today's panelists



Philip Woolfson, Managing Partner, Brussels



Angus Rodger, Partner, London



Guy Soussan, Partner, Brussels



Daniella Terruso, EU Policy Advisor, Brussels

- Focuses on legal issues facing the insurance sector in a cross-border context within the EU
- Advises EU and foreign re/insurance undertakings, intermediaries and associations on prudential supervision, regulatory and commercial questions
- 25 years' experience of advising insurers and reinsurers on contracts and regulation and representing them in disputes
- He is the author of a book on EU insurance regulation and a contributing author to various other books and publications
- 20 years' experience of advising re/insurers, captives, and intermediaries on EU regulatory and legal issues
- Advises on governance, corporate structuring, group supervision, and treatment of third-country groups under the Solvency II equivalence regime
- Provides policy advice and strategic representation before the EU institutions
- Advises on legislation and supervisory practice affecting the re/insurance sectors; EU tax law and policy affecting the life insurance sector; and the Digital Single Market, personal data protection and cybersecurity

Today's panelists



**Simon Hirsbrunner, Partner,
Brussels**

- Swiss and German-qualified lawyer, advising on EU regulatory requirements, with a focus on Swiss-EU relations
- Former European Commission case-handler
- Served at the Legal Service of the Swiss Federal Office of External Economic Affairs, the EFTA, and the European Law Unit of the Swiss Federal Office of Justice



**Alexis Lautenberg, Steptoe
Advisor, Brussels**

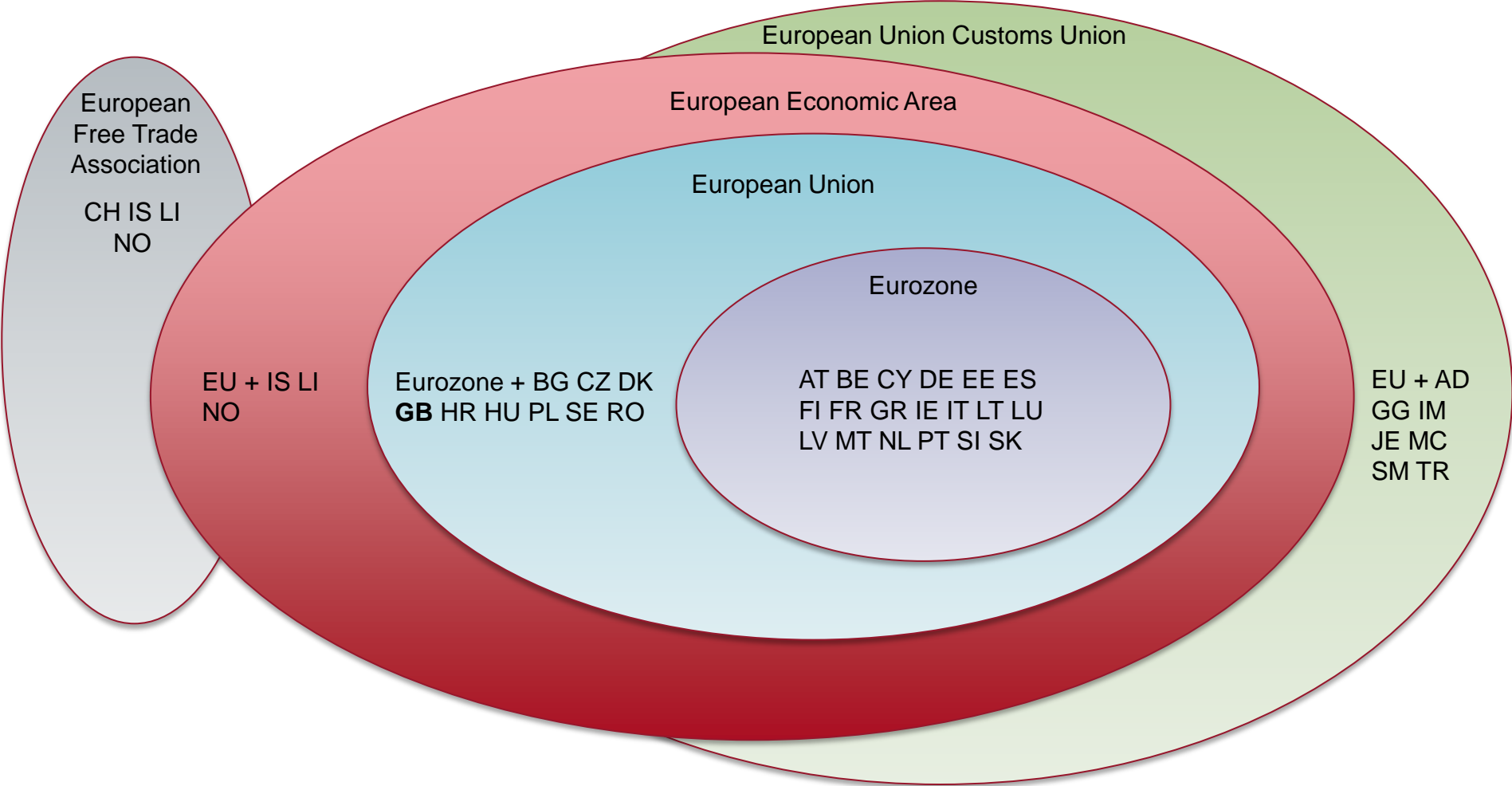
- Former Swiss Ambassador to the UK and the EU
- Chairman, Swiss Finance Council
- Prior to the establishment of the WTO, he was the Deputy Head of the Swiss Delegation to GATT in Geneva
- Also served as Chairman of the Negotiating Group on Financial Services under the Uruguay Round in Geneva



James Searles, Partner, Brussels

- Advises on matters of WTO-compatibility of EU and third-country trade measures
- Particular experience advising governments on the negotiation of bilateral trade and investment agreements
- Provides counsel to industry and governmental agencies on market access issues and regional, bilateral, and multilateral trade relations

The UK in broader Europe



From withdrawal to future relations with the EU

- A two-year process from UK **notification** to European Council (unless extension)
- **Withdrawal agreement** is concluded on behalf of the Union by the Council (qualified majority) after European Parliament simple majority vote
- Negotiation of an **agreement on future relations** with the EU is likely to take longer than the withdrawal agreement
- The UK may not initiate **trade deals with non-EU countries** before withdrawal (EU exclusive competence)

EU law applies during withdrawal period

- Donald Tusk, President of the European Council:
 - EU law – “**rights as well as obligations**” – continues to apply to and within the UK. “*I would also like to reassure you there will be **no legal vacuum** until the UK formally leaves the European Union.*”
- David Cameron, outgoing Prime Minister UK:
 - The UK will remain a “**full, paying member** until the point at which we leave.”
- UK’s Financial Conduct Authority statement:
 - “*Much financial regulation currently applicable in the UK derives from EU legislation. This regulation will **remain applicable** until any changes are made, which will be a matter for Government and Parliament.*
 - *Firms must continue to abide by their obligations under UK law, including those derived from EU law and **continue with implementation plans** for legislation that is still to come into effect.”*

UK insurance perspective

- *“London can remain insurance capital after Brexit”*
 - **Inga Beale, Lloyds of London**
- *“Brexit will allow insurers to escape ‘absolutely dreadful’ EU regulation”*
 - **Lord Turnbull, former non-executive director, Prudential**
- *“It is clear that passporting rights, access to the single market and visas are top of the list of what London businesses demand from any exit negotiations”*
 - **Sadiq Khan, the Mayor of London**
- *“Customers should remember we remain part of the EU until the process of leaving is complete and they should therefore avoid hasty decisions about their financial matters”*
 - **Huw Evans, Director General of the Association of British Insurers (ABI)**

EU single market in re/insurance: current status

- Treaty-guaranteed freedoms
- Economic integration, market liberalisation, legislative harmonisation
- Protection of policyholders
- Mutual recognition of supervision, a single licence and EU passport rights
- Solvency II
- Reorganisation and re-domestication
- Jurisdictional and choice of law rules

Benefits of Solvency II: e.g. group supervision

- *“An updated group supervision approach with the definition of a group solvency requirement and clear powers assigned to the group supervisor is based on fundamentally sound principles.”*
 - Gabriele Bernardino, Chairman of EIOPA
- **Group supervisor role:** strict allocation of powers, exchange of information with solo supervisors, common supervisory culture and proper functioning of the colleges
- Achieving group supervision was a **key reason** for Bermuda and Switzerland to seek equivalence because solo supervisors would “rely” on supervision exercised by the home regulator
- After Brexit, unless EU equivalence is granted, Solvency II exposes UK-based groups to **separate** EU group supervision

Options (1/4): European Economic Area

- Current members: EU + Iceland, Liechtenstein, Norway, via EFTA
- EU passport and Solvency II prudential regime apply in full
- EU ‘four freedoms’ (goods, services, capital, persons) and related EU legislation apply
- No formal access to the decision-making process within the EU institutions when relevant legislation is adopted
- Enforcement by EFTA Surveillance Authority and EFTA Court
- Observer status in European Supervisory Authorities (e.g. EIOPA)

Options (2/4): Swiss experience

- 100+ bilateral sectoral access agreements, but no general agreement on financial services
- No cross-border business, except for reciprocal establishment of non-life insurance branches
- EU equivalence designations (*e.g.* Solvency II) on same basis as other third country candidates
- MoU with European Supervisory Authorities (*e.g.* EIOPA)
- A more ambitious financial services deal likely subject to concessions on free movement of persons and the jurisdiction of the EU Court of Justice

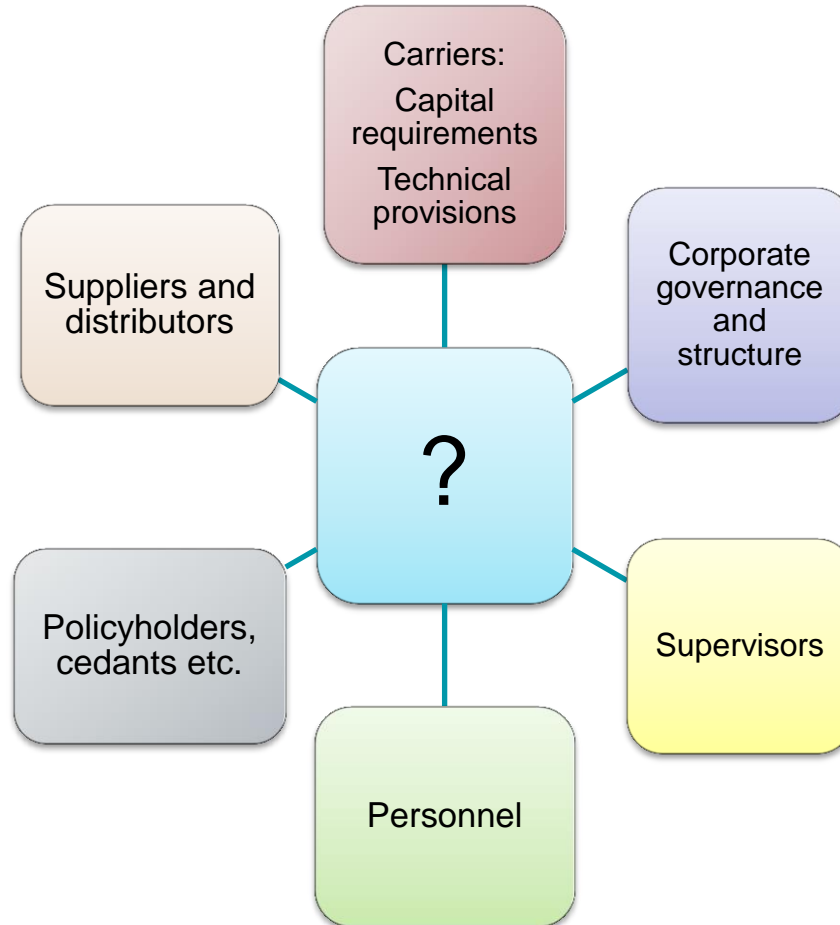
Options (3/4): WTO status

- Circumstances: 2 years+, no EEA or EFTA (“no free movement, no access to single market” – and “**no cherry picking**”)
- **UK reduced to basic WTO membership** (rights and obligations per GATT 1994 and related agreements including GATS)
- GATS provides **basic rights** on services market access but numerous national limitations (including by EU MS) and certain carve-outs, including prudential
- UK insurers can still provide **MAT insurance** subject to GATS limitations (the EU leaves this to MS national discretion); **reinsurance** is more challenging; unless EU equivalence is granted, national requirements (e.g. collateral) may be imposed
- **UK options:** individually join existing WTO sectoral initiatives/ agreements (e.g. TISA, GPA, ITA) and start bilateral FTA negotiations (with EU and other third countries)
- EU has set certain ambitious and comprehensive bilateral FTAs e.g. with Korea, Singapore, and Canada (pending ratification) as **templates**

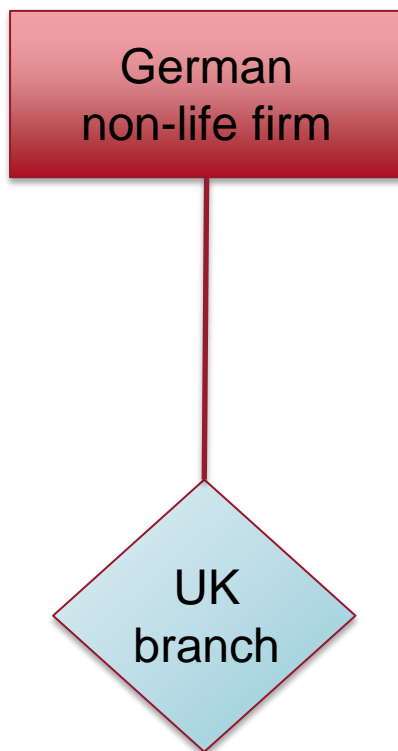
Options (4/4): Equivalence

- Equivalence is available for three areas of Solvency II: reinsurance, solvency calculation and group supervision
- It does not provide trading rights (except reinsurance)
- UK is already Solvency II “compliant”
- Any post-Brexit UK equivalence is subject to broader context of relations with the EU
- Scope for passporting?

Preparing for Brexit



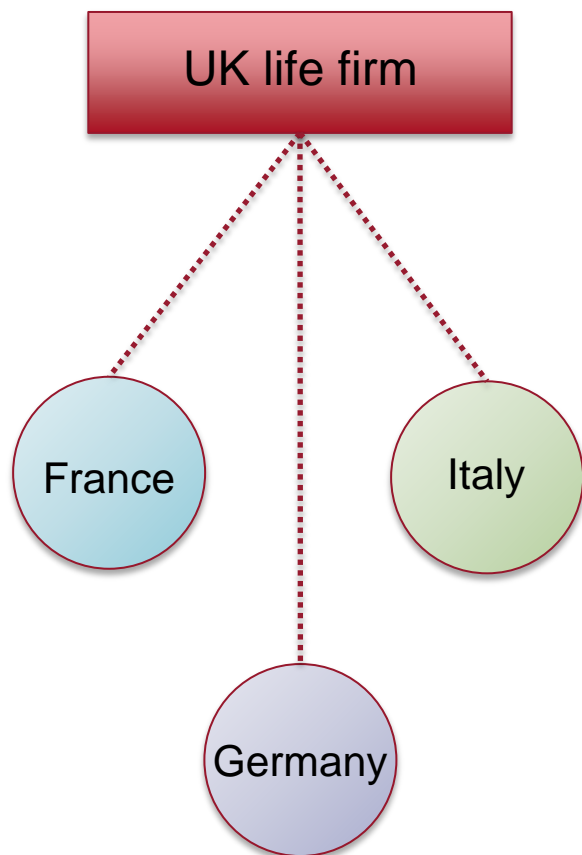
Case study (1/4): incoming EEA firm with existing UK branch



- After Brexit, will no longer be the UK branch of an EEA firm
- Prudential requirements, governance
- Conduct of business
- Guarantee scheme
- Other?

Transitional arrangements?

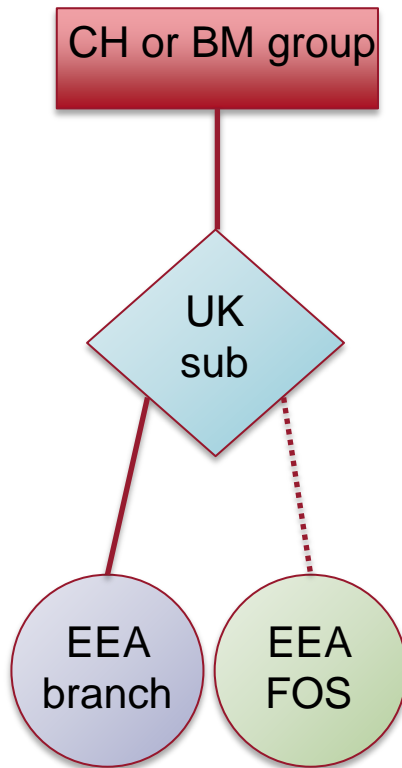
Case study (2/4): outwards UK firm on services basis



- After Brexit, will no longer be EEA insurer with freedom of services/FoS
- FoS? Branch? Subsidiary?
- Prudential and governance
- Conduct of business, distribution
- Guarantee scheme
- Other?

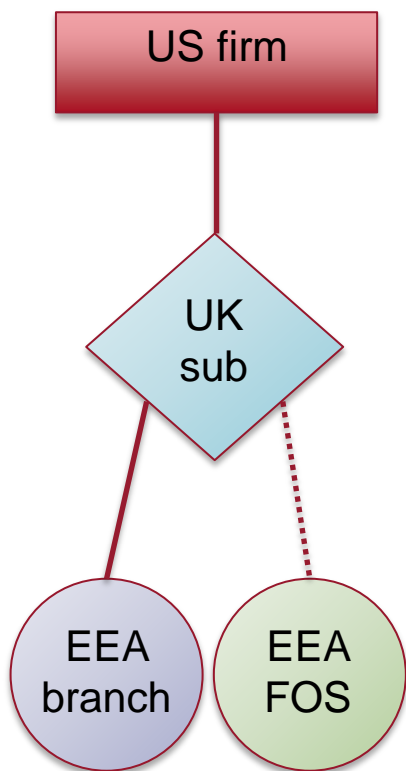
Transitional arrangements?

Case study (3/4): Swiss or Bermudian group using UK as port of entry



- After Brexit, BMA and FINMA would no longer act as Solvency II group supervisor
- EEA branches become branches of a third country insurer
- FoS direct insurance from UK to EEA would be lost
- Reinsurance into the EEA from the group would still benefit from equivalence (due to the group's status)
- UK sub can no longer be the hub for business into the EEA. Replacement by EEA sub?

Case study (4/4): US firm using UK as port of entry



- For EEA purposes, unless equivalence is granted, group supervision can no longer be UK
- Relocate or set up a company in another Member State to redirect EEA business and safeguard passporting rights?
- Group supervision regime for non-equivalent jurisdictions will continue for US inside the EEA until better arrangements agreed
- Impact of covered agreement?

Next steps

- Continue current activity/assess new business opportunity
- Monitor policy, legal and regulatory developments
- Take stock of all links in the (re)insurance chain and identify vulnerabilities
- Understand differences in UK-EU regimes
- Consider corporate and operating structure

Questions?



Thank you for joining us

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