



# Germany - Brexit for the Insurance Sector

## INSURANCE HORIZONS

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- Unless they have commenced a portfolio transfer before the end of the transition period, UK insurance companies are required to terminate insurance contracts underwritten using EU passporting rights before the end of the transition period and as soon as is legally permissible.
- If it is not permitted to terminate those policies, a UK insurer can run them off in accordance with their contractual terms.
- If they commenced a portfolio transfer before the end of the transition period, UK insurers can continue to service their policies until the transfer takes effect.
- UK insurers who no longer have passporting rights in Germany must provide certain information to BaFin by 27 February 2021.

On 31 December 2020 (the last day before the end of the Brexit transition period) the Federal Financial Supervisory Authority (BaFin) published a general ruling on conducting and settling cross-border business of UK insurance companies and pensions providers post-Brexit (General Ruling).

In essence, BaFin is of the opinion that, on the withdrawal of the UK from the EU and the end of the Brexit transition period, UK insurers shall lose their passporting rights, which were previously granted by Article 15(1) of the Solvency II Directive as implemented, which previously allowed them to conduct insurance business in other EU/EEA states. Therefore, in principle, UK insurance companies have to be considered as third-country insurance companies, subject to the supervisory regime under German insurance supervisory law (Sections 67 to 73 German Insurance Supervision Act, (VAG)).

### Details of BaFin's General Ruling

However, BaFin ordered, in its General Ruling, that UK insurance companies that have underwritten insurance policies in Germany using their passporting rights before 31 December 2020:

1. are allowed (without being required to obtain a further license from BaFin in accordance with Sect. 67 (1) VAG) to run off the underwritten policies in accordance with the applicable contractual provisions, but have to:
  - i. terminate these policies if possible and as soon as legally permissible;
  - ii. completely settle the insurance contracts and terminated insurance contracts on the basis of the terms of the contracts; and
  - iii. fully settle insurance contracts already terminated prior to 31 December 2020 on the basis of the contractual terms.

(Therefore, it is only permissible to fully run-off existing business, if, and for the period that, the termination of the primary insurance contracts is not permitted under civil law.)

2. are allowed, even if termination of the relevant contracts is permitted under applicable law, to continue to run off a portfolio of risks pending a transfer of the insurance portfolio to an EU/EEA licensed insurance undertaking or to a third country branch licensed in the EU/EEA, if the portfolio transfer was initiated before 31 December 2020 and could be considered as a “realistic option that is likely to be approved”;

3. must submit the following documents and information for the entire duration of the execution or settlement of insurance contracts:

- a. a specific indication and updates of their contingency plan (e.g. portfolio transfer, pure run-off, other);
- b. the name and contact information of the person within the insurance company that is responsible for handling complaints related to the affected insurance contracts;
- c. the expected period of time until the final completion of the settlement of all insurance contracts;
- d. the number of insurance contracts still to be settled;
- e. the number of affected policyholders, whose insurance contracts still have to be settled;
- f. the amount of gross technical provisions for insurance contracts still to be settled;
- g. the amount of gross premium income as of the last balance sheet as well as the (estimated) gross premium income still to be expected with regard to the insurance contracts to be settled; and
- h. the number of claims that are still open.

The information/updates under a) and b) must be submitted for the first time not later than by 27 February 2021 and on an ongoing basis as changes are made to the contingency plan.

The information/documents under c) - h) must be submitted once a year, within three months of the end of the fiscal year.

BaFin expressly reserves the right to separately order submission of further information or documents during the year deviating from the rule above.

Insurance companies must also submit this information and documentation separately for each line of business.

The General Ruling took effect on 1 January 2021. It applies to affected insurance companies until complete termination of the contracts.

The General Ruling can be revoked in respect of all UK insurers or for individual insurers.

## Consequences of the General Ruling

The intention of these regulations is that an orderly run off of the insurance portfolios of British insurers can take place if there is no possibility of termination. However, BaFin attaches great importance to the fact that in cases where termination right exists vis-à-vis the policyholders, this option has to be used by the insurers. It should be stressed that BaFin considers transparency for policyholders to be very important.

As this General Ruling applies to UK insurance companies only, there is a risk that UK insurance intermediaries will not be allowed to carry out insurance distribution activities (even in relation to the run-off of insurance policies underwritten by UK insurers, where this is permitted based on BaFin's General Ruling as considered above) if these activities are licensable distribution activities under the Insurance Distribution Directive (IDD). Currently, there is no explicit relief for UK intermediaries in relation to their German passported business and operations. Therefore, the exemptions from the licensing requirements provided for under the IDD will gain even more practical importance.

[Return to Overview page](#)

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