

27 SEP 2018



Member of the European Parliament
European Parliament Brexit Coordinator
Group of the Alliance of Liberals and Democrats for Europe
The Chair

D 314758 18.09.2018

Ms Seema Malhotra MP
House of Commons
London, SW1A 0AA
United Kingdom

Dear Ms Malhotra,

At my hearing before the Exiting the European Union Select Committee on 20 June 2018, you asked me a question on the impact of Brexit on existing contracts. I promised that I would get back to you in writing on this issue.

When it comes to ensuring the continuity of contracts concluded before Brexit - such as insurance and OTC derivatives contracts – the assessment made by the EU so far indicates that issues are likely to be linked to a far more limited set of contracts than initially feared by some.

As regards cross-border insurance contracts, the vast majority are one-off or short term year contracts like travel insurance. For these contracts there are no cliff-edge risks. For the rather limited number of cross-border EU-UK insurance contracts that would still be in place after the UK's withdrawal, they would remain valid and the performance of existing obligations under the contract could generally continue to take place. This would mean that there is as a rule no issue of contract continuity.

In the case of uncleared OTC derivatives, many of these contracts expire before March 30, 2019. In addition, derivative contracts concluded between UK and EU market participants should in principle remain valid. As analysis from market participants has shown, under the applicable national third country provisions of different Member States the performance of existing obligations under the contract could continue. This would mean that there is no issue of contract continuity, even in case of a no-deal scenario. At the meeting of the Treasury Select Committee of 17 July 2018 the Governor of the Bank of England Mark Carney acknowledged that existing (derivative) contracts remain valid and that service continuity is ensured. He also acknowledged that these contracts can be held and serviced until maturity. There is, therefore, no issue of contract continuity. However, the performance of certain life-cycle events such as roll-over, novation and portfolio compression, imply, as a rule, the creation of new rights and obligations, for which an authorisation under Union or national law may be required. The use

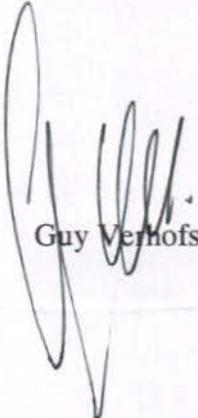
of the term "*life-cycle events*" hides that in many cases these events lead to the creation of new rights and obligations, to new contracts.

Although I fully understand that market participants would prefer "business as usual", it should not come as a surprise to market participants and UK supervisors that the UK's withdrawal has consequences, also in the financial services area. For this reason the EU has over recent months consistently encouraged all stakeholders to prepare for the UK's withdrawal from the European Union. This was also underlined again by the European Council (Article 50-format) on 29 June.

It should be pointed out in this regard that, as confirmed in the Solvency II Directive, insurance firms are themselves required to take measures to ensure that contracts can continue to be serviced. As stated by the European Insurance and Occupational Pensions Authority (EIOPA), firms should assess the impact of the withdrawal on their operations and contract portfolios and, also in cooperation with the relevant national supervisors, identify and then mitigate these risks. The customers should be clearly informed about the possible impact on their insurance contracts and on the relevant measures taken by the insurance firms.

I am conscious of the fact that this can be a burden to firms and believe that is one of the reasons why the transition period, as provided for in the current draft Withdrawal Agreement, would be so important to provide stakeholders with more time to adapt to the new situation. As you know, the draft Withdrawal Agreement provides for a transition period until the end of 2020, during which the economic status quo, including passporting rights, would be maintained. There is, however, no legal certainty about a transition period so long as the Withdrawal Agreement is not concluded and ratified.

Yours sincerely,



Guy Verhofstadt