

EIOPA ISSUES SECOND WARNING ABOUT THE IMPACT OF BREXIT ON INSURANCE CONTRACTS

03 July 2018 | Europe

Legal Briefings - By **Alison Matthews and Geoff Maddock**

EIOPA has published an [opinion](#) and [FAQs](#) emphasising the need for insurers and insurance intermediaries to explain to policyholders how Brexit will affect their insurance cover.

At first sight, EIOPA's comments appear to reinforce concerns that political compromise cannot be expected on policies written (or performed) on a cross-border basis before the UK's withdrawal from the EU (so-called "legacy contracts"). The particular issue for UK insurers is whether they will have the authorisation they need, post-Brexit, to continue to meet their obligations to EEA policyholders under these contracts. Closer examination of the words used by EIOPA may, however, mean that fewer policies are caught by this issue than has been assumed to date.

Our discussion of EIOPA's latest opinion can be found [here](#).

In particular, we note the following:

- EIOPA's comments serve as a reminder that, despite numerous calls for contract continuity to be dealt with outside political negotiations, time is running out for what should have been a relatively simple issue to resolve (see our [December 2017 blog post](#), discussing EIOPA's first opinion on this issue and our comments in [July 2016](#)).
- There is little new in what EIOPA says for UK insurers that have already begun the process of transferring policies to an EEA-authorized insurer. It has never been in doubt that policyholders must be told about how a Part VII transfer undertaken in the context of Brexit will affect, for example, their FSCS protection.

- EIOPA appears to limit its comments to policies that were sold cross-border. This may mean that concerns about insurers' ability to meet claims by policyholders who move from the UK after inception of their contract fall away.
- Finally, EIOPA sets its comments in the broader context of policyholder protection. The most obvious way of protecting policyholders post-Brexit is to ensure that policies can be performed in exactly the same way as at present. It is perhaps unfortunate, therefore, that EIOPA remains silent on the need for a solution that removes any barriers to the payment of claims.

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