



Austria - Brexit for the Insurance Sector

INSURANCE HORIZONS

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- From 1st January 2021 UK firms will be treated as firms from third countries.
- No temporary permission regime has been put in place for UK insurance companies to provide cross-border services – it is unclear whether claims on policies underwritten by UK companies before the end of the transition period can be paid.

The Austrian legislator has provided that insurance companies established in the UK must ensure that policyholders are informed of the effects of the withdrawal of the UK from the EU before the conclusion of any contract and during the term of the insurance contract, and that this information is updated without delay if necessary.

However, neither the Austrian Financial Markets Authority (FMA) nor the Austrian Government has provided specific information on how UK insurers, who previously passported into Austria, can continue to pay claims and service policies after the end of the Brexit transition period.

There is no Austrian legislation in this regard, and the EU-UK Trade and Cooperation Agreement does not deal with this topic either. Unlike some other EU member states, Austria has not adopted a national temporary permissions regime that would enable UK insurance companies to provide cross-border services after 31st December 2020 to run off their policies. Consequently, as of 1st January 2021, UK firms will be treated as firms from third countries. In the relevant national legislation, regulations and EU legislation, unless otherwise specified, references to third countries shall be read as including the United Kingdom.

Even though it is widely accepted that the contracts remained valid by civil law, the question of whether the claims from these contracts could be fulfilled at all has caused great difficulties.

To mitigate the risk of not being able to fulfil their obligations, many UK insurance undertakings have decided to transfer insurance contracts held by Austrian customers to an insurance undertaking in continuing EEA state. The FMA has provided information on the process for portfolio transfers involving Austrian policies and has emphasized that every affected insurance policyholder must be informed about the transfer, and that generally a termination right for the policy holder exists at the end of the current insurance period.

However, where such measures have not been taken, fulfilment of UK insurers' insurance contracts may not, in principle, be possible.

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