

European Insurance Contract Law - European Commission sets up expert group

January 2013

LATEST DEVELOPMENTS

The European Commission has established an expert group in European Insurance Contract law, tasked with analysing whether differences in the contract laws of the Member States create an obstacle to European cross-border trade in insurance products.

BACKGROUND

Over the past decade, the European Institutions have been examining the possibility of harmonising contract law across the Member States, with the aim of removing barriers to cross-border trade. Insurance has been carved out from the existing initiative on European Contract law reform with the Commission recognising that, as an industry, insurance requires "specific in-depth analysis". With this in mind, the new expert group will have 20 members comprising representatives of stakeholders to include the insurance industry, the main users of insurance products and practitioners with experience in drafting insurance contracts.

Should the expert group find that differences in national contract laws do pose an obstacle to cross-border trade in insurance products, it will identify the product areas which are likely to be particularly affected by such obstacles.

COMMENT

There is some doubt as to whether differing national laws actually result in cross-border barriers to trade. The Commission has confirmed that it will only seek to introduce a new European Insurance Contract law if it can be demonstrated to be more beneficial to the free movement of services than the existing national laws.

Perceived potential advantages to an EU-wide Insurance Contract law include easier access for consumers to foreign products, thereby leading to potential costs savings at consumer level and for insurers, an increased customer base leading to greater premium volume. For multi-national businesses, there may be advantages to a streamlined contractual system and for both individuals and businesses, greater freedom to move within the EU without concern that insurance would be affected.

However, the existing insurance passporting regime, by which it is possible for an insurer carrying on business in one Member State to do so in another, is already aimed at facilitating cross-border trade and appears to work well. Insurance does not operate in a vacuum and whilst harmonisation may be desirable from a wordings perspective, it would also require associated rationalisation in a number of related legal spheres such as data protection

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and tax. Claims handling across an EU-wide arena and differing dispute resolution regimes may present particular difficulties should a European Insurance Contract law be introduced. Moreover, most personal lines products require a detailed knowledge of the local market, including local regulation and laws.

The expert group is due to report its findings to the Commission before the end of the year.

FURTHER INFORMATION & TRAINING

For more information or to enquire about any training requirements that you may have in relation to this subject please contact the person with whom you usually deal or Helen Chapman/Nina Tulloch.



Helen Chapman

Partner, London

T +44 20 7296 2588

helen.chapman@hoganlovells.com



Nina Tulloch

Senior Associate, London

T +44 20 7296 5667

nina.tulloch@hoganlovells.com

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