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## Home and away

The conditions for free movement of services within the EU are as vital as the freedoms themselves, says supervisor Alberto Corinti

Free movement of services is one of the fundamental freedoms of the EU's internal market. An open and sound EU single market in insurance benefits both consumers and insurers. It has the potential to foster genuine competition, increase consumer choice, boost innovation and provide business opportunities.

This system, however, is based on the precondition that prudential and market conduct supervision ensure an equivalent, satisfactory level of consumer protection and a level playing field for companies across all EU member states.

The principle of "home country control", coupled with the obligation to consider general requirements related to the provision of services in another country (host country), such as consumer protection law, has been designed to allow this system to work. EU supervisors must therefore ensure that EU undertakings are capable of fulfilling their obligations and treating consumers fairly in whichever EU market they conduct business.

Several obstacles could potentially obstruct this objective, such as:

- Lack of harmonisation of regulation across EU countries. Even certain detailed aspects of prudential regulation, despite the EU's Solvency II Directive, are not — or have not yet been — fully harmonised in national implementing measures.
- Lack of or insufficient convergence of supervisory practices.
- Home supervisors' lack of expertise about specific risks and challenges in the host market, ie players, products, operational

functioning. This is relevant for the assessment of both the company's underwriting risk and the operational and reputational risk stemming from conduct of business in the host market.

- Home supervisors' limited resources and tools to appropriately supervise a cross-border activity that could become disproportionate compared to domestic activity.
- Host supervisors' challenges or even inability to appropriately enforce consumer protection law or other general requirements.

All these issues can be amplified by a lack of effective cooperation between the home and the host supervisor. Companies could then try to leverage these shortcomings in order to circumvent unfavourable regulation, as well as to exploit less effective supervisory treatments.

These risks could put the credibility of the sector and eventually the fundamental objectives of the internal market at stake. This would be a loss both for European citizens seeking insurance coverage and for insurers, who would all be impacted by a decrease in the credibility of the sector.

Unfortunately, these risks appear to materialise increasingly in the internal market. The recent distress or even failures of some EU insurers pursuing extensive cross-border business have had a significant impact on host country policyholders. This has, of course, raised concerns among policymakers, insurers and supervisors.

### A system that does not always work

The cross-border activity under freedom of services (FOS) represents a significant portion of insurance business in Italy. While we see this as a good development, we cannot hide the fact that ensuring appropriate protection for Italian policyholders in the case of cross-border activity has become increasingly challenging.

One clear, maybe extreme, example is Italian entrepreneurs banned from the Italian financial market due to their reputation, who then establish companies in other countries to continue to operate in Italy. In these cases we have cooperated with the home supervisors, who remain responsible for the prudential supervision of those companies, to seek appropriate interventions to stop or, as far as possible, prevent this behaviour.

<sup>1</sup> Conducted during 2015 and whose final report was approved by the EIOPA Board of Supervisors (BoS) in January 2016

<sup>2</sup> The revision of the General ("Siena") Protocol was approved by the EIOPA BoS in January 2017 under the legal form of a BoS Decision

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Recently there have also been cases of EU companies entering the Italian motor third-party liability (MTPL) market and experiencing severe problems due to their lack of knowledge of the specific characteristics and risks of this market, which could not be detected and addressed by the home supervisor.

### What can regulators and supervisors do?

Certainly, harmonisation of regulation and enhanced convergence of supervisory practices, including the availability of resources and tools, are preconditions to improving the situation. EIOPA plays a key role in this. However, a crucial aspect is a qualitative evolution in the cooperation between home and host supervisors. This relationship should become more effective, more timely and more forward-looking. In addition, notwithstanding the "home country control" principle, the host supervisor should have a more proactive and responsible function. This is because host supervisors are often better placed to detect risks arising from cross-border activity in their markets.

The EIOPA "peer review" on FOS<sup>1</sup> highlighted this need. The subsequent revision of the "Siena" Protocol<sup>2</sup> has introduced new forms of cooperation that intend to move in this direction. It should enable more timely and complete exchange of information at all stages of the supervisory process: during the authorisation of cross-border activity; on an ongoing basis; and — if necessary — even before the undertaking submits an application to carry out cross-border activity (eg, when assessing shareholders and managers who come from or are connected to another EU country and there is a clear intention to operate predominantly in that country).

Whether this is sufficient will very much depend on the day-to-day supervisory practices of EU supervisors and their ability to cooperate effectively, even beyond their formal duties. Since the creation of the internal market, the main objective has been to eliminate obstacles to the freedom to move services across EU countries. Now, to defend the internal market, we need to focus more on the conditions to allow this freedom. ■