

**HILA-AIDA SUMMIT  
ATHENS 2014**

MAY 7-9, 2014  
KING GEORGE HOTEL  
ATHENS, GREECE

# Working Group State Supervision

**HILA-AIDA SUMMIT  
Athens, 8 May 2014**

# Agenda

17.30 p.m. **Introduction** (Dr Gunne W. Bähr, Germany; Yannis Samothrakis, Paris)

17.45 p.m. **Topic 1: The future role of EIOPA and national supervisors under the Solvency II regime**

**Speakers re Topic 1:**

- 1) **Nikolaos Pavlopoulos**, President Greek Private Life Insurance Guarantee Fund.
- 2) **Olivier Favre**, Schellenberg Wittmer Ltd, Zurich.

18.15 p.m. Discussion

18.30 p.m. **Topic 2: Regulatory challenges resulting from group insurance contracts on a cross-border basis**

**Speakers re Topic 2:**

- 1) **Reinhard Dallmayr**, BLD Bach Langheid Dallmayr, Munich.
- 2) **Andreas Glaser**, Head Life Legal & Contacts, Partner Re, Zurich.
- 3) **Yannis Samothrakis**, Clyde & Co, Paris.

19.15 p.m. Discussion

19.25 p.m. Questionnaire, next meeting, topics for the next meetings etc.

19.30 p.m. End of session

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*The future role of EIOPA and national  
supervisors under the Solvency II  
regime*

*Nikos Pavlopoulos*

***Private Life Insurance Guarantee Fund***

***[www.pligf.gr](http://www.pligf.gr)***

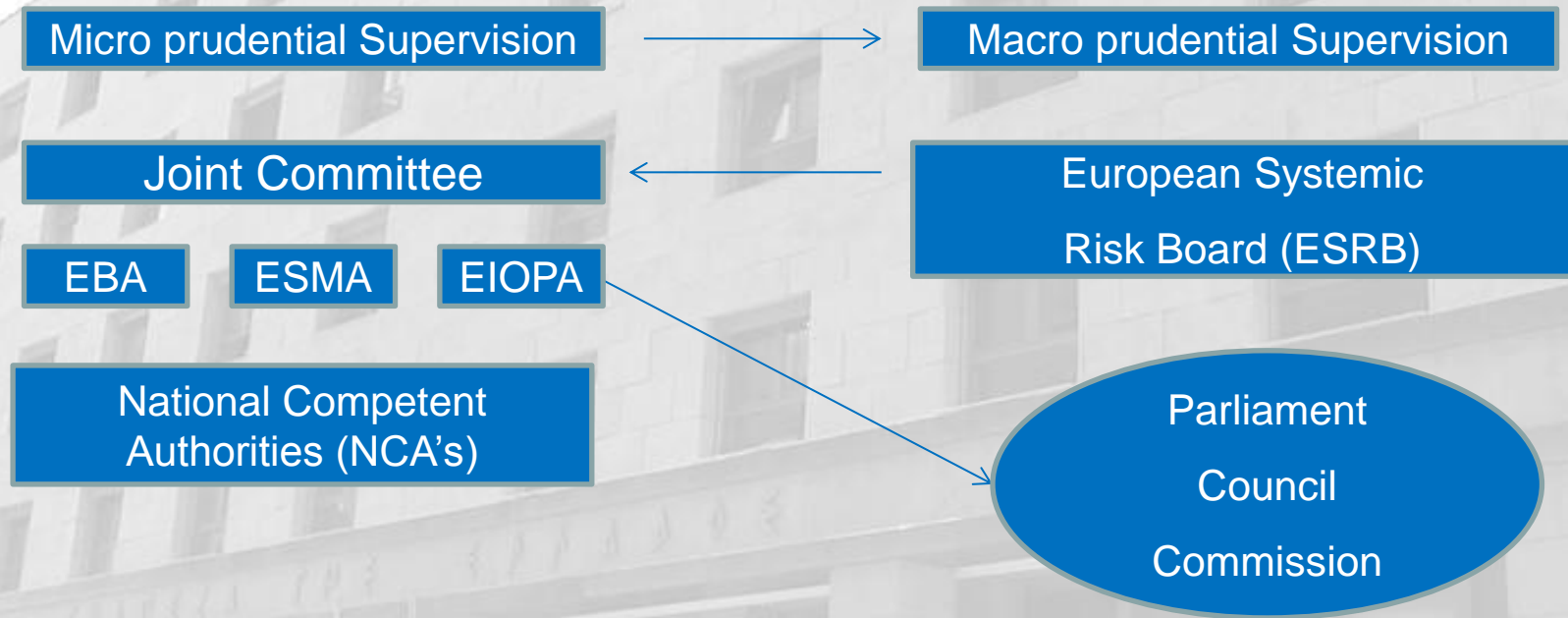
# Lessons learned

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- Consistent supervisory practices
- Close co-operation and information exchange between supervisors
- Integrated network of supervisors (authorities)

# European System of Financial Supervision (ESFS)

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# Regulatory tools

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- Own Risk Solvency Assessment (ORSA)
  - Forward looking assessment of undertaking own risk (Flauor)
- Supervisory reporting
- Public disclosure
- XBRL Taxonomy
- Group supervision (colleges)

# Eiopa – future role

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## Key Consumer Trends in the EU

- Payment protection insurance
- Unit-linked life insurance products
- Comparison websites

# Supervisory convergence

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- Action plan for colleges of supervisors 2014 -2015
- Review Panel
- Supervisory Handbook
- Centre of Expertise on internal models
- Stress test



# Key roles

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- Close cooperation with NCA
- Setting up a reporting system
- Intervention in the consumer - to - market relations

# IORP Directive

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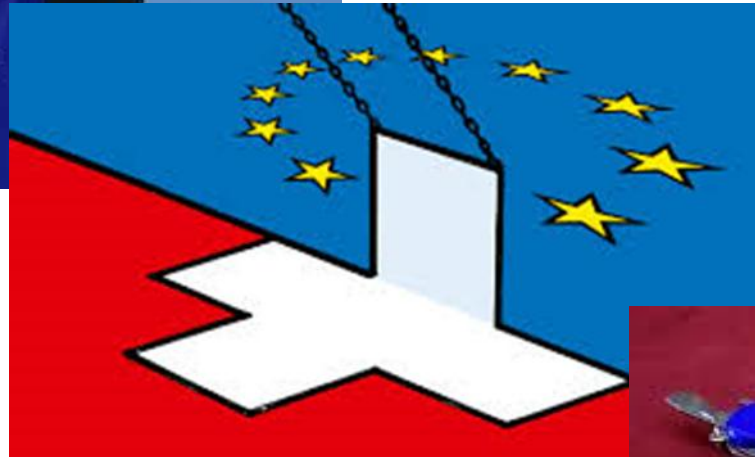
- Moving towards a better alignment between risk and capital
- Promoting good risk management practices,
- Fostering transparency and reinforcing supervision

AIDA Conference 7-9 May 2014, State Supervision WP  
Swiss perspective on EIOPA

Olivier Favre



# Market access?



- > FINMA as competent supervisory authority
  - > Domestic business: Insurance companies domiciled in Switzerland (direct insurance and reinsurance)
  - > Cross-border business (by insurance companies domiciled outside Switzerland) conducted in or from Switzerland:
    - > Insurance activities deemed to be conducted in Switzerland if:
      - policyholder or insured person domiciled in Switzerland or
      - insured property located in Switzerland
    - > Insurance activities deemed to be conducted from Switzerland if foreign insurance company has Swiss branch office (even if no Swiss policyholders, insured persons or property)

- > Exemptions for cross-border business:
  - > reinsurance business conducted by foreign insurance companies (with or without Swiss branch office)
  - > direct insurance business without Swiss branch office if
    - > insuring only risks relating to marine, air or cross-border transportation
    - > insuring only risks located abroad
  - > at discretion of FINMA: if small number of insured or economically insignificant activity in Switzerland

# Supervision by FINMA

	No Treaty	Treaty with EU (direct ins. ex. life)	Treaty with Liechtenstein (direct ins.)
Cross-border activity w/o license	No (sub. to exceptions, e.g. reinsurance)	No	Yes (subject to review by home regulator)
Swiss branch	Yes (requirements of ISA), except reinsurance	Yes (requirements of treaty)	No (subject to review by home regulator and FINMA)
Regulator	FINMA	FINMA	Issue specific

# Supervision by FINMA

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- > Groups under Swiss law
  - > at least one insurance company
  - > mainly active in the insurance business
  - > common control (either voting rights or otherwise, e.g. financial support)
- > Supervision by FINMA
  - > controlled from Switzerland (at present 8)
  - > controlled from outside Switzerland, but no equivalent group supervision (at discretion of FINMA) by foreign supervision authorities (at present 0)
- > Status of Swiss group companies of EU groups and of EU group companies of Swiss groups for solvency calculations depending on outcome of EU equivalence
- > Meetings with supervisory colleges for purposes of exercising group supervision internationally



- > Relevant for purposes of
  - > reinsurance supervision (Art. 172 of Solvency II Directive)
  - > group supervision (Art. 260 of Solvency II Directive)
  - > inclusion of third country insurance and reinsurance undertakings in group solvency calculations (Art. 227 of Solvency II Directive)
- > Initial assessment by EIOPA completed on 26 October 2011 (to be confirmed)
- > Formal equivalence decision by EU Commission expected as of end of 2014/Q1 2015

# Solvency II Equivalence

Criteria	Swiss regulation	Equivalence status
Powers and responsibilities of FINMA	ISA and implementing ordinances, SST	√
Professional secrecy, exchange of information	FINMASA and ISA	√
Licensing of new business	ISA and implementing ordinances	√
System of governance and public disclosure	ISA and implementing ordinances, applicable securities laws for listed entities	<ul style="list-style-type: none"><li>- no waiver of internal audit function</li><li>- requirement to have compliance function</li><li>- public disclosure by company (information on solvency and financial condition)</li></ul>

# Solvency II Equivalence

Criteria	Swiss regulation	Equivalence status
Changes in business, management or qualifying holdings	ISA and implementing ordinances	√
Solvency assessment	ISA and implementing ordinances, FINMA regulations on SST, SQA (so far SQA I and II)	<ul style="list-style-type: none"><li>- SST: quantification of operational risks</li><li>- reinsurance: captives not subject to SST</li><li>- group supervision, SST: consolidation vs. aggregation method</li></ul>
Scope of group supervision	ISA and implementing ordinances	√
Cooperation and exchange of information	ISA and FINMA policy on insurance group supervisory colleges	√

thank you for your attention

**Olivier Favre**

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# Regulatory Challenges Resulting from Group Insurance Contracts on a Cross Border Basis

Dr. Reinhard Dallmayr

HILA –AIDA SUMMIT WP Session State Supervision  
Athens, 8th May 2014

# Can Group Insurance Contracts Solve non-admitted Problems?

## Pros

- Uniform standards and sufficient coverage
- uncomplicated placement and loss settlement
- lower costs
- better transparency

## Cons

- regulatory-, criminal- and tax issues?
- no local advice
- social security issues

## **Consequences of regulatory or other legal infringements (not exhaustive) in target country**

- Fines, criminal proceedings against insurer, intermediary, policyholder
- Contract may be void or non-enforceable in target country
- Local requirements to be insured may not be met (example: Germany)
- Compliance issues for employer

# Where is insurance business carried out?

The country in which the insurance business is carried out (and where a licence is required) is where the risk is situated (Directive 88/357)

- for real estate where the property is located
- for registered vehicles the country of registration
- for travel- and holiday risks the country where the contract is made
- for all other risks the country in which the policyholder has its habitual abode; if the policyholder is an entity, where its seat or branch is which is related to the cover



# Incoming business (Germany)

Example: EU-insurer covers EU-nationals in Germany through a group insurance contract with an EU-policyholder

- Consequence would be that e.g. in case of a group insurance contract between a French insurer and a French company which sends expats to Germany, German regulatory law is not affected!
- **But:** This may infringe the rationale of regulatory rules and could encourage circumventions. Therefore some legal opinions argue that in case of group insurance the habitual abode of the insured persons is decisive

- Even if foreign insurer may provide group insurance coverage to expats local requirements may impose obstacles:
  - Example: Health insurance in Germany
  
- Acc. to §§ 110a (4) 2, 12 (1) VAG (Act on Supervision of Insurance Entities) health insurance which can replace completely or partially the cover of the social health insurance (substitutive insurance) must be carried out in the manner of life insurance:
  - premiums must be calculated on actuarial principles (e.g. on probability tables and other statistical data)
  - old age reserves must be created

# German Local Requirements = Health Insurance

- Exceptions: Expats who do not have a Wohnsitz in Germany:
  - Only temporary stay up to 6 months, eventually up to 2 years under certain circumstances (e.g. family remains in home country, expat goes there on weekends)
  - non-EU nationals with a visa of up to 5 years: health insurance cover can be limited to 5 years, needs not to build old age reserves

## Substitutive Health Insurance

- § 193 (3) VVG (Act on Insurance Contract Law)
  - Each person which has a domicile (Wohnsitz) in Germany must have a valid health insurance with an insurer admitted in Germany. The cover must provide for in- and out-patient treatments; the total retention may not exceed 5.000 €/year.
    - Infringement of EU-Law (discrimination)?
    - Consequence – required cover is substitutive
    - non-EU-insurer needs German licence

## Example: Outgoing group insurance contract – USA

- EU-employer and –insurer make group insurance contract which covers expats in USA (for 0,5 to 5 years)
- USA regards as carrying out insurance business in the US
  - Issuing of insurance contracts to residents
  - Offers to make such contracts
  - Collecting premium for such contracts
  - Carrying out other insurance business in connection with such contracts, e.g. settling claims

Vielen Dank für  
Ihre Aufmerksamkeit

# Lecturer

**Dr. Reinhard Dallmayr**  
**Rechtsanwalt**  
**Specialized Insurance Lawyer**

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## Language

German, English

## Areas of expertise

- Insurance contract law
- Counselling foreign insurers
- Regulatory law
- Product development
- Reinsurance
- Arbitration

## Career

1969-1976

1977

1980:

2004:

Law Studies in Munich and London

Doctorate

Admission to the bar

Specialized solicitor in insurance law

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# PartnerRe

## **Regulatory challenges - Trends or Particularities?**

Overview about state supervision in dedicated Reinsurance markets

May 8, 2014





## Disclaimer

**The following presentation is for general information, education and discussion purposes only.**

**Views or opinions expressed, whether oral or in writing do not necessarily reflect those of PartnerRe nor do they constitute legal or professional advice.**





# Agenda

Scope

Supervision and Insurance

Supervision and Reinsurance

Examples





## Scope

**Insurance and reinsurance means life insurance and life reinsurance and therefore, non-life insurance is not within the scope of this presentation**



## Supervision and Insurance

- Access to markets:

Licensing vs. non-admitted  
(standard) (exemption)

- Product features:

Compliance with local insurance laws



Multinational Companies insuring the business either with multinational insurance groups or with local insurance companies, which enter into profit sharing arrangements on a multinational level



## Supervision and Reinsurance

- **Licensing (Life vs. Non-Life)**
- **Collaterals**
- **Contractual requirements**
- **Limitations for retrocession**
- **Requirements for specific reinsurance products**

## Examples

**Some – non-comprehensive – examples for challenges by local supervision:**

### **1) Australia:**

- license requirement for life reinsurance companies, provided that reinsurance is subject to Australian laws; and**
- non-admitted reinsurance requires providing collaterals.**

### **2) US: no license required, but collaterals.**

## Examples

### 3) Brazil:

- local, admitted and eventual;
- local reinsurers shall participate with 40% in each reinsurance;
- insurance or local reinsurance shall not cede more than 20% within the same economic group outside the country; and
- various contractual requirements.



## Examples

- 4) EU: License in one member state required, provided that local legal entity is established in EU (FOS)
- 5) Russia: requirement for wording in local language

Questions?



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# Collective or Group Insurance

AIDA Working Party on State Supervision  
Athens, 8 May 2014

Yannis Samothrakis

# Agenda

## **Background**

- Increasing number of questions on group / collective insurance
- Widespread means of offering tailored insurance
- Legal vacuum

## **General considerations - what is a group insurance contract?**

- EU law
- France / UK / Poland / Belgium / Spain / Italy

## **Issues to consider when setting-up a group insurance contract scheme**

- Location of the risk – prudential concern
- Applicable law – contractual concern
- Premium tax issues

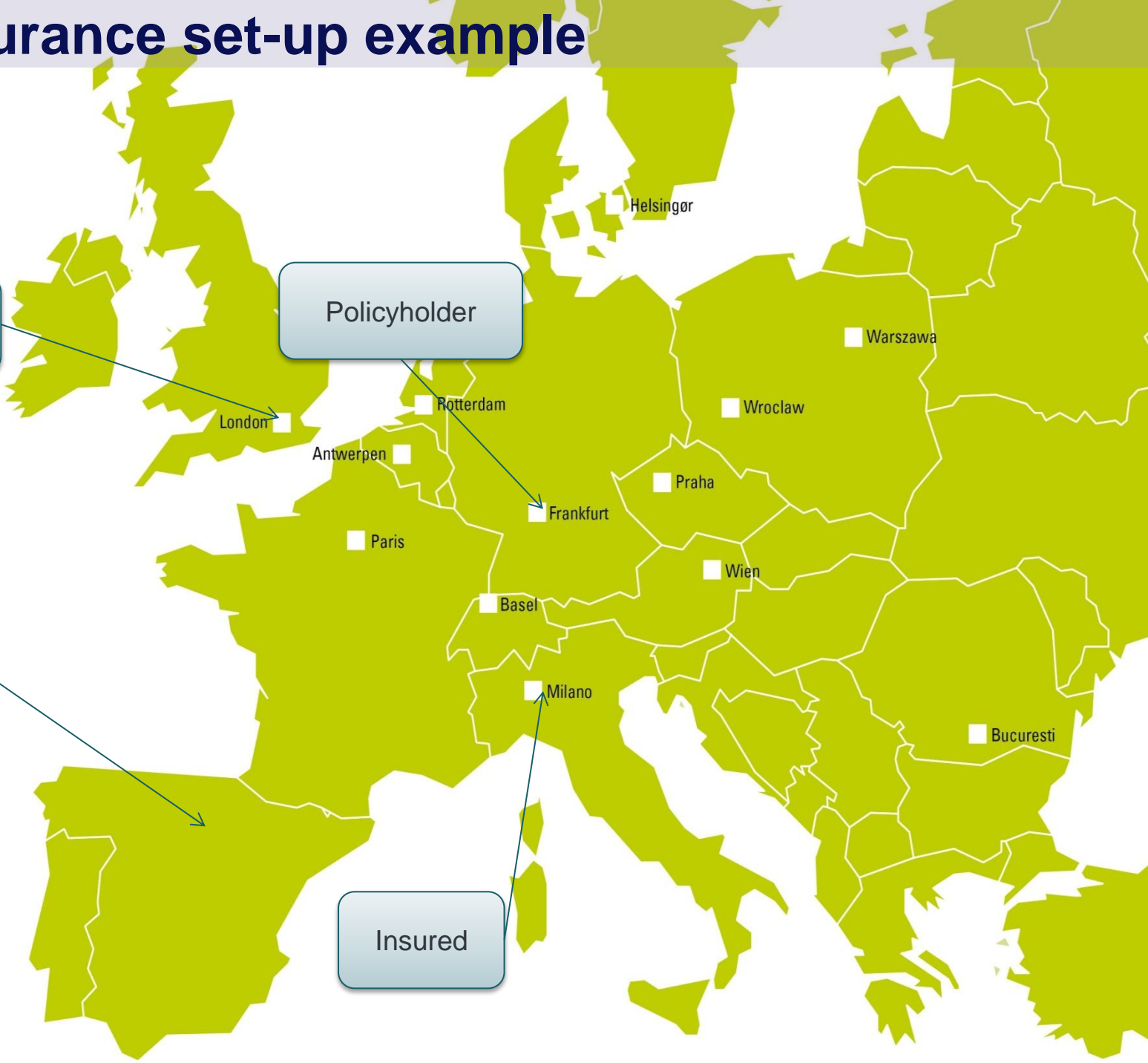
# Group insurance set-up example

Broker

Policyholder

Insurer

Insured



London

Antwerpen

Paris

Basel

Frankfurt

Praha

Wien

Wroclaw

Warszawa

Helsingor

Bucuresti

Milano

Insured

# General considerations – what is a group insurance contract?

**No EU law definition**

**Use of term “insured” for this presentation: person adhering to the group insurance contract**

**National laws:**

- France
- United Kingdom
- Poland
- Belgium
- Spain
- Italy

# Issues to consider

**Location of the risk – prudential concern**

**Applicable law – contractual concern**



# Location of the risk

## Why do we care?

- Determines whether the insurer is conducting cross-border business, i.e. triggers notification requirement with Home Member State regulator
- Application of the “general good” (article 180 Solvency II) to the provision of insurance subject to prior communication
- Risks – procedure under article 155 Solvency II for non compliance with the host Member States’ legal provisions:
  - Take measure to prevent or penalise further irregularities
  - Prevent from concluding new contracts
  - Administrative penalties against properties

# Location of the risk

## Non-life: Directive 88/357/EEC / consolidated in the Solvency II Directive:

*Article 13 - Definitions*

*For the purposes of this Directive, the following definitions shall apply:*

...

*(13) "Member State in which the risk is situated" means any of the following:*

*(a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;*

*(b) the Member State of registration, where the insurance relates to vehicles of any type;*

*(c) **the Member State where the policy holder took out the policy** in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;*

*(d) in all cases not explicitly covered by points (a), (b) or (c), the Member State in which either of the following is situated:*

*(i) the **habitual residence of the policy holder**; or*

*(ii) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;*

# Location of the risk

## **Life: Directive 2002/83/EC / consolidated in the Solvency II Directive:**

*Article 13 - Definitions*

*For the purposes of this Directive, the following definitions shall apply:*

*...*

*(14) "Member State of the commitment" means the Member State in which either of the following is situated:*

*(a) the habitual residence of the policy holder;*

*(b) if the policy holder is a legal person, that policy holder's establishment, to which the contract relates;*



Broker

Policyholder

Insurer

Insured

# Location of the risk

**In a group insurance contract, how should the term “policyholder” be interpreted?**

- Option 1:** the relevant policyholder is the person taking the group insurance contract with the insurer
- Option 2:** the relevant policyholder is the insured

# Location of the risk

- Option 1 would result from a “literal” interpretation of the laws (both EU and national)
- Option 2 complies with the objective of the laws:
  - In case of group contracts, the insured can be assimilated to the policyholder
  - What is the nature of the agreement between the insurer and the policyholder?
  - Context of consumer protection / application of general good – e.g. recital 47 of the Third Life Directive

*“(47) The Member States must be able to ensure that the assurance products and contract documents used, under the right of establishment or the freedom to provide services, to cover commitments within their territories comply with such specific legal provisions protecting the general good as are applicable.*

# Applicable law

## At EU level, Rome I Regulation:

- Direct effect (except Denmark)
- Article 7 specific to direct mass risks insurance:
  - Exclusion of large risks (Art. 7 (2))
  - Exclusion of risks located outside of the EU (Art. 7 (1))
  - Obvious consumer protection objective – Recital 23:
    - *As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.*

# Applicable law

## **General rules applying to insurance contracts under Rome I: limited choice for mass risks**

- (a) the law of any Member State where the risk is situated at the time of conclusion of the contract;
- (b) the law of the country where the policy holder has his habitual residence;
- (c) in the case of life assurance, the law of the Member State of which the policy holder is a national;
- (d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;
- (e) where the policyholder pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder.



# Applicable law

To the extent that the law applicable has not been chosen by the parties, the contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

**In most cases, the law applicable will therefore be the law of the Member State in which the risk is situated which, in most cases, is the Member State where the insured has his / her habitual residence.**

# Applicable law

## **Some further considerations:**

- Compulsory insurance (Article 7 (4)):
  - The insurance contract must comply with the specific provisions laid down by the Member State that imposes the obligation
  - Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail
- Overriding mandatory provisions (Article 9)

Provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract 2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum

# Location of Risk and Applicable law - Conclusion

## Issues to consider when looking at a group insurance contract:

- How is the location of the risk defined for this specific risk?
  - Habitual residence of insured
  - Property: location of property
  - Vehicle: registration of vehicle
- Is the policyholder located in the EEA?
- Is the risk situated in the EEA?
- Can we write these specific risks in the country where the risk is situated?
- If so, do we know what general good provisions apply?
- Applicable law: is the chosen law compatible with the limited choice of Rome I? In most cases: law applicable is the law of the member State where the risk is located, generally habitual residence of insured
- In case the cover is bundled with another product / service: Is it available separately? Can it be priced separately?

# Tax considerations

## **Directive 88/357/EEC of 22 June 1988 (article 25)**

- Every insurance contract concluded by way of provision of services shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated
- The law applicable to the contract pursuant to Article 7 shall not affect the fiscal arrangements applicable.

## **In case of group contracts:**

- Location of the risk
- In practice, each Member State has its own interpretation
- The issue of distance selling

# Summary of key issues

Country	Legally defined / regulated?	Is the policyholder an intermediary?	Location of risk by reference to insured?	Bundled insurance – is there a risk?
France	Yes	If remunerated + conducting insurance mediation	Probably	Yes
UK	No (but FCA definition)	Depends on remuneration and frequency	Yes	Yes
Belgium	No	If remunerated + conducting insurance mediation	Probably	Yes
Spain	Yes	No		Yes
Italy	Partly	If remunerated + conducting insurance mediation + insured liable for premium	Probably	Yes
Poland	No	No	Probably	Yes

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