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Brexit and the pandemic: the perfect storm

By Maria Moro on June 1, 2021

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Alberto Batini manages the London office of BTG Legal (Batini Traverso Grasso & Associates), a Milan-based law firm that specialises in international insurance law. In London, Mr Batini focuses on the Italian exposures held by London market insurers, reinsurers and corporations. Commercial Risk's Maria Moro asked him to outline the situation faced by Italian companies, six months after the effective Brexit date.

Maria Moro (MM): After the initial period of Brexit, what is the outlook for those Italian companies?

Alberto Batini (AB): Many British operators took steps before the original date of 29 March 2019, moving their offices to the European mainland – especially to Belgium, the Netherlands, Ireland and Luxembourg – in order to retain their passporting rights in European countries.

The situation of the EU-based businesses that wanted to continue operating in the UK is quite another story. The Italian government had devised specific measures in the event of a hard Brexit by virtue of Law Decree 22, March 2019, a temporary provision whereby insurance and financial intermediaries could continue to operate for 18 months. The period was then extended to three years, also thanks to the regulations issued by the Italian Institute for the Supervision of Insurance (IVASS), in concert with Eiopa and the UK.

A transitional post-Brexit scheme, the Temporary Permission Regime, was introduced, pursuant to which companies operating in regulated sectors have 36 months, from 1 January 2021, to manage any insurance runoffs, regularise their position and adapt their market, whether they decide to stay in the UK or leave the country.

Conversely, companies working in non-regulated sectors will encounter fewer restrictions, as supervision does not apply to them, but they will feel a greater impact in terms of taxes and customs. Some businesses that had a growing market in the UK have decided to found a company there – a simpler choice that enables them to access the local financial market with greater ease. In the long run, a process of gradual misalignment between EU and UK regulations is expected, posing further obstacles for operators in both sectors.

The impression is that it is not currently possible to understand the tangible effects of Brexit. Whether London will be able to remain a central hub for the financial and economic world, or whether its centrality will be supplanted by other European cities that are already major financial centres today such as Frankfurt, Amsterdam, Paris or Milan.

MM: Which sectors are most affected by the economic impact?

AB: Since the 1980s, trade with the UK has always delivered a positive balance for Italy, with an ever-growing export value that reached €25bn in 2019, while imports basically remained stable (€10bn in the same year). Overall, however, the impact on the Italian economy could be less severe than on other European countries with much higher export volumes to the UK, such as Ireland, the Netherlands, Spain or Germany.

As with other aspects, at the moment the perception is distorted by the pandemic, and only with the return to normal will we be able to evaluate the true magnitude of the Brexit effect.

Among the most thriving industries, those Italian companies that specialise in the energy sector stand out, thanks to many projects in renewable energy, health and assistance, machinery, and food and beverages. These account for €3.4bn alone.

Conversely, Italy has appeal for tourism and entertainment, while it suffers from a low internationalisation of the manufacturing sector. Paradoxically, this weakness reduces the risk of capital flight, as British investments are more modest in Italy than in other EU countries. Of the total foreign direct investments in our country, there are about 6,000 foreign companies that invest in 11,000 Italian companies, for a turnover exceeding €400bn.

MM: Is the trade regulatory framework simpler?

AB: Success in maintaining export volumes will depend on the evolution of customs regulations which, pursuant to the 'divorce' agreements, do not introduce duties. They are, however, burdened by excessive bureaucracy, with detrimental consequences for both parties.

One of the possible future scenarios is the abolition of VAT in the UK. At the present time, this seems a remote possibility, but sooner or later, the UK will certainly have to leave the EU VAT area, with tariffs and excise taxes being imposed on international trade, even if currently not included in the Brexit agreements. For now, the advantage consisting in the incorporation of EU regulation into UK legislation prevails and mitigates the possible shock.

Brexit could even prove to be a blessing for the back-shoring of Italian capital previously hoarded in the UK. There are more than 1,600 British companies with Italian shareholdings, 5.5% of Italian commitments abroad, for a turnover to the tune of €23bn. It could be more convenient to relocate to Italy if market conditions were to change and difficulties in the transfer of personnel were to increase.

So far, the Italian government has not devised a consistent strategy in this respect. It has introduced tax breaks for the return of skilled workers employed in Great Britain but not for companies. By contrast, the last three British governments have all taken steps to incentivise foreign capital to remain in the country.

Purportedly, in the near future the UK will strengthen trade relations with the countries of the Commonwealth, and define veritable trade treaties with the countries of the European Union.

MM: What are the prospects for companies that want to continue operating in the UK?

AB: The pandemic has somewhat put on hold all the issues linked to Brexit, which nevertheless persist. Many companies are trying to quickly understand the extent to which Brexit will impact their investment strategies, but the disruption caused by the pandemic makes everything more complicated. At this stage, the best thing is to hire experts in the relevant business sector in order to monitor market trends on a periodic basis.

For companies that want to invest in Great Britain, it is still relatively simple to set up a business. Costs are low, a local director is not required, registration to obtain a VAT number is not mandatory for revenues below £85,000, VAT is low and, in general, all capital transactions are incentivised.

MM: What are your suggestions regarding insurance agreements?

AB: There are 53 British insurance undertakings in Italy, totalling a premium portfolio of €1.7bn and boasting about ten million Italian policyholders. They are now considered third-country operators and must obtain the 'non-EEA' permit from IVASS, operating as authorised establishments. On the contrary, companies with a registered office in the European Union can continue to operate under the right of establishment and under freedom of services.

These companies, within 15 days of the end of the transitional period, had to inform policyholders, the insured and other assignees, of the operating regime applicable to them, also by means of an announcement on their official website.

Within 90 days of the end of the transitional period, they are required to submit a plan to IVASS detailing the measures enabling them to correctly perform the contracts, including the payment of claims. In addition, each year they will have to submit a report to IVASS on the progress of the plan. Consumers can withdraw without additional charges from contracts with a duration exceeding one year and the withdrawal will take effect from the expiry of the first subsequent annual premium. Furthermore, it is no longer possible to use tacit renewal clauses.

The complaint regime has also changed. Specific regulations now apply to brokers and intermediaries. To overcome these difficulties, the tendency of Anglo-Saxon companies is to open insurance and reinsurance undertakings in Europe, as Lloyd's already did in 2019, with the transfer of the European Union contracts to a new entity specially created in Brussels.

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