



CEIOPS-DOC-07/08

**General Protocol  
relating to the collaboration of the  
insurance supervisory authorities  
of the Member States of the  
European Union**

**March 2008**



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| <b>PART I<br/>GENERAL CONSIDERATIONS</b> |
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## **1 General aims and principles**

- 1.1 This Protocol applies to the authorities of the Member States of the European Union (EU) competent for the supervision of insurance and reinsurance undertakings, in respect of the application of the Insurance Directives as listed in Annex I lit. a ("Competent Authorities")<sup>1</sup>.
- 1.2 The Members and Observers of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) have a long tradition of cooperation and exchange of information. It is recognized that the on-going development of the internal market and the growing internationalisation of business activities require increased collaboration between supervisors. It is also recognized that the European Commission has put forward a proposal for a Directive on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II"). Once the new supervisory framework is implemented, the Protocol will be developed accordingly.
- 1.3 The Competent Authorities endeavour to cooperate and use, as effectively as possible, all information available for supervisory purposes in order to achieve the objectives of insurance supervision and, in particular, financial stability and adequate protection of policyholders and other stakeholders.
- 1.4 Nothing in this Protocol shall affect internal communication arrangements within a Member State. However, such arrangements should not hinder effective cross-border cooperation between the Competent Authorities.
- 1.5 Nothing in this Protocol shall diminish the responsibilities of Competent Authorities under the Directives and in particular the duty vested in the Competent Authority of the Home State to exercise prudential supervision over the Undertaking for which it has sole responsibility.

## **2 Participating Authorities**

- 2.1 The Protocol applies to the Competent Authorities of EU Member States and to the Competent Authorities of non-EU Member States that are

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<sup>1</sup> Terms written with capital initials are used as defined in Annex I (Definitions) or in the text itself.

## PART I GENERAL CONSIDERATIONS

parties to the European Economic Area ('EEA') Agreement as if they were the Competent Authorities of EU Member States.

Consequently, for the purpose of this Protocol the following terms should be understood accordingly:

'Member State' shall include the non-EU Member States that are parties to the EEA Agreement and have formally agreed to be part of the Protocol.

'Member of CEIOPS' shall include the Competent Authorities of non-EU countries which are parties to the EEA Agreement and formally observers to CEIOPS.

'European Union' shall include non-EU Member States that are parties to the EEA Agreement.

- 2.2 If certain supervisory tasks according to the Insurance Directives fall under the competence of other competent authorities that are not Members of CEIOPS, those national authorities may, subject to approval by Members of CEIOPS, join the Protocol by signing the Joinder Agreement in Annex V, if this contributes to further strengthening cross-border cooperation. The term 'Competent Authority' shall therefore include those authorities which have signed the Joinder Agreement.
- 2.3 Annex VI lists all Competent Authorities to which the Protocol applies.
- 2.4 This Protocol does not apply to cooperation with the Swiss insurance supervisory authority, which is covered by the "Protocol relating to collaboration between supervisory authorities of the Contracting Parties of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life insurance" signed at Luxembourg on October 10th, 1989" (Doc DT/I/106/94). The specific status of Swiss Branches in the EU and of EU Branches in Switzerland in non-life insurance, according to these provisions, shall be taken into account when applying the rules of this Protocol, in particular authorisation and on-going supervision of the solvency requirement.
- 2.5 Competent Authorities shall endeavour to make every best effort to obtain the necessary information from those Authorities which are competent under the Directives, but are not Competent Authorities under the Protocol.

### **3 Principles of cooperation**

- 3.1 The Competent Authorities, whilst recognising the principles in the Directives regarding the distribution of responsibilities between Home and Host State Competent Authorities, acknowledge the importance of effective cooperation to facilitate the carrying out of their respective duties.
- 3.2 The procedures and information described in the Protocol constitute minimum requirements. Nothing in the Protocol shall be interpreted in such a way as to hinder the exchange of further information and the extended collaboration between Competent Authorities, as concerns the supervision of Undertakings.
- 3.3 In the case of Undertakings in difficulty and other emergency situations, the Competent Authorities endeavour to make every best effort to remedy the problems and minimise the negative impact on policyholders and market stability.
- 3.4 The Competent Authorities agree that their collaboration may extend to areas not covered by the Insurance Directives. In these situations the Competent Authorities shall be guided by the principles of the Directives.
- 3.5 In the case of divergent views, the relevant Competent Authorities shall strive to agree on a viable solution; in cases where no such solution can be reached, recourse may be made to the CEIOPS Mediation Mechanism<sup>2</sup>.

### **4 Rules on professional secrecy**

The Competent Authorities agree to exchange confidential information whenever possible, within the limits of the rules laid down in Article 16 of the Third Non-Life Directive, Article 16 of the Consolidated Life Directive, Articles 24 to 30 of the Reinsurance Directive and Article 29 of the Reorganisation/Winding-up Directive, in order to improve the effectiveness of insurance and reinsurance supervision in the EU.

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<sup>2</sup> CEIOPS-DOC-14/07 Protocol on Mediation Mechanism between Insurance and Pensions Supervisors (October 2007)

**PART II**  
**AUTHORISATION OF DOMESTIC UNDERTAKINGS**

**1 General**

Article 7 of the First Non-Life Directive, replaced by Article 5 of the Third Non-Life Directive, Article 5 of the Consolidated Life Directive; Article 4 of the Reinsurance Directive

- 1.1 In accordance with the principle of single authorisation, the decision to issue an authorisation, which is valid for the whole of the EU, shall be the sole competence of the Competent Authority of the Home State.
- 1.2 Within the context of the single market and with due regard to the single licence principle, the Competent Authorities recognise the importance of conducting a rigorous examination of the authorisation information for new Undertakings, and of seeking to ensure the uniform application of the criteria relating to the supervision of access to, and pursuit of, insurance activity.
- 1.3 The Competent Authority of the Home State should upload on its website a list of all Undertakings licensed in that Member State, including, at least, the name, postal address, legal form<sup>3</sup> and authorised insurance classes. The list should also include the Member States for which Undertakings have notified their intention to open Branches or provide services, once the information is communicated to the Competent Authority of the Host State. The information should be updated as necessary.

**2 Exchange of licensing information with other insurance supervisory authorities**

Art. 12.a) (1) of the First Non-Life Directive inserted by Art. 22(1) of Directive 2002/87/EEC, modified by Art. 57(1) of the Reinsurance Directive; Art. 9.a) of the Consolidated Life Directive, inserted by Art.60(2) of the Reinsurance Directive; Art. 14(1) of the Reinsurance Directive

**2.1 Subsidiary of an Undertaking authorised in another Member State**

- 2.1.1 Where the Undertaking seeking authorisation is a subsidiary of an Undertaking authorised in another Member State, the Competent Authority of the Home State shall ask the Competent Authority of the

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<sup>3</sup> The requirement to state legal form shall not be applicable where legal form can be implied from the name of the entity.



## PART II AUTHORISATION OF DOMESTIC UNDERTAKINGS

direct parent Undertaking and, if applicable, of the ultimate EU parent Undertaking for any relevant information relating to:

- the good repute and financial soundness of the Shareholders/Members;
- the reputation and experience of directors, managers and other persons who effectively run the affairs of the business;
- the structure of the group;
- possible conflicts of interest; and
- other relevant licensing criteria, as appropriate.

2.1.2 The Competent Authority to which the request has been made shall, as soon as possible, provide the Competent Authority of the Home State with any relevant information in its possession or inform the requesting authority that it does not have any such information.

2.1.3 If the ultimate parent of the Undertaking seeking authorisation is not a regulated Undertaking, or if it is a regulated undertaking not located in the EU, the Competent Authority of the ultimate EU parent Undertaking shall be asked to provide the Competent Authority of the Home State with all the relevant information in its possession about the ultimate parent Undertaking.

### **2.2 Subsidiary of the parent of an Undertaking authorised in another Member State**

2.2.1 Where the Undertaking seeking authorisation is a subsidiary of the parent of an Undertaking authorised in another Member State, the Competent Authority of the Home State shall ask the Competent Authority of the Undertaking and the Lead Supervisor under the Helsinki Protocol for any relevant information relating to:

- the good repute and financial soundness of the Shareholders/Members;
- the reputation and experience of directors, managers and other persons who effectively run the affairs of the business;
- the structure of the group;
- possible conflicts of interest; and
- other relevant licensing criteria, as appropriate.

2.2.2 The Competent Authority to which the request has been made shall, as soon as possible, provide the Competent Authority of the Home State with any relevant information in its possession or inform the requesting authority that it does not have any such information.

## PART II AUTHORISATION OF DOMESTIC UNDERTAKINGS

2.2.3 In cases where the parent Undertaking is an Undertaking authorised in a Third Country, the Competent Authority of the Home State shall ask the supervisory authority of the Third Country Undertaking for the aforementioned information.

### **2.3 Control by the same person who controls an Undertaking authorised in another Member State**

2.3.1 In cases where the undertaking seeking authorisation is controlled by the same natural or legal person who controls an Undertaking authorised in another Member State, the Competent Authority of the Home State shall ask the Competent Authority of the Undertaking for any relevant information relating to:

- the good repute and financial soundness of the Shareholders/Members;
- the reputation and experience of directors, managers and other persons who effectively run the affairs of the business;
- the structure of the group;
- possible conflicts of interest; and
- other relevant licensing criteria, as appropriate.

2.3.2 The Competent Authority to which the request has been made shall, as soon as possible, provide the Competent Authority of the Home State with any relevant information in its possession or inform the requesting authority that it does not have any such information.

## **3 Exchange of licensing information with other financial supervisory authorities**

Art. 12 a)(2) of the First Non-Life Directive, introduced by Art. 22(1) of Directive 2002/87/ EEC, modified by Art. 57(1) of the Reinsurance Directive; Art. 9 a) of the Consolidated Life Directive, inserted by Art. 60(2) of the Reinsurance Directive; Art. 14(2) of the Reinsurance Directive

### **3.1 Subsidiary of a credit institution or investment firm authorised in the EU**

3.1.1 In cases where the Undertaking seeking authorisation is a subsidiary of a credit institution or investment firm authorised in the EU, the Competent Authority of the Home State shall ask the Competent Authority of the direct and, if applicable, the ultimate regulated EU parent for any relevant information relating to:

## PART II AUTHORISATION OF DOMESTIC UNDERTAKINGS

- the good repute and financial soundness of the Shareholders/Members;
- the reputation and experience of directors, managers and other persons who effectively run the affairs of the business;
- the structure of the group;
- possible conflicts of interest; and
- other relevant licensing criteria, as appropriate.

3.1.2 If the ultimate parent is not a regulated Undertaking, or is a regulated Undertaking located in a Third Country, the supervisory authority of the ultimate regulated EU parent shall be asked to provide the Competent Authority of the Home State with the aforementioned information.

### **3.2 Subsidiary of the parent undertaking of a credit institution or investment firm authorised in another Member State**

When the Undertaking seeking authorisation is a subsidiary of the parent undertaking of a credit institution or investment firm authorised in another Member State, the Competent Authority of the Home State shall ask the supervisory authority of the subsidiary for any relevant information relating to:

- the good repute and financial soundness of the Shareholders/Members;
- the reputation and experience of directors, managers and any other persons who effectively run the affairs of the business;
- the structure of the group;
- possible conflicts of interest; and
- other relevant licensing criteria.

### **3.3 Control by the same person who controls a credit institution or investment firm authorised in another Member State**

3.3.1 When the Undertaking seeking authorisation is controlled by the same natural or legal person who controls a credit institution or investment firm authorised in another Member State, the Competent Authority of the Home State shall ask the supervisory authority of the subsidiary for any relevant information relating to:

## PART II AUTHORISATION OF DOMESTIC UNDERTAKINGS

- the good repute and financial soundness of the Shareholders/Members;
- the reputation and experience of directors, managers and other persons who effectively run the affairs of the business;
- the structure of the group;
- possible conflicts of interest; and
- other relevant licensing criteria, as appropriate.

### **4 Exchange of information on directors, managers, Shareholders/Members**

#### 4.1 In view of the importance of the supervision of

- the good repute, competence and professional experience of directors, managers, and other persons who effectively run the business of Undertakings; and

- the good repute and financial soundness of Shareholders/Members,

both during the process of authorisation and on an on-going basis, the Competent Authorities shall endeavour, where possible, to share the information available to them in those fields.

#### 4.2 Where the persons who are responsible for directing the affairs of the Undertaking, and/or the Shareholders/Members with qualifying holdings come from, or are connected to, other Member States, the Competent Authority of the Home State may request from the Competent Authorities of those other Member States relevant information relating to:

- the good repute, competence and professional experience of the directors, managers and any other person(s) who effectively run the affairs of the Undertaking; and

- the good repute and financial soundness of the Shareholders/Members.

#### 4.3 The Competent Authority to which the request has been made, shall, as soon as possible, provide to the Competent Authority of the Home State, any relevant information in its possession or inform the requesting Competent Authority that it does not have any such information.

#### 4.4 The Competent Authority of the Home State shall immediately inform the Competent Authority of the Host State when it issued any action against directors, managers or any other person(s) who effectively run

## PART II AUTHORISATION OF DOMESTIC UNDERTAKINGS

the affairs of the Undertaking, or against its Shareholders/Members, in accordance with the provisions of the relevant Directives<sup>4</sup>.

- 4.5 The Competent Authorities shall inform those other supervisors concerned of all decisions that might be of interest to them when assessing the good repute, competence and professional experience of the directors, managers or any other person(s) who effectively run the affairs of the Undertaking or the good repute or financial soundness of the Shareholders/Members.
- 4.6 The Competent Authorities shall establish a contact point for the exchange of information on directors, managers and Shareholders/Members and forward the details of the contact point to the CEIOPS Secretariat. The Competent Authorities shall update this information as necessary and inform the CEIOPS Secretariat accordingly. The CEIOPS Secretariat will publish the list of contact points on the Members' Area of the CEIOPS website.

### **5 Authorisation in the context of insurance groups and financial conglomerates**

- 5.1 If, through the authorisation of an Undertaking, an insurance group according to Article 2 of the Insurance Groups Directive is created, the relevant Competent Authorities shall create a Coordination Committee and appoint a Lead Supervisor according to the provisions of the "Helsinki Protocol"<sup>5</sup> and the "Statement on the role of the lead supervisor"<sup>6</sup>. In this case, or if the structure of an already existing insurance group is affected, the CEIOPS Secretariat shall be informed about this change.
- 5.2 If, through the authorisation of an Undertaking a financial conglomerate according to Article 2(14) of the Financial Conglomerates Directive (FCD)<sup>7</sup> is created, the relevant Competent Authorities shall take the appropriate steps under the FCD. In this case, or if the structure of an

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<sup>4</sup> Art. 19(3) of the First Non-Life Directive, Art. 13(3) of the Consolidated Life Directive and Art. 17(4) of the Reinsurance Directive; or Art. 15(4) of the Third Non-Life Directive, Art. 15(4) of the Consolidated Life Directive and Art. 23 of the Reinsurance Directive

<sup>5</sup> Protocol relating to the Collaboration of the Supervisory Authorities of the Member States of the European Union with regard to the Application of the Directive 98/78/EC on the Supplementary Supervision of Insurance Undertakings in an Insurance Group (DT/NL/194/00 Final), 11 May 2000

<sup>6</sup> Statement on the role of the lead supervisor in the context of Supplementary Supervision as defined by the Insurance Groups Directive (98/78/EC), CEIOPS-DOC-07/06, December 2006

<sup>7</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council

## PART II AUTHORISATION OF DOMESTIC UNDERTAKINGS

already existing conglomerate is affected, the CEIOPS Secretariat shall be informed about this change.

### **6 Acquisitions and increase of shareholdings in domestic Undertakings**

Art. 15c of the Third Non-Life Directive, Art. 15c of the Consolidated Life Directive and Article 20 of the Reinsurance Directive, as amended by Directive 2007/44/EC

- 6.1 If it is proposed that an Undertaking is acquired by an Undertaking mentioned in paragraphs 2.1., 2.2, 2.3, 3.1 or 3.2, the Competent Authorities shall, without undue delay, provide each other with any information which they deem essential or relevant for the assessment, be it on request of another Authority, or on own initiative.
- 6.2 The same applies if a person who has taken a decision to further increase, directly or indirectly, a qualifying holding in an Undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30%<sup>8</sup> or 50%.
- 6.3 Notwithstanding, the Competent Authorities are entitled to give, receive or request information on any change in the shareholder structure of supervised Undertakings to/from any other Supervisory Authority at any time.

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<sup>8</sup> Member States need not apply the 30% threshold where, in accordance with Article 9(3) of Directive 2004/109/EC, they apply a threshold of one-third.

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| <b>PART III<br/>CROSS-BORDER ACTIVITIES</b> |
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## **1 Establishment of a Branch by an Insurance Undertaking**

Article 10 of the First Non-Life Directive, replaced by Article 32 of the Third Non-Life Directive, Article 40 of the Consolidated Life Directive; Article 20a(5) of the First Non-Life Directive, Article 38(5) of the Consolidated Life Directive

### **1.1 Information to be provided by the Competent Authority of the Home State to the Competent Authority of the Host State**

1.1.1 When it does not oppose the opening of a Branch in another Member State, the Competent Authority of the Home State shall communicate, in Written Form, the following information to the Competent Authority of the Host State (notification):

- the scheme of operations<sup>9</sup> indicating in particular the type of operation envisaged and the structure of the organisation of the Branch;
- the classes of insurance according to the annexes to the First Non-Life Directive and the Consolidated Life Directive into which the planned businesses fall;
- the name and address of the head office of the Undertaking;
- the address in the Member State of the Branch, from which documents may be obtained from the Undertaking (which shall also be that of the General Representative) and to which they may be delivered;
- the name and powers of the General Representative;

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<sup>9</sup> The scheme of operations shall contain information or explanations concerning

- a) the nature of the risks or commitments which the undertaking is proposing to cover;
- b) the principles which it uses for guidance for re-insurance;
- c) estimates of the cost of setting up administrative services and the organisation for securing business; the financial resources set aside for this purpose and, if the risks to be covered fall within class n°18 of Title A of the Annex to the First Non-Life Directive, the company taking over assistance services or the resources available to the Undertaking for providing the promised assistance;
- d) the structure of the organisation of the Branch;

In addition, for the first three financial years:

- e) estimates of overheads other than the cost of setting up, in particular, general running costs and commission;
- f) estimates of premiums or contributions and claims;

## PART III CROSS-BORDER ACTIVITIES

- if the Undertaking is to cover motor vehicle third party risks (class 10, not including carrier's liability) a declaration of membership or a certificate of application for membership<sup>10</sup> of the national office and of the National Guarantee Fund of the Host State;
- in cases where the Undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 3(2) of Directive 87/344/EEC of 22 June 1987;
- a certificate of solvency, in the form provided for in Annex II.

1.1.2 The information shall be communicated by the Competent Authority of the Home State, as soon as possible, and in any event within three months of having received all necessary information<sup>11</sup> from the Undertaking which intends to establish a Branch in the territory of another Member State. The Competent Authority of the Home State shall ensure that the Competent Authority of the Host State receives the complete notification. The Competent Authority of the Host State shall acknowledge receipt if so requested<sup>12</sup>.

1.1.3 The Competent Authority of the Home State shall advise the Undertaking that the information has been sent to the Host State and that activity should not commence in the Host State until the occurrence of either of the events referred to in paragraph III.1.3.1.

1.1.4 In the event of the receipt of an incomplete notification the Competent Authority of the Host State shall immediately inform the Competent Authority of the Home State of the areas in respect of which the information is considered to be incomplete, and request provision of the outstanding information.

### **1.2 Conditions imposed in the interests of the general good <sup>13</sup>**

1.2.1 The Competent Authority of the Host State, shall, within two months from the date of receipt of the notification, communicate, in Written Form, to the head office of the Undertaking and the Competent

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<sup>10</sup> In this case, the Competent Authority of the Home State shall obtain from the Undertaking a commitment that it will not engage in business concerning this class as long as it has not forwarded the final membership declaration.

<sup>11</sup> A notification shall be deemed to be complete, when all relevant information under paragraph III.1.1.1 or 2.1.1, as appropriate, has been communicated to the Competent Authority of the Host State.

<sup>12</sup> Evidence of receipt may assume the form of communications between Competent Authorities which take place during the usual course of the notification process.

<sup>13</sup> In the context of this Protocol, the term "general good provisions" shall be understood in the meaning of the relevant Insurance Directives. However, a Competent Authority will not be expected to provide information on general good provisions which extend beyond those directly relating to the area of financial services.



## PART III CROSS-BORDER ACTIVITIES

Authority of the Home State, any conditions under which, in the interests of the general good, the activity must be pursued within the territory of the Host State.

1.2.2 The communication shall also include a reference to the website on which information on general good provisions is available.

### **1.3 Activity of the Branch**

1.3.1 The Branch may commence activity at the earliest of either of the following:

- on communication to the Undertaking of the information in paragraph III.1.2.1; or
- on communication to the Undertaking that no conditions will be imposed pursuant to paragraph III.1.2.1; or
- on the expiry of the two months period referred to in paragraph III.1.2.1.

### **1.4 Changes to information concerning the Branch**

1.4.1 Where on the basis of changes to the information notified under paragraph III.1.1.1 by the Undertaking, the Home State does not object to the proposed change(s), it shall communicate the information to the Competent Authority of the Host State as soon as possible, and in any event no later than one month after it has received the information from the Undertaking.

1.4.2 The Competent Authority of the Host State shall, where considered necessary, communicate in Written Form to the head office of the Undertaking and the Competent Authority of the Home State the conditions, under which, in the interests of the general good, the activities of the Undertaking may be pursued within the Host State, as soon as possible, and in any event no later than one month after it has received the information from the Undertaking. This information shall include the link to the website of the Competent Authority of the Host State where the general good conditions are published.

## **1.5 Branch Closure**

- 1.5.1 The Competent Authority of the Home State shall notify the Competent Authority of the Host State as soon as possible if business activities will no longer be continued due to the proposed closure of the Branch.
- 1.5.2 In the event of the closure of the Branch the Competent Authority of the Home State shall inform the Competent Authority of the Host State how the policies underwritten by the Branch will be managed.
- 1.5.3 The procedure mentioned in paragraph III.1.5.1 shall apply whenever a Branch no longer accepts new business and no longer administers its portfolio of contracts via this Branch.

## **2 Commencing activities by way of freedom to provide services – Direct Insurance**

Article 16 of the Second Non-Life Directive, amended by Article 35 of the Third Non-Life Directive, and Article 42 of the Consolidated Life Directive; Article 20a(5) of the First Non-Life Directive, Article 38(5) of the Consolidated Life Directive

### **2.1 Information to be provided by the Competent Authority of the Home State to the Competent Authority of the Host State**

- 2.1.1 Where it does not oppose the provision of services in another Member State, the Competent Authority of the Home State shall communicate in Written Form, to the Competent Authority of the Host State, the following information (notification):
  - the nature of the risks or commitments which the Undertaking is proposing to cover by way of freedom to provide services;
  - the classes of insurance according to the Annexes to the First Non-Life Directive and the Consolidated Life Directive into which these risks or commitments fall;
  - the name and address of the head office of the Undertaking;
  - where applicable, the name and address of the establishments (other than the head office of the Undertaking), situated in the Member States from which it is planned to provide services;
  - a certificate of solvency, in the form provided for in Annex II;
  - if the Undertaking is to cover motor vehicle third party risks (class 10, not including carrier's liability), a declaration of membership or a certificate of application for membership<sup>14</sup> of the National Office

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<sup>14</sup> In this case, the Competent Authority of the Home State shall obtain from the Undertaking a commitment that it will not engage in business concerning this class as long as it has not forwarded the

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and of the National Guarantee Fund of the Member State of provision of services and the name and address of the representative for the handling of claims;

- if the Undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 3(2) of Directive 87/344/EEC of 22 June 1987.

2.1.2 The information shall be communicated by the Competent Authority of the Home State, as soon as possible, and in any event within one month of having received all necessary information from the Undertaking which intends to carry on business by way of freedom to provide services. The Competent Authority of the Home State shall ensure that the Competent Authority of the Host State receives the complete notification. The Competent Authority of the Host State shall acknowledge receipt if so requested<sup>15</sup>.

2.1.3 The Competent Authority of the Home State shall advise the Undertaking concerned that the information has been sent to the Host State.

2.1.4 In the event of the receipt of an incomplete notification the Competent Authority of the Host State shall immediately inform the Competent Authority of the Home State of the areas in respect of which the information is considered to be incomplete, and request provision of the outstanding information.

### **2.2 Additional Information**

If the Competent Authority of the Host State has doubts as to the precise conditions under which the activity is to be pursued, it may, following consultation with the Competent Authority of the Home State, request the provision by the latter of information concerning the specific resources which the Undertaking proposes to use in marketing its products in the Host State.

### **2.3 Conditions imposed in the interests of the general good**

2.3.1 The Competent Authority of the Host State, shall, as soon as possible after the receipt of the notification, communicate, in Written Form, to

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final membership declaration. If this commitment is not honoured, the Competent Authority of the Home State can appraise the reasons put forward.

<sup>15</sup> Evidence of receipt may assume the form of communications between Competent Authorities which take place during the usual course of the notification process.

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the head office of the Undertaking and the Competent Authority of the Home State any conditions, under which, in the interests of the general good, the activity must be pursued within the territory of the Host State.

- 2.3.2 The communication shall also include a reference to the website on which information on general good conditions is available.

### **2.4 Starting of activity**

The Undertaking may commence activity by way of freedom to provide services once informed by the Competent Authority of the Home State that the notification provided for in paragraph III.2.1.1 has been made.

### **2.5 Changes to information**

- 2.5.1 An Undertaking shall give notice to the Competent Authority of the Home State, in Written Form, of any change to the information notified under paragraph III.2.1.1.
- 2.5.2 Where on the basis of the new information forwarded by the Undertaking, the Home State does not object to the proposed change(s), it shall communicate the information to the Competent Authority of the Host State, as soon as possible, but in any event no later than one month after it has received the information from the Undertaking.
- 2.5.3 The Competent Authority of the Host State shall, where considered necessary, communicate in Written Form to the head office of the Undertaking and the Competent Authority of the Home State the conditions under which, in the interests of the general good, the activities of the Undertaking may be pursued within the Host State. This information shall include the link to the website of the Competent Authority of the Host State where the general good conditions are published.
- 2.5.4 The proposed change may be made as soon as the Competent Authority of the Home State has informed the head office of the Undertaking that the proposed change has been notified to the Competent Authority of the Host State, pursuant to paragraph III.2.5.2.

## **2.6 Cessation of Activities**

The Competent Authority of the Home State shall notify the Competent Authority of the Host State as soon as possible if business activities will no longer be continued by freedom to provide services.

## **3 Establishment of a Branch by a Reinsurance Undertaking**

### **3.1 Information to be provided by the Competent Authority of the Home State to the Competent Authority of the Host State**

3.1.1 The Competent Authority of the Home State shall – as far as possible - communicate in Written Form the following information to the Competent Authority of the Host State:

- the name and address of the head office of the Undertaking;
- the address of the Branch, which shall also be that of the General Representative;
- the name and powers of the General Representative;
- the type of reinsurance activity, according to Article 4(2) of the Reinsurance Directive, into which the planned business falls;
- the fulfilment of the solvency requirements.

3.1.2 The information shall be communicated by the Competent Authority of the Home State within one month after having received information from the Undertaking, of its intention to establish a Branch in the territory of another Member State.

### **3.2 Changes to information**

Any proposed change to the information submitted pursuant to paragraph III.3.1.1 shall be – as far as possible - communicated by the Competent Authority of the Home State to the Competent Authority of the Host State as soon as possible, and in any event no later than one month after having received the information from the Undertaking.

### **3.3 Branch Closure**

The Competent Authority of the Home State shall notify the Competent Authority of the Host State if business activities will no longer be continued due to the proposed closure of the Branch.

## **4 Information on planned business, risks and commitments**

- 4.1 The Competent Authority of the Host State may ask the Competent Authorities of the other Member States for the information that it wishes to receive in addition to that specified in paragraphs III.1.1.1 and III.2.1.1. Any such request should be proportionate to the type of business, risks or commitments that an Undertaking intends to cover or contract on its territory.
- 4.2 The Competent Authority of the Home State shall inform the Undertaking of the request.
- 4.3 The Competent Authority of the Home State, shall, where possible, include the additional information with the notification relating to the opening of a Branch<sup>16</sup>, or to the pursuit of business by way of freedom to provide services<sup>17</sup> or to the communication of a change.
- 4.4 If the Undertaking is not in a position to provide the additional information, the Competent Authority of the Home State shall inform the Competent Authority of the Host State.

## **5 Language, communication means, contact point and list of notifications**

- 5.1 All information referring to notifications of the establishment of a Branch or the commencement of free provision of services, including information on changes and additional information according to paragraph III.4.1, shall be written in a language which is accepted by the Competent Authority of the Host State, with the exception of the certificate of solvency and any further communication relating to the notification and changes from the Competent Authority of the Home State at the request of the Competent Authority of the Host State, which shall be produced in the language of the Competent Authority of the Home State or in any other language accepted by the Competent

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<sup>16</sup> Articles 10 of the First Non-Life Directive, replaced by Articles 32 of the Third Non-Life Directive, and Article 40 of the Consolidated Life Directive

<sup>17</sup> Articles 14 of the Second Non-Life Directive, replaced by Article 34 of the Third Non-Life Directive, and Article 41 of the Consolidated Life Directive

## PART III CROSS-BORDER ACTIVITIES

Authorities of the Home and the Host State. Competent Authorities should aim to be as flexible as possible in respect of languages in which they will accept notifications.

- 5.2 Each Competent Authority shall establish a contact point for all questions, requests and problems arising from the notification and changes of cross-border business activities.
- 5.3 Each Competent Authority shall inform the CEIOPS Secretariat about
  - the details of the contact point (including name, function, postal address, e-mail address, fax and phone number);
  - the language(s) in which it will accept documents referring to the notification of cross-border activities;
  - the communication means by which it will accept documents referring to the notification of cross-border activities.
- 5.4 Each Competent Authority shall, as necessary, notify the CEIOPS Secretariat of any changes to the aforementioned information.
- 5.5 The CEIOPS Secretariat shall publish the aforementioned information on the Members' Area of the CEIOPS website.
- 5.6 The Competent Authority of the Host State should upload on its website a list of all Undertakings which have notified their intention to open a Branch or provide services in that jurisdiction. The information should be updated as necessary.

## **6 Conditions imposed in the interests of the general good**

- 6.1 Without prejudice to the provisions laid down in paragraphs III.1.2.1 and III.2.3.1, each Competent Authority shall, in Written Form, advise other Competent Authorities of the general good conditions imposed in its jurisdiction.
- 6.2 Each Competent Authority shall publish an up-to-date list of the general good conditions of the respective jurisdiction on its website, in its own language(s) and/or in English.
- 6.3 The Competent Authorities shall provide the CEIOPS Secretariat with the links to the general good conditions on their respective websites or on any other relevant websites in their jurisdiction. The CEIOPS Secretariat shall publish these links on the Public Area of the CEIOPS website.

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- 6.4 The Competent Authorities shall incur no legal liability in respect of the accuracy or completeness of the information provided pursuant to the preceding paragraph.

### **7 Submission of policy conditions to the Competent Authority of the Host State**

Article 54(2) of the Third Non-Life Directive; Article 8 (4) of the Second Non-Life Directive, modified by Article 30 of the Third Non-Life Directive

- 7.1 The Competent Authority of the Host State shall inform the Competent Authorities of relevant Member States of instances of compulsory insurance or alternative health insurance, where the general and specific conditions of such policies must be provided to the Competent Authorities of the Host State before they are applied. This information should be updated as soon as new legislation is introduced or the existing one is changed. This information shall include a link to the relevant website of the Competent Authority of the Host State.
- 7.2 The other Competent Authorities shall transmit this information to Undertakings wishing to establish a Branch or take up the provision of services in the Member State concerned. The Competent Authorities shall advise that such contracts may not be concluded before the Competent Authority of the Host State is in possession of policy terms and conditions, in the language(s) specified by the Host State's national law.
- 7.3 The Competent Authorities shall provide the CEIOPS Secretariat with the link to the websites where the insurance classes and/or insurance products are listed, for which policy conditions have to be presented to the Competent Authority of the Host State. The aforementioned information shall be updated as necessary. The CEIOPS Secretariat will publish the relevant links on the Public Area of the CEIOPS website.

### **8 Representative for the handling of claims**

- 8.1 In the area of motor vehicle liability insurance, Competent Authorities shall co-operate in order to facilitate the ability of the Competent Authority of the Home State to check the reliability and the professional qualification of the claims representative, who is to be appointed in the Host State pursuant to Article 6 of Directive 90/618/EEC or in the other Member States if the Insurance Undertaking is to cover motor vehicle third party risks (class 10, not including carrier's liability) pursuant to Article 4 of the 4th Motor Insurance Directive.



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8.2 The requested Competent Authority shall, as far as possible, endeavour to promptly supply the information requested by the Competent Authority of the Home State or confirm that they have no such information.

## **9 Discovery of activities not notified**

9.1 If the Competent Authority of a Host State discovers that an Insurance Undertaking has not notified an activity as prescribed in the relevant Directives<sup>18</sup>, it shall immediately inform the Competent Authority of the Home State.

9.2 The Competent Authority of the Host State may, in an emergency situation, request the Insurance Undertaking to stop the relevant activity immediately.

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<sup>18</sup> Articles 10(1) of the First Non-Life Directive, replaced by Articles 32 of the Third Life Directive, and Article 40(1) of the Consolidated Life Directive, or Articles 14 of the Second Non-Life Directive, replaced by Articles 34 of the Third Non-Life Directive, and Article 41 of the Consolidated Life Directive

**PART IV  
ON-GOING SUPERVISION OF UNDERTAKINGS  
ENGAGED IN BUSINESS**

**1 Rules applying to an Undertaking on an on-going basis**

1.1 On an on-going basis an Undertaking shall:

- a) fulfil the conditions for authorisation;
- b) operate in accordance with the rules applying to it;
- c) comply with the provisions on the calculation and representation of the technical provisions and possess the necessary solvency margin;
- d) demonstrate an overall financial situation enabling the Competent Authorities responsible for its supervision, on the basis of the information available to them, to assess that the Undertaking will, in all probability, continue to fulfil its commitments in the future; and
- e) be appropriately managed, in order to identify, measure and control, to an adequate level, all risks to which the Undertaking is exposed.

1.2 The provisions on exchange of information on directors, managers, Shareholders/Members specified in chapter II.4 shall also be applied in respect of the on-going supervision of Undertakings, where appropriate.

**2 The exercise of on-going prudential supervision over Undertakings**

Articles 13 and 14 of the First Non-Life Directive, amended by Articles 9 and 10 of the Third Non-Life Directive; Articles 10 and 11 of the Consolidated Life Directive; Articles 15 and 16 of the Reinsurance Directive

2.1 The on-going prudential supervision of the activities of Undertakings, both off-site and on-site, shall be the responsibility of the Competent Authority of the Home State, without prejudice to the proper powers of the Competent Authority of the Host State, as recognised by the Directives.

2.2 On-site inspections of Branches should enable the Competent Authorities to assess the situation of each establishment and the standard of its business activities. To this end, the Competent Authority of the Home State shall ask the Undertaking to place at its disposal, at local level, any documents, books, registers, contracts, statements of claims,

## PART IV ON-GOING SUPERVISION OF UNDERTAKINGS ENGAGED IN BUSINESS

accounting documents, etc. which may be required, and personnel qualified to provide it with the information required.

- 2.3 When the Competent Authority of the Home State makes a decision regarding an on-site inspection in a Branch situated in another Member State, it shall inform the Competent Authority of the Host State, as soon as possible, indicating the:
- name and position of the persons responsible for the investigation;
  - dates planned for the action in the Branch;
  - reason(s) for the investigation; and
  - programme for the proposed investigation.
- 2.4 The latter does not restrict the power of the Competent Authority of the Home State to extend its investigations beyond the initial programme.
- 2.5 The Competent Authority of the Host State may take part in the on site-inspection. When the Competent Authority of the Host State decides to use the option to participate in the on-site inspection, it shall immediately inform the Competent Authority of the Home State and communicate the name and position of the persons who will participate in the inspection.
- 2.6 After concluding the on-site inspection, the Competent Authority of the Home State shall communicate the observations from the investigation of the Branch, and any consequences that may arise, to the Competent Authority of the Host State.
- 2.7 At the express request of the Competent Authority of the Home State, the Competent Authority of the Host State may carry out an on-site inspection alone, on behalf of the Competent Authority of the Home State. The latter shall then place at the disposal of the persons empowered to carry out that investigation any accounts, documents and information which they may need in the performance of their duties.

### **3 Monitoring of compliance with the applicable rules of law**

Article 40(2) of the Third Non-Life Directive, Article 46(1) of the Consolidated Life Directive; Article 47 of the Reinsurance Directive

- 3.1 In order to allow the Competent Authority of the Host State to verify compliance with the rules of the Host State, any Undertaking which carries out operations by way of freedom to provide services or through a Branch, shall be requested to communicate to the Competent Authority of the Host State any documents, the provision of which would have been compulsory if requested from an Undertaking with its head office in the Host State.

- 3.2 Refusal to communicate such documents shall be treated as an irregularity within the meaning of paragraph IV.4.1 and may give rise to the application of the measures referred to in that paragraph and to the application of the penalties provided for by national law.
- 3.3 Where, in order to investigate compliance with the rules of law applicable to a Branch, it is considered necessary to carry out an on-site inspection at the Branch, the Competent Authority of the Host State may carry out such an investigation on its own initiative.

The Competent Authority of the Host State shall inform the Competent Authority of the Home State of its decision as soon as possible, communicating to it the

- name and position of the persons responsible for the investigation;
- dates planned for the action in the Branch;
- reason for the inspection; and
- proposed programme.

The Competent Authority of the Home State can participate in the on-site inspection. If it chooses to do so, it shall immediately inform the Competent Authority of the Host State, indicating the name and position of the persons who will participate in the inspection.

- 3.4 When, for the purposes of monitoring compliance with the rules of law applying to a Branch or to operations conducted within its territory by way of freedom to provide services, an on-site inspection at the head office of the Undertaking is considered necessary, the Competent Authority of the Host State shall inform the Competent Authority of the Home State. The Competent Authority of the Home State may carry out the investigation.
- 3.5 The Competent Authority carrying out the inspection shall inform the other Competent Authority of the observations from the investigation.

#### **4 Procedures in case of non-compliance of Undertakings with the rules of law of the Host Member State**

Articles 40(3) to 40(9) of the Third Non-Life Directive, Article 46(2) to 46(8) of the Consolidated Life Directive and Article 47 of Reinsurance Directive

- 4.1 If the Competent Authority of the Host State ascertains that an Undertaking is not complying with the rules of law of the Host State, it shall invite the Undertaking to terminate the irregular situation.
- 4.2 The Competent Authority of the Host State shall send a letter to the head office of the Undertaking, stating the type of infringement(s)

#### PART IV ON-GOING SUPERVISION OF UNDERTAKINGS ENGAGED IN BUSINESS

observed and the measures to be taken. A copy of the letter shall also be sent to the Competent Authority of the Home State.

Where the operations are engaged in by a Branch, a copy of this letter shall also be sent to the General Representative of the Branch.

- 4.3 If the Undertaking does not do what is required, the Competent Authority of the Host State shall inform the Competent Authority of the Home State and submit to the latter all relevant information, including an assessment of the situation and the supervisory measures proposed. The Competent Authority of the Home State shall acknowledge receipt of this information.
- 4.4 The Competent Authority of the Home State shall take all appropriate measures to ensure that the Undertaking terminates the irregular situation. It shall inform the Competent Authority of the Host State of the measures that have been taken and, if applicable, explain why these measures deviate from those proposed in the assessment of the Competent Authority of the Host State.
- 4.5 If the Undertaking persists in infringing the general good conditions of the Host State, or if the Competent Authority of the Host State considers the measures taken by the Competent Authority of the Home State to be inadequate or lacking, the former may take appropriate measures to terminate the irregular situation. It shall, wherever possible, inform the Competent Authority of the Home State of the measures in advance, or, in any event, as soon as possible after the measures have been taken.

Notwithstanding the procedure defined above, in emergencies, the Competent Authority of the Host State may take any appropriate measures, under the conditions defined in the above paragraph, to prevent irregularities committed on its territory. In this case, it shall immediately inform the Competent Authority of the Home State.

These measures shall be notified in Written Form, simultaneously to the head office of the Undertaking and, where appropriate, to the Branch concerned. The measures may, in particular, include a prohibition on the Undertaking from continuing to conclude new (re)insurance contracts in the territory of the Member State concerned, or any other measure provided for by national legislation. The rationale for the invocation of the measures must be explained in the notification. The notification may be drafted in the language of the Host State.

- 4.6 When the irregular situation constitutes an infringement of the law or regulations in force in the Host State, the procedure defined above does not prevent the application of national penalties, as provided for by the laws of the Member States concerned.

The Competent Authority of the Host State shall immediately inform the Competent Authority of the Home State when a national penalty procedure is initiated.

## **5 Portfolio transfer<sup>19</sup>**

### **5.1 Transfer of portfolio of contracts of Insurance Undertakings**

Article 12 of the Third Non-Life Directive amending Article 11 of the Second Non-Life Directive and Article 14 of the Consolidated Life Directive; Article 20a(5) of the First Non-Life Directive, Article 38(5) of the Consolidated Life Directive

5.1.1 Before an Insurance Undertaking is authorised under the conditions laid down by its national law to transfer all or part of its portfolio of contracts to an accepting Insurance Undertaking, the Competent Authority of the Home State of the transferring Insurance Undertaking shall

- consult the Competent Authority of the Host State of the Branch whose portfolio is to be transferred; and
- obtain the agreement of the Competent Authority(ies) of the Member State(s) of risks or commitments.

5.1.2 These opinions and agreements shall be given as soon as possible, and in any event no later than three months after the date of receipt of the request. The Competent Authority of the Host State shall acknowledge receipt if so requested<sup>20</sup>. Once this period has expired, the opinion shall be considered positive or agreement shall be deemed to have been given.

5.1.3 When the head office of the accepting Insurance Undertaking and that of the transferring Insurance Undertaking are not in the same Member State, the Competent Authority of the Home State of the transferring Insurance Undertaking, shall also obtain a certificate of solvency from the Competent Authority of the Home State of the accepting Insurance Undertaking, stating that the accepting Insurance Undertaking has the necessary solvency margin, taking account of the transfer. This certificate shall be issued as soon as possible, and in any event no later than three months after the request.

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<sup>19</sup> This chapter is dealing with transfers of portfolios of contracts of Community undertakings. Portfolio transfers of Branches of Third Countries are addressed in chapter V.5.

<sup>20</sup> Evidence of receipt may assume the form of communications between Competent Authorities which take place during the usual course of the portfolio transfer process.

#### PART IV ON-GOING SUPERVISION OF UNDERTAKINGS ENGAGED IN BUSINESS

5.1.4 In order to facilitate these measures as a whole, the Competent Authority of the Home State of the transferring Insurance Undertaking shall provide the following minimum information:

a) to the Competent Authority of the Home State of the accepting Insurance Undertaking:

- the draft transfer agreement or the transfer agreement and, if they do not appear in it, the names and addresses of the transferring Insurance Undertaking and the accepting Insurance Undertaking, the insurance classes and the details of the nature of the risks or commitments to be transferred;
- the volume of gross and net technical provisions, established on the basis of the contracts to be transferred;
- the volume of gross and net written premiums;
- the volume of the gross and net burden of claims in non-life insurance;
- details of assets transferred;
- details of guarantees provided by the transferring Insurance Undertaking or a third party (for example a reinsurance undertaking) to safeguard against deterioration of the reserves corresponding to the transferred business; and
- name(s) of the country or countries of the risks or commitments.

b) to the Competent Authority of the Host State of the Branch whose portfolio is to be transferred:

- the draft transfer agreement or the transfer agreement and, if they do not appear in it, the names and addresses of the transferring Insurance Undertaking and the accepting Insurance Undertaking, and the scope of the operation (total or partial transfer of the Branch's portfolio);
- arrangements for the settlement of claims in the event of the closure of the Branch following the transfer.

c) to the Competent Authority of the Member State of the risks or commitments:

- the draft transfer agreement or the transfer agreement and, if they do not appear in it, the names and addresses of the transferring Insurance Undertaking and the accepting Insurance Undertaking.

5.1.5 If the Competent Authority of the Home State of the accepting Insurance Undertaking has serious concerns about how that Insurance Undertaking will perform in the future, it shall inform the Competent

#### PART IV ON-GOING SUPERVISION OF UNDERTAKINGS ENGAGED IN BUSINESS

Authority of the Home State of the transferring Insurance Undertaking of those concerns as soon as they arise, but in any event no later than within a period of three months after it has been consulted.

##### 5.1.6 Where the accepting Insurance Undertaking:

- has not previously taken up the business of direct insurance and therefore requires authorisation from the Competent Authority of its Home State or requires an extension of its autorisation; and/or
- will cover the risks or commitments through a Branch which has yet to be established, or will require an extension of the business which it is entitled to carry on in the State of the Branch; and/or
- will cover the risks or commitments through the provision of services where it has not previously done so;

the relevant Competent Authorities shall co-operate to ensure that, as far as possible, their respective functions can be carried out concurrently, to enable the transfer to take place within a reasonable period.

5.1.7 The Competent Authority of the Home State of the transferring Insurance Undertaking shall communicate its decision to the Competent Authority of the country or countries of risk or commitment and the other authorities which were consulted.

5.1.8 The Competent Authorities of the Member States of risks or commitments shall assist the Competent Authority of the Home State of the transferring Insurance Undertaking or of the accepting Insurance Undertaking, or the transferring Insurance Undertaking or the accepting Insurance Undertaking themselves, at the time of publication of the transfer, in accordance with the law applicable in the States of risks or commitments<sup>21</sup>. The Competent Authorities shall inform each other about the method of publication of the transfer of portfolio provided by their national law.

5.1.9 In case of a merger of Insurance Undertakings or Insurance and Reinsurance Undertakings, the Competent Authorities shall consult each other in accordance with the procedure laid down for portfolio transfers, and inform each other about the legal consequences of the merger, in particular the validity of existing notifications of cross-border business.

5.1.10 The authorisation of a transfer under this chapter does not affect the right of Member States to give policyholders the option of cancelling contracts within a fixed period. The Competent Authorities shall inform each other of the circumstances and the period within which contracts can be cancelled according to the provisions of their national law.

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<sup>21</sup> Article 12(6) of the Third Non-Life Directive and Article 14(5) of the Consolidated Life Directive



## **5.2 Transfer of portfolio of contracts of Reinsurance Undertakings**

Articles 18 and 43(6) of the Reinsurance Directive

- 5.2.1 When the head office of the transferring Reinsurance Undertaking and that of the accepting Undertaking are not in the same Member State, the Competent Authority of the Home State of the transferring Reinsurance Undertaking shall obtain a certificate of solvency from the Competent Authority of the Home State of the accepting Undertaking, stating that the accepting Undertaking has at its disposal the necessary solvency margin, taking into account the transfer. The certificate of solvency shall, wherever possible, be provided within a period of three months, from the date of receipt of the request.
- 5.2.2 The Competent Authorities concerned by the transfer of the portfolio of contracts shall cooperate to ensure that, as far as possible, their respective functions can be carried out concurrently to enable the transfer to take place in a reasonable period.
- 5.2.3 In order to facilitate these measures as a whole, the Competent Authority of the Home State of the transferring Reinsurance Undertaking shall, wherever possible, provide the following minimum information to the Competent Authority of the Home State of the accepting Undertaking within three months from the date of receipt of the request:
- the draft transfer agreement or the final transfer agreement and, if they do not appear in it, the names and addresses of the transferring Reinsurance Undertaking and the accepting Undertaking, and the type of reinsurance activity provided for under Article 4(2) of the Reinsurance Directive;
  - the volume of gross and net technical provisions, established on the basis of the contracts to be transferred;
  - the volume of gross and net written premiums;
  - the volume of the gross and net burden of claims in non-life reinsurance;
  - details of assets transferred;
  - details of guarantees provided by the transferring Reinsurance Undertaking or a third party to safeguard against deterioration of the reserves corresponding to the transferred business, if relevant.
- 5.2.4 If the Competent Authority of the Home State of the accepting Undertaking has serious concerns about how that accepting Undertaking will perform in the future, it shall inform the Competent Authority of the Home State of the transferring Reinsurance

## PART IV ON-GOING SUPERVISION OF UNDERTAKINGS ENGAGED IN BUSINESS

Undertaking of those concerns as soon as they arise, but in any event no later than within a period of three months after it has been consulted.

### 5.2.5 Where the accepting Undertaking:

- has not previously taken up the business of reinsurance and therefore requires authorisation from the Competent Authority of its Home State or requires an extension of its authorisation; and/or
- will cover the risks or commitments through a Branch which has yet to be established, or will require an extension of the business which it is entitled to carry on in the Member State of the Branch;

the relevant Competent Authorities shall co-operate to ensure that, as far as possible, their respective functions can be carried out concurrently, to enable the transfer to take place within a reasonable period.

### 5.2.6 In the case of a merger of Reinsurance Undertakings, the Competent Authorities shall consult each other in accordance with the procedure laid down for portfolio transfers.

## **6 Supervisory measures**

### **6.1 Prohibition of free disposal of assets**

Article 20(1) and (5) of the First Non-Life Directive, replaced by Article 13 of the Third Non-Life Directive, Article 37(1) and (5) of the Consolidated Life Directive; Article 42(1) and (4) of the Reinsurance Directive

6.1.1 The Competent Authority of the Home State shall determine whether to initiate any measure(s) to prohibit the free disposal of the assets of an Undertaking. The Competent Authority of the Home State shall inform the Competent Authority of the Host State of its intention to pursue any such measure(s). The notification and the measure may happen simultaneously where immediate action is required.

6.1.2 The Competent Authority of the Home State shall, in Written Form, inform the Competent Authorities of the Member States where the Undertaking's assets are located, of the assets, disposal of which must be prohibited.

6.1.3 Insofar as it lies within their possibilities, the Competent Authorities of the Member States concerned shall check the existence or the location of certain assets previously identified by the Competent Authority of the Home State, on the basis of data which the latter will have supplied, and on its request.

## PART IV ON-GOING SUPERVISION OF UNDERTAKINGS ENGAGED IN BUSINESS

6.1.4 The Competent Authority to which the request has been made shall prohibit the disposal of the assets and inform the Competent Authority of the Home State of the measures taken. It shall endeavour to provide any assistance required by the Competent Authority of the Home State.

### **6.2 Plan for the restoration of a sound financial position (Restoration Plan)**

Article 20(2) and (5) of the First Non-Life Directive, replaced by Articles 13 of the Third Non-Life Directive, Article 37(2) and (5) of the Consolidated Life Directive and Article 42(2) and (4) of the Reinsurance Directive

6.2.1 The Competent Authority of the Home State, when it requires an Undertaking to provide a Restoration Plan, shall assume responsibility for approving and ensuring the implementation of the Restoration Plan.

6.2.2 The Competent Authority of the Home State shall inform the Competent Authority of the Host State that it has requested a Restoration Plan. It shall communicate the Restoration Plan to the Competent Authority of the Host State, together with any information which it considers appropriate in the circumstances, on the request of the Competent Authority of the Host State.

6.2.3 The Competent Authority of the Home State shall take any measures which it considers appropriate.

### **6.3 Short-term finance scheme**

Article 20(3) and (5) of the First Non-Life Directive, replaced by Article 13 of the Third Non-Life Directive, Article 37(3) and (5) of the Consolidated Life Directive and Article 42(3) and (4) of the Reinsurance Directive

6.3.1 The Competent Authority of the Home State, when it requires an Undertaking to provide a short-term finance scheme, shall assume responsibility for approving this plan and ensuring its implementation.

6.3.2 The Competent Authority of the Home State shall inform the Competent Authority of the Host State that it is requesting a short-term finance scheme. It shall communicate the short-term finance scheme to the Competent Authority of the Host State, if the latter so requests.

6.3.3 The Competent Authority of the Home State shall take any measures which it considers appropriate.

## **6.4 Financial recovery plan**

Article 20a of the First Non-Life Directive as inserted by Article 1(7) of Directive 2002/13/EC; Article 38 of the Consolidated Life Directive; Article 43 of the Reinsurance Directive

- 6.4.1 The Competent Authority of the Home State, when it requires an Undertaking to provide a financial recovery plan, shall assume responsibility for ensuring the implementation of this plan.
- 6.4.2 The Competent Authority of the Home State shall inform the Competent Authority of the Host State if it has
- obliged the Undertaking to have a higher required solvency margin; or
  - revalued downwards eligible elements of the available solvency margin; or
  - decreased the reduction of reinsurance for the calculation of the required solvency margin.
- 6.4.3 The Competent Authority of the Home State shall take any measures which it considers appropriate.

## **6.5 Withdrawal or lapse of authorisation**

Article 22 of the First Non-Life Directive, replaced by Article 14 of the Third Non-Life Directive; Article 39 of the Consolidated Life Directive; Article 44 of the Reinsurance Directive

- 6.5.1 The Competent Authority of the Home State shall assume sole responsibility for terminating the activity of an Undertaking. This shall be without prejudice to the proper competences of the Competent Authority of the Host State.
- 6.5.2 Except under special circumstances and before withdrawing authorisation in respect of one, several or all the classes for which the Undertaking is authorised, the Competent Authority of the Home State shall inform the Competent Authorities of all Host States of its intention.
- 6.5.3 The Competent Authority of the Home State shall communicate the decision on withdrawal or the lapse of authorisation to the Competent Authorities of all other Member States in respect of which the Undertaking has exercised rights under the freedom of establishment or the freedom to provide services, and update its website accordingly.

6.5.4 The Competent Authorities shall, throughout the process relating to the withdrawal or lapse of authorisation, collaborate in good faith and in mutual recognition of the competence of each Competent Authority.

6.5.5 The Competent Authorities shall act collectively and collaboratively, to ensure a coordinated response to the consequences of the withdrawal or the lapse of authorisation.

## **6.6 Application of reorganisation measures and winding-up proceedings of an Insurance Undertaking**

Articles 5, 8, 14 and 30 of the Reorganisation and Winding-up Directive

6.6.1 A decision adopted according to the home Member State's legislation concerning reorganisation measures or the opening of winding-up proceedings of an Insurance Undertaking, including its Branches in other Member States, shall be recognised without further formality within the territory of all other Member States and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.

6.6.2 The Competent Authority<sup>22</sup> of the Home State shall assume sole responsibility for reorganising or terminating the activity of an Insurance Undertaking.

6.6.3 The Competent Authority of the Home State shall communicate, as a matter of urgency, the decision on the winding-up or adoption of reorganisation measures to all other Competent Authorities. The information shall include the possible practical effect of such measures.

6.6.4 When an Insurance Undertaking, whose head office is situated outside the EU, has Branches established in more than one Member State, each Branch shall be treated independently with regard to the application of Directive 2001/17/EC. The Competent Authorities of the relevant Member States shall endeavour to coordinate their actions.

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<sup>22</sup> Within this context, 'Competent Authority', may mean either the:  
(i) administrative or judicial authorities of Member States; or  
(ii) competent authorities as defined in Article 1(k) of the Third Non-Life Insurance Directive and Article 1.1(n) of the Consolidated Life Directive.

The relevant meaning should be applied, as appropriate, to the various stages of the reorganisation and winding-up proceedings of an Insurance Undertaking.

## **7 Right to warn**

Article 10(1) of the Consolidated Life Directive, Article 15(1) of the Reinsurance Directive

- 7.1 If the Competent Authority of the Host State has reasons to consider that the activities of an Undertaking could adversely affect its financial soundness, it shall inform the Competent Authority of the Home State. If necessary, the Competent Authority of the Home State shall check that the Undertaking concerned is complying with the prudential principles defined by the Directives. It shall in any event respond to the concerns of the Competent Authority of the Host State.
- 7.2 In cases where a significant part of an Undertaking's overall business is carried out in a Host State the allocation of tasks and responsibilities between the Competent Authorities of the Home and Host States should not prevent the Competent Authority of the Home State from utilising the knowledge of the Competent Authority of the Host State about the local market and risks in order to achieve effective supervision and adequate protection of policyholders.
- 7.3 In cases where a significant share of a Member State's insurance market is held by an Undertaking located in another Member State, the allocation of tasks and responsibilities between the Competent Authorities of the Home and Host States should not prevent the Competent Authority of the Host State from utilising the knowledge of the Competent Authority of the Home State about the prudential status of the Undertaking in order to achieve effective supervision and adequate protection of policyholders.

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| <b>PART V</b><br><b>BRANCHES OF UNDERTAKINGS OF THIRD COUNTRIES</b> |
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## **1 Authorisation**

- 1.1 The Competent Authority of the Member State where a Third Country Undertaking intends to establish a Branch, shall ask the supervisory authority of the Third Country for any relevant information, in its possession, concerning at least:
  - the good repute and the experience of the General Representative or other persons who effectively run the business of the Branch;
  - the financial situation of the Third Country Undertaking; and
  - the repute and the financial soundness of shareholders, managers and/or other persons who effectively direct the affairs of the business of the Third Country Undertaking.
- 1.2 In order to identify cases of possible information exchange and cooperation, the Competent Authority responsible for the licensing procedure shall request from the Undertaking applying for a licence information about already existing Branches, subsidiaries, participations, pending authorisation procedures or any other links to the EU.
- 1.3 Where the Third Country Undertaking already has links to the EU, the Competent Authority in charge of the authorisation shall ask the Competent Authorities of the Member States in which the Undertaking has Branches, subsidiaries, participations, pending authorisation procedures or any other interest, for any information in their possession concerning the Third Country Undertaking or its Branches, subsidiaries or participations in the respective Member State, that might be relevant for the licensing procedure.
- 1.4 The requested Competent Authority shall endeavour to provide the information as soon as possible or inform the requesting Competent Authority that it does not have any relevant information.
- 1.5 To optimise the supervision of Branches of Undertakings with their head office in a Third Country, the Competent Authorities agree that best possible use shall be made of any information which is available from a Competent Authority responsible for the supervision of Branches or subsidiaries of that Undertaking already existing in the EU.

## **2 General principles of cooperation in the supervision of Third Country Insurance Branches**

- 2.1 The extent of collaboration between Competent Authorities responsible for the supervision of EU Branches of a third country insurer differs according to whether the Branches of Undertakings of Third Countries are subject to separate supervision or to the special system as described in Articles 26 to 28 of the First Non-Life Directive and Article 56 of the Consolidated Life Directive.
- 2.2 An appropriate degree of collaboration should, if the need arises, be defined when agreements have been concluded with Third Countries under Article 29 of the First Non-Life Directive and Article 57 of the Consolidated Life Directive.

## **3 Separate supervision of Third Country Insurance Branches**

Articles 23, 24, 25 and 27 of the First Non-Life Directive; Articles 51, 54 and 55 of the Consolidated Life Directive

- 3.1 In general, Insurance Branches of a Third Country Undertaking in different Member States are supervised separately and shall each be obliged to ensure its own solvency.
- 3.2 The Competent Authorities of the Member States in which a Third Country Undertaking has Insurance Branches, shall provide each other with all relevant information about the Third Country Undertaking and inform each other about significant developments concerning the solvency of the Insurance Branches.
- 3.3 In particular, the Competent Authorities of the Member States of the Insurance Branches shall also collaborate in respect of an Insurance Branch of a Third Country Undertaking, to which Article 20 of the First Non-Life Directive and/or Article 37 of the Consolidated Life Directive apply.

## **4 Collaboration under the special system**

Articles 26 and 28 of the First Non-Life Directive and Articles 56 and 52(3) of the Consolidated Life Directive

### **4.1 Setting-up of the system**

- 4.1.1 It is the sole responsibility of the Undertaking whose head office is in a Third Country to decide on whether it would like to request the



## PART V BRANCHES OF UNDERTAKINGS OF THIRD COUNTRIES

advantages of the special supervisory regime according to Article 26 of the First Non-Life Directive or Article 56 of the Consolidated Life Directive.

The request must cover all Insurance Branches existing within the EU, and those in respect of which authorisation is sought. It covers all the advantages. These cannot be granted separately.

4.1.2 The procedure for reaching an agreement ('Agreement' under these Articles shall be as follows:

- The Undertaking may make informal contacts with the Competent Authorities of the Member States of the Insurance Branches, particularly in order to determine which Competent Authority will be responsible for verifying the Undertaking's state of solvency in the EU.
- The Undertaking shall be asked to send an official request to each of the Competent Authorities concerned, in accordance with Annex III, Document I. This request shall state the Competent Authority chosen to assume responsibility for the overall supervision of solvency ('Competent Authority of Choice') and the rationale for the choice.
- Each Competent Authority shall notify the Undertaking of its acceptance or refusal.
- The Undertaking shall be asked to communicate the replies to the Competent Authority of Choice, if the latter has accepted designation as such.

4.1.3 When the Undertaking asks a Competent Authority to accept responsibility as the Competent Authority of Choice (Annex III, Document II):

- the Competent Authority of Choice shall notify the Undertaking and the other Competent Authorities concerned of the date (agreed by all relevant Competent Authorities), on which the Agreement shall take effect; and
- each Competent Authority involved shall make the necessary arrangements for the Agreement to take effect in its own country, on the date fixed.

4.1.4 The replies of the Competent Authorities, the request of the Undertaking addressed to the Competent Authority of Choice and the reply of the latter shall establish the commitment of the parties.

4.1.5 When an Undertaking which benefits from an Agreement opens an Insurance Branch in a Member State where it was not carrying on business when the Agreement was concluded, it shall ask the Competent Authority of that Host State to join the Agreement. If that

## PART V BRANCHES OF UNDERTAKINGS OF THIRD COUNTRIES

Authority accepts, the respective Competent Authority shall participate in the Agreement.

### **4.2 Operation of the system**

Article 26(2) and Article 28 of the First Non-Life Directive; Article 56(2) and Article 52(3) of the Consolidated Life Directive

4.2.1 The Competent Authority of Choice shall supervise the solvency of all the Insurance Branches of the Third Country Undertaking.

4.2.2 The Competent Authorities of the Undertaking's other Insurance Branches shall carry out financial supervision, other than the supervision of solvency.

### **4.3 Termination of an Agreement**

4.3.1 An Agreement ends:

- on the initiative of one or more of the relevant Competent Authorities;
- on the initiative of the Undertaking;
- on the Undertaking opening an Insurance Branch in a Member State where it was not carrying on business when the Agreement was concluded, and the Competent Authority of the Member State of the new Branch does not consent to join the Agreement;
- following total transfer of the portfolio of contracts of the Insurance Branch established in the Member State of the Competent Authority of Choice; or
- following the withdrawal of the licence of the Undertaking in the Member State of the Competent Authority of Choice.

4.3.2 After termination of an Agreement, the Undertaking's Insurance Branches are subject to the system of separate supervision unless their authorisation has been withdrawn or they enter into a new Agreement.

4.3.3 Collaboration between Competent Authorities shall take place in every case where an Agreement lapses.

4.3.4 Termination of an Agreement takes effect:

- on the date of the withdrawal of authorisation by the Competent Authority of Choice;

## PART V BRANCHES OF UNDERTAKINGS OF THIRD COUNTRIES

- on the date of termination of the Agreement by one or more Competent Authorities or by the Undertaking; or
- on the effective date of a portfolio transfer in the Member State of the Competent Authority of Choice.

4.3.5 On this date, the Competent Authorities should undertake a complete reassessment of the solvency of Insurance Branches established in their respective countries, unless a new Agreement has been negotiated beforehand and can take effect without a break in continuity.

### **5 Portfolio transfers of Direct Insurance Branches of Third Countries**

Article 28 a of the First Non-Life Directive, introduced by Article 53 of the Third Non-Life Directive; Article 53 of the Consolidated Life Directive

In accordance with the principles of Article 53 of the Third Non-Life Directive and Article 53 of the Consolidated Life Directive, and under the conditions provided for by national law, a Member State shall authorise the transfer of the portfolio of contracts from a Branch of a Third Country established in its territory ('Transferor') to an accepting Office established in a Member State of the EU ('Accepting Office'), subject to the following conditions:

- the Competent Authorities of the Home State of the Accepting Office attest that the Accepting Office possesses the necessary solvency margin;
- if the Accepting Office is a Branch of a Third Country established in the Transferor's Member State, the Competent Authority responsible for supervising its overall solvency, shall certify that the Accepting Office possesses the necessary solvency margin, taking account of the transfer;
- if the Accepting Office is a Branch of a Third Country established in a Member State other than that of the Transferor and where this is authorised in the country of establishment of the Transferor, the Competent Authorities of the country of establishment of the Accepting Office or those in charge of supervising its solvency, must certify that the Accepting Office possesses the necessary solvency margin, taking account of the transfer;
- the Competent Authorities of the Member State of establishment of the Accepting Office must certify that the law of that Member State permits such a transfer, and that the Member State has agreed to the transfer;

PART V BRANCHES OF UNDERTAKINGS OF THIRD COUNTRIES

- that the Competent Authorities of the Member State of the risks and those of the Member State of the commitment, shall give their agreement within a period of three months from the request for an opinion from the Competent Authority of the Home State of the transferring Undertaking. If the Competent Authorities have not responded on the expiry of the three month period, agreement will be assumed.

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| <p style="text-align: center;"><b>PART VI</b><br/><b>EXCHANGE OF COMPLEMENTARY INFORMATION AND</b><br/><b>STATISTICAL DATA</b></p> |
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**1 Exchange of information between the Competent Authorities of the Home State and Host State**

Article 19 of the First Non-Life Directive, amended by Article 11 of the Third Non-Life Directive, Article 13 of the Consolidated Life Directive and Article 17 of the Reinsurance Directive

- 1.1 Besides the standardised procedures of supervisory cooperation, information exchange between the Competent Authorities of the Home State and the Host State(s) is essential for the effective performance of their respective obligations.
- 1.2 In order to ensure effective and efficient supervision of an Undertaking, the Competent Authority of the Home State may need complementary information from the Competent Authority of the Host State, in order to properly assess the risks incurred by the Undertaking, paying due consideration to local conditions under which its business activities are carried out through a Branch or under the freedom to provide services. Information related to local markets and risks may be of particular interest to the Competent Authority of the Home State.
- 1.3 Conversely, the Competent Authority of the Host State may require information in respect of Undertakings writing business in its domestic market through freedom of establishment or services in order to ensure compliance with the conditions in which, for reasons of the general good, such business must be conducted in the host Member State.
- 1.4 Information exchange should be proportionate to the risks created by the business in order to avoid unnecessary burden on the Undertaking and the relevant Competent Authorities.
- 1.5 Information should be exchanged regarding any adverse developments such as complaints from policyholders, changes in the standards of the conduct of business, unsatisfactory commercial practices and any issue that can adversely influence the financial position of the Undertaking.
- 1.6 Relevant information should be provided as soon as possible.

## **2 Exchange of statistical information**

Article 44(2) of the Third Non-Life Directive, Article 49 of the Consolidated Life Directive

2.1 Before the end of each year, the Competent Authority of the Home State shall communicate to the Competent Authority of the Host State a summary of the following data, from the previous year,

- on an aggregated basis:
  - in the case of non-life insurance: the amount of premiums, claims and commissions, without deductions for reinsurance, and the frequency and average cost of claims under motor vehicle third-party liability, without deductions for reinsurance, according to groups of classes according to Article 44 of the Third Non-Life Directive and showing separately insurance by way of establishment and insurance by way of freedom to provide services;
  - in the case of life assurance: the amount of premiums before deduction for reinsurance, by class and showing separately life assurance by way of establishment and life assurance by way of freedom to provide services; and
- on a company basis:
  - total premiums written, showing separately insurance by way of establishment and insurance by way of freedom to provide services.

2.2 The Competent Authority of the Home State shall also inform the Competent Authority of the Host State if no cross-border activities through branches or free provision of services were reported.

## **3 Exchanges of additional statistical information**

3.1 The Competent Authority of the Home State shall make every effort to ensure that the Competent Authority of the Host State has at its disposal the elements necessary for statistical information and the analysis of its market.

3.2 In particular, at the request of the Competent Authority of the Host State, the Competent Authority of the Home State shall communicate the statistical information supplied under paragraph VI.2, for each of the Branches established within the territory of the Member State which has made the request.

PART VI EXCHANGE OF COMPLEMENTARY INFORMATION AND STATISTICAL DATA

- 3.3 In addition, the Competent Authority of the Host State may request from the Competent Authority of the Home State the simplified technical account presented in Annex IV for each of the Branches established on the territory of the Member State which has made the request, and for Undertakings engaging in business by way of freedom to provide services within that Member State.

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| <p style="text-align: center;"><b>PART VII</b><br/><b>HANDLING OF POLICYHOLDER COMPLAINTS</b></p> |
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## **1 Complaints handling systems in Member States**

Article 31(1), second indent, of the Third Non-Life Directive; Article 36 of the Consolidated Life Directive

- 1.1 In the context of the development of the single market in insurance, it is important that all complaints from policyholders<sup>23</sup> are dealt with by the relevant complaints handling body, irrespective of whether the complaint involves policyholders and insurers in different Member States.
- 1.2 The manner in which complaints handling is organised within a jurisdiction is a matter for each jurisdiction and therefore not subject to this Protocol. There are a wide variety of complaints handling systems in Member States. In some Member States, complaints are dealt with by Competent Authorities, whilst others have developed Ombudsman services or other systems, or have a combination of both. The ways in which these systems operate vary considerably across the Member States.
- 1.3 Where complaints have a cross-border component, it is important for individual policyholders and for consumer confidence generally, that the differences in complaints handling systems do not prevent or deter complaints from being directed to the relevant bodies and subsequently dealt with.
- 1.4 The procedures outlined in this Protocol are intended to facilitate the process of identifying the relevant complaints handling body and ensure that complaints filed with a Competent Authority are addressed and arrive at the body that is competent to deal with the complaint.
- 1.5 It is recognised that the Commission has set up a network (FIN-NET)<sup>24</sup> to facilitate the out-of-court resolution of consumer complaints where the service provider is established in a Member State other than the Member State where the consumer is domiciled. Nothing in this Protocol is intended to interfere with this agreement or the process developed under FIN-NET.

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<sup>23</sup> The term 'policyholder' shall be understood in a broad sense, including all persons that file an insurance-related complaint.

<sup>24</sup> <http://ec.europa.eu/fin-net>



## **2 Complaints handling procedures**

- 2.1 It is important that a complaint is assessed by the Competent Authority which initially receives it, to establish which body is competent to deal with the complaint. Where possible, the Competent Authority shall keep the complainant informed about further handling of the complaint.
- 2.2 In cases where the Competent Authority that receives the complaint is competent to deal with the complaint, it shall inform the complainant, as soon as possible, of applicable national procedures.
- 2.3 In cases where the Competent Authority that receives the complaint is not competent to deal with the complaint, but another body in the same jurisdiction is, the Competent Authority shall, as soon as possible:
  - if legally possible, pass the complaint directly to the body competent to deal with the complaint and inform the complainant of the referral;
  - if legally not possible, provide the complainant with any relevant information about the body competent to deal with the complaint, to facilitate the referral of the complaint by the complainant.
- 2.4 In cases where the Competent Authority that receives the complaint is not competent to deal with the complaint, but a Competent Authority or a competent body in another jurisdiction is, the Competent Authority that receives the complaint shall, as soon as possible:
  - if legally possible, pass the complaint directly to the Competent Authority or competent body in the other jurisdiction and inform the complainant of the referral;
  - if legally not possible, provide the complainant with any relevant information about the Competent Authority or competent body in the other jurisdiction, in order to facilitate the referral of the complaint by the complainant;
  - inform, if legally possible, the Competent Authority of the other jurisdiction of the complaint.
- 2.5 If a complaint contains issues relevant to the supervision of an Undertaking, the Competent Authority that deals with the complaint shall, as soon as possible, and if legally possible, provide the Competent Authority of the Home State with relevant information on the complaint.
- 2.6 In the cases referred to in paragraphs VII.2.3 to VII.2.4, the Competent Authority that initially receives the complaint shall explain to the complainant why it considers itself not to be competent to deal with the

complaint, and why it considers the other Competent Authority or body to be competent.

### **3 Dispute over responsibilities**

- 3.1 A complaint shall not be passed to another Competent Authority or competent body, if the Competent Authority or competent body has already declined responsibility for dealing with the complaint.
- 3.2 Where differences of opinion exist as to who assumes responsibility for the complaint, every best endeavour shall be made to resolve the issue in good faith within four weeks from the date on which the complaint was initially received from the complainant.
- 3.3 If the question of responsibility cannot be settled, the Competent Authority which initially received the complaint from the complainant, may refer the matter to the CEIOPS Mediation Mechanism<sup>25</sup>.

### **4 Information to the public**

- 4.1 The Competent Authorities shall provide the following information<sup>26</sup> about their national system, including updates, as necessary:
  - Authorities/bodies competent to deal with policyholder complaints (indicating, in particular, whether it is an ombudsman or a supervisory service);
  - Contact information for the Competent Authority/body competent to deal with policyholder complaints (name, postal address, phone number, fax number, any e-mail address, any website address);
  - Organisation for the Competent Authority/body competent to deal with policyholder complaints (e.g. whether it is a statutory/voluntary system, free/with charges payable by the complainant);
  - Coverage for the Competent Authority/body competent to deal with policyholder complaints (e.g. insurers/intermediaries covered, insurance products covered);
  - Competence for the Competent Authority/body competent to deal with policyholder complaints (e.g. out of court settlement/system

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<sup>25</sup> CEIOPS-DOC-14/07 Protocol on Mediation Mechanism between Insurance and Pensions Supervisors (October 2007)

<sup>26</sup> Paragraph VII.4.1 does not impose a requirement on the Competent Authority to provide the information in a particular format.

## PART VII HANDLING OF POLICYHOLDER COMPLAINTS

that does not issue decisions; information on whether the decision is binding or not);

- Preconditions of the Competent Authority/body competent to deal with policyholder complaints (e.g. necessity to address the Undertaking in the first place);
- Restrictions of the Competent Authority/body competent to deal with policyholder complaints (e.g. any limit on the amount awarded, time limits in bringing the complaint to the Competent Authority, restrictions on the type of complainant - professional/non professional, consumer associations/other third parties);
- Indication of the typical time for handling complaints/transfer of the complaint to the Competent Authority/body competent to deal with policyholder complaints.

4.2 The Competent Authorities will make the aforementioned information available through their public website.<sup>27</sup> The Public Area of the CEIOPS website shall provide links to the relevant national websites.

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<sup>27</sup> A Competent Authority may make the information in paragraph VII.4.1 available by way of a link on their website to the relevant information.

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| <p style="text-align: center;"><b>PART VIII<br/>OTHER ISSUES</b></p> |
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**1 Assistance (class 18)**

Articles 8(3), 10(3) and 13 of the First Non-Life Directive, replaced by Articles 6, 32 and 9 of the Third Non-Life Directive

- 1.1 When an Undertaking is authorised in class 18 (as listed in point A of the Annex to the First Non-Life Directive), the Competent Authority of the Host State shall collaborate with the Competent Authority of the Home State, to verify the resources available to the Undertaking to successfully carry out assistance operations, in so far as national legislation provides for supervision of these resources.
- 1.2 In order to carry out this supervision, the Competent Authorities of the Home State and the Host State shall exchange, on request, any information relating to assistance resources available to the Undertaking, and communicate to each other the necessary documents and information for the exercise of the supervision.

**2 Data on health insurance**

Article 54(2) of the Third Non-Life Directive

The Competent Authority of the Host State shall communicate to the Competent Authority of the Home State sickness tables and any other relevant statistical data on the health insurance contracts as referred to in Article 54(2) of the Third Non-Life Directive, and make this information available on its public website.

### **3 Collaboration on maximum interest rates**

Article 20 of the Consolidated Life Directive

- 3.1 The Competent Authorities of the Member States which set a ceiling to interest rates under Article 20.1.B.a) point (i) of the Consolidated Life Directive for contracts expressed in a currency of another Member State, shall
- do so on the basis of the highest of the rates, either on issue, or on the secondary market, for Government debenture loans issued by the Member State whose currency is involved; and
  - consult the Competent Authority of the latter Member State.
- 3.2 The consulted Competent Authority shall indicate the maximum rates fixed, if appropriate, in its own currency and the method of determining such rates.
- 3.3 Each Competent Authority shall inform the other Competent Authorities, at least once a year, and in cases of change of the method of establishing the maximum interest rates applied in its country, per currency, if appropriate. It states on that occasion whether it has applied the exemptions provided for in Article 20.1.B.c) of the Consolidated Life Directive. Alternatively, the Competent Authority may publish the mentioned information on its website.
- 3.4 Member States which set a ceiling to interest rates by applying the provisions of Article 20.1.B.a) point (ii) of the Consolidated Life Directive, shall inform the other relevant Member States, for each currency and at least once a year, of the level of
- the prudential margin applied on the yield from the assets in question;
  - the maximum rate applied on the yield from future assets.

### **4 Co-operation in connection with the cross-border activity of Undertakings excluded from the scope of the Insurance Directives**

Article 3 of the First Non-Life Directive, Article 3(5) and 3(6) of the Consolidated Life Directive

- 4.1 The Competent Authorities of the Home State and the Host State shall collaborate in respect of the application of the Treaty rules, when one of the Undertakings of a Member State mentioned in Article 3 of the First Non-Life Directive or in Articles 3(5) or 3(6) of the Consolidated Life Directive intends to engage in cross-border business, either by establishing a Branch or under the freedom to provide services.

PART VIII OTHER ISSUES

- 4.2 The Competent Authorities shall exchange all necessary information on the planned conditions for the pursuit of the business for the Undertaking in the Home State and the Host State.
- 4.3 The Competent Authorities shall also collaborate in order to determine the supervisory framework that may apply to them under the principles of Community law.

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| <p style="text-align: center;"><b>PART IX</b><br/><b>FINAL PROVISIONS</b></p> |
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## **1 List of previous protocols now repealed**

On the date of entry into force of the Protocol, the following Protocols are repealed:

- Protocol of 5 December 1980 of the Second Working Party on collaboration of supervisory authorities for the application of the Directive 78/473/EEC of 30 May 1978 on Community coinsurance.
- Protocol of 13 April 1984 on the implicit elements of the solvency margin for the application of the first Directive 79/267/EEC of 5 March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance of the 5 March 1979.
- Protocol of 26 October 1995 on the collaboration of the supervisory authorities of the countries of the European Economic Area with a view to the application of directives concerning life assurance and non-life insurance, which appears in the addendum to this Protocol.

## **2 List of the Protocols in force**

- Protocol of 3 June 1977 on taking hidden reserves into account in the solvency margin for the implementation of the first Directive 73/239/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance of 24 July 1973.
- Protocol of 5 December 1980 on taking hidden reserves into account in the solvency margin for the implementation of the first Directive 79/267/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance of 5 March 1979.

### **3 Report on the application of the Protocol**

- 3.1 A report on the application of the Protocol will be made at regular intervals to the Members' Meeting of CEIOPS, which will decide on the appropriateness of updating or amending the Protocol.
- 3.2 Notwithstanding paragraph I.2.2, Annex VI shall be kept updated by the CEIOPS Secretariat.