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# **Decision on the collaboration of the insurance supervisory authorities**

**January 2017**

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<p style="text-align: center;"><b>PART I</b> <b>GENERAL CONSIDERATIONS</b></p>
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**1.1 General aims**

- 1.1.1 This Decision applies to the authorities of the Member States of the European Economic Area (EEA) competent for the supervision of insurance and reinsurance undertakings (“Supervisory Authorities”) on the basis of Directive 2009/138/EC<sup>1</sup> (“Solvency II Directive”).
- 1.1.2 This Decision should be read together with the relevant provisions of the Solvency II Directive.
- 1.1.3 The Members of the European Insurance and Occupational Pensions Authority (“EIOPA”) 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.
- 1.1.4 The Supervisory Authorities will 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, adequate protection of policyholders and other stakeholders and financial stability.
- 1.1.5 Nothing in this Decision should affect internal communication arrangements within a Member State. However, such arrangements should not hinder effective cross-border cooperation between the Supervisory Authorities.
- 1.1.6 Nothing in this Decision should diminish the responsibilities of Supervisory Authorities under the Solvency II Directive and in particular the duty vested in the Supervisory Authority(ies) of the Home Member State to authorise and to exercise prudential supervision over the undertaking for which it has sole responsibility.

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<sup>1</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the pursuit of the business of insurance and reinsurance (Solvency II) (OJ L 335, 17.12.2009, p.1)

## **1.2 Principles of cooperation**

- 1.2.1 The Supervisory Authorities, whilst recognising the principles in the Solvency II Directive regarding the distribution of responsibilities between Home and Host Member State Supervisory Authorities ("Home NSA" and "Host NSA" respectively) acknowledge the importance of effective cooperation to facilitate the carrying out of their respective duties.
- 1.2.2 The procedures and information described in the Decision constitute minimum requirements and provide considerations on the communication of additional information. Nothing in the Decision should be interpreted in such a way as to hinder the exchange of further information and the extended collaboration between the Supervisory Authorities, as concerns the supervision of undertakings.
- 1.2.3 The information exchange requirements described in the Decision should be proportionate to the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertaking. The Supervisory Authorities should give adequate consideration to the specific nature of captive insurance and captive reinsurance undertakings.
- 1.2.4 The information exchange requirements described in the Decision should take into account prospective and risk-based supervision which includes the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
- 1.2.5 In the case of undertakings in difficulty and other emergency situations, the Supervisory Authorities endeavour to make every effort to remedy the problems and minimise the negative impact on policyholders and financial stability.
- 1.2.6 In the case of divergent views in terms of application of this Decision, the relevant Supervisory Authorities should strive to a mutually agreed solution; in cases where no such solution can be reached, recourse should be made to EIOPA for mediation.

## **1.3 Rules on professional secrecy**

The Supervisory Authorities agree to exchange confidential information whenever possible, within the limits of the rules laid down in Articles

PART I GENERAL CONSIDERATIONS

64 to 71 of the Solvency II Directive in order to improve the effectiveness of insurance and reinsurance supervision in the EEA.

## **PART II AUTHORISATION**

### **2.1 General**

Article 15 of the Solvency II Directive

- 2.1.1 In accordance with the principle of single authorisation, the decision to issue an authorisation, which is valid for the whole of the EEA, shall be the sole responsibility of the Home NSA.
- 2.1.2 Within the context of the single market and with due regard to the single licence principle, the Supervisory Authorities recognise the importance of conducting a rigorous examination of the authorisation information, and of seeking to ensure the uniform application of the criteria relating to the supervision of access to, and pursuit of, insurance and reinsurance activity.
- 2.1.3 The Home NSA shall upload on its website a list of all insurance and reinsurance undertakings licensed in that Member State as well as third country branches, including at least, the name, postal address, legal form and authorised insurance classes. The information shall be updated as necessary<sup>2</sup>.

### **2.2 Exchange of authorisation information with other insurance Supervisory Authorities**

Article 26(1) and (3) of the Solvency II Directive

#### **2.2.1 Scope**

- 2.2.1.1 Section 2.2 is applicable when the undertaking requesting the authorisation is:
- a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State;
  - b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State;

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<sup>2</sup> See 3.3.1.5 for disclosures requirements applicable from a Host perspective.

- c) an undertaking controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.

### **2.2.2 Addressee**

2.2.2.1 The Supervisory Authority responsible for granting authorisation shall ask for the information defined in paragraph 2.2.3 from:

- a) the Supervisory Authority of the direct parent undertaking referred in 2.2.1.1 a) and, if applicable, of the ultimate parent undertaking at EEA level,
- b) the Supervisory Authority of the subsidiary and the group supervisor under the Solvency II Directive,
- c) the Supervisory Authority of the undertaking controlled by the same person, whether natural or legal, in the other Member State.

### **2.2.3 Information**

2.2.3.1 The Supervisory Authority responsible for granting authorisation shall ask for any relevant information relating to:

- a) the suitability and the financial soundness of the shareholders and members with qualifying holdings;
- b) the structure of the group;
- c) the fitness and propriety assessments of all persons who effectively run the undertaking or hold other key functions, if these persons are involved or have been involved in the management of another entity of the same group;
- d) deteriorating financial conditions and instances of non-compliance with technical provisions, Solvency Capital Requirement ("SCR") and Minimum Capital Requirement ("MCR") of the relevant insurance or reinsurance undertakings and measures taken in accordance with Articles 137, 138, 139 and 141 of the Solvency II Directive;
- e) significant concerns in terms of the system of governance including risk management of the relevant insurance or reinsurance undertakings;
- f) supervisory measures taken under Articles 36 and 37 of the Solvency II Directive to address deficiencies related to the system



of governance of the relevant insurance or reinsurance undertakings;

- g) possible conflicts of interest;
- h) other relevant licensing criteria, as appropriate.

2.2.3.2 If the ultimate parent of the undertaking seeking authorisation is not a regulated undertaking, or is a regulated undertaking located in a third country, the Supervisory Authority of the ultimate parent undertaking at EEA level or, if applicable, the group supervisor of the EEA group, shall be asked to provide the requesting Supervisory Authority with the information listed in paragraph 2.2.3.1.

## **2.2.4 Providing of information**

2.2.4.1 The Supervisory Authority to whom the request has been made, shall as soon as possible and preferably within 2 weeks upon receipt of a request, provide the Supervisory Authority responsible for granting the authorisation with any relevant information in its possession or inform the requesting authority that it does not have any such information.

## **2.3 Exchange of authorisation information with other financial supervisory authorities**

Article 26(2) and (3) of the Solvency II Directive

### **2.3.1 Scope**

2.3.1.1 Section 2.3 is applicable when the undertaking requesting the authorisation is:

- a) a subsidiary of a credit institution or investment firm authorised in another Member State,
- b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in another Member State,
- c) an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in another Member State.

### **2.3.2 Addressee**

2.3.2.1 The Supervisory Authority responsible for granting authorisation shall ask the information defined in paragraph 2.3.3 respectively from:

- a) the Supervisory Authority of the direct parent undertaking and, if applicable, of the group supervisor of the EEA group,
- b) the Supervisory Authority of the subsidiary,
- c) the Supervisory Authority of the undertaking controlled by the same person, whether natural or legal, in the other Member State.

### **2.3.3 Information**

2.3.3.1 The Supervisory Authority responsible for granting authorisation shall ask for any relevant information relating to:

- a) the suitability and the financial soundness of the shareholders and members with qualifying holdings;
- b) the structure of the group;
- c) the fitness and propriety assessments of all persons who effectively run the undertaking or hold other key functions, if these persons are involved or have been involved in the management of another entity of the same group;
- d) deteriorating financial conditions and instances of non-compliance with quantitative sectoral requirements by the relevant credit institutions or investment firms;
- e) significant concerns in terms of the system of governance of the relevant credit institutions or investment firms including risk management;
- f) supervisory measures taken in the case described in point d) and to address deficiencies related to the system of governance of the relevant credit institutions or investment firms;
- g) possible conflicts of interest;
- h) other relevant licensing criteria, as appropriate.

2.3.3.2 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 parent undertaking at EEA level or, if applicable, the

group supervisor of the EEA group, shall be asked to provide the requesting Supervisory Authority with the information listed in paragraph 2.3.3.1.

## **2.4 Exchange of information on all persons who effectively run the undertaking or hold other key functions, shareholders and members with qualifying holdings**

Article 26 (3) of the Solvency II Directive

2.4.1 With regard to the importance of the supervision of

- a) the fitness and propriety assessment of all persons who effectively run the undertaking or hold other key functions, if these persons are involved or have been involved in the management of another entity in the same group; and
- b) the suitability and the financial soundness of the shareholders and members with qualifying holdings;

both during the process of authorisation and on an on-going basis, the Supervisory Authorities shall endeavour to exchange available information related to these areas.

2.4.2 Where the persons who effectively run the undertaking or hold other key functions and/or the shareholders and members with qualifying holdings come from, or are connected to<sup>3</sup> other Member States, the Supervisory Authority concerned shall request, where applicable, from the Supervisory Authorities of those other Member States, relevant information relating to:

- a) the fitness and propriety assessments of all person(s) who effectively run the undertaking or hold other key functions; and
- b) the suitability and financial soundness of the shareholders and members with qualifying holdings.

2.4.3 The Supervisory Authority to which the request has been made, shall, as soon as possible, preferably within 2 weeks upon receipt of a request, provide to the Supervisory Authority responsible for granting authorisation, any relevant information in its possession or inform the

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<sup>3</sup> For the purpose of assessing " come from, or are connected to other Member States", the concerned Supervisory Authority shall consider the communicated experience of that person(s), namely if the CV indicates that the person has worked in a regulated entity in other Member States.

requesting Supervisory Authority that it does not have any such information.

- 2.4.4 The Home NSA shall immediately inform the Host NSA when it takes any measure against person(s) who effectively run the undertaking or hold other key functions, or against its shareholders and members with qualifying holdings<sup>4</sup>.
- 2.4.5 In accordance with Article 26(3) of the Solvency II Directive, the Home NSA shall inform the Host NSA concerned of all decisions that might be of relevance<sup>5</sup> to the Host NSA when assessing
- a) the fitness and propriety of all person(s) who effectively run the undertaking or hold other key functions if these persons are involved or have been involved in the management of another entity of the same group;
  - b) the suitability and the financial soundness of the shareholders and members with qualifying holdings.
- 2.4.6 The Supervisory Authorities shall establish a contact point or set up a general email account for the exchange of information on the suitability of shareholders and members with qualifying holdings and on the fit and proper requirements of all persons who effectively run the undertaking or hold other key functions.
- 2.4.7 EIOPA shall develop an appropriate tool that makes the above contact points available to the Supervisory Authorities. This shall be hosted on the EIOPA extranet. The Supervisory Authorities shall be responsible for keeping that information up to date.

## **2.5 Exchange of information on authorisations sought in other Member States**

- 2.5.1 The Home NSA shall request the applicant to declare if there had been a formal or informal request for an authorisation, by its shareholders or members with qualifying holdings, to establish an insurance or reinsurance undertaking in another Member State or

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<sup>4</sup> The notion of “any measure” shall cover not only administrative measures but also misdemeanours and criminal proceedings if applicable such as when the Supervisory Authority is the e.g. authorized prosecutor.

<sup>5</sup> It shall cover relevant decisions issued or known by the Supervisory Authority taking into account the provisions of professional secrecy.

third country that had been rejected or withdrawn. The Home NSA shall ask the applicant for the reasons why the application was rejected or withdrawn.

2.5.2 Where appropriate, the Home NSA shall engage with the Supervisory Authority(ies) from whom the application has been sought in order to understand the circumstances of the rejected or withdrawn application, before making a decision on the authorisation.

2.5.3 The Supervisory Authorities shall provide input in a timely manner, preferably within 2 weeks upon receipt of a request, with a view to exchanging information before the decision on the particular application is taken by the Home NSA.

## **2.6 Exchange of information on an applicant that intends to operate exclusively (or almost exclusively) in another Member State**

2.6.1 In cases where an insurance undertaking applying for an authorisation has clearly indicated its intention to operate exclusively or almost exclusively in one or more Member State(s) on a freedom of services basis (e.g. in the scheme of operations)<sup>6</sup>, the Home NSA shall ask the undertaking for the reasons supporting that strategy.

2.6.2 It is advisable that the Home NSA engages with the Host NSA(s) in order to facilitate its understanding of the situation and the circumstances of the undertaking, before making a decision on the authorisation.

2.6.3 The Host NSA(s) shall provide input in a timely manner, preferably within 2 weeks upon receipt of a request under paragraph 2.6.2, with a view to exchanging information before the decision on the particular application is taken by the Home NSA.

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<sup>6</sup> Cases where even if a very minor part of the activity is planned to be carried out in the territory of the Home Member State, most of the activity is planned to be carried out in one or more Member States on a freedom of services basis.

## **2.7 Acquisitions and increase of shareholdings in undertakings**

Articles 60 of the Solvency II Directive

2.7.1 The relevant Supervisory Authorities shall, as soon as possible, preferably within 2 weeks upon receipt of a request, provide each other with any information which they deem essential or relevant, be it on request of another authority, or on its own initiative, if it is proposed that an undertaking is to be acquired by any of the following:

- a) a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State;
- b) the parent undertaking of a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State;
- c) a natural or legal person controlling a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company in another Member State.

2.7.2 The above paragraph (c) is applicable if a natural or legal person or such persons acting in concert (the proposed acquirer) have taken a decision to further increase, directly or indirectly, a qualifying holding in an insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30%<sup>7</sup> or 50% or so that the insurance or reinsurance undertaking would become its subsidiary.

2.7.3 A decision by the Supervisory Authority that has authorised the insurance or reinsurance undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the Supervisory Authority responsible for the proposed acquirer, in accordance with Article 60(2) of the Solvency II Directive.

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<sup>7</sup> Member States need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

## PART II AUTHORISATION

2.7.4 The Supervisory Authorities shall provide upon request information on changes in qualifying holdings in the supervised undertakings to other Supervisory Authorities.

<p style="text-align: center;"><b>PART III</b> <b>CROSS-BORDER ACTIVITIES</b></p>
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### **3 Framework for the collaboration of Supervisory Authorities**

The provisions for collaboration between Home and Host NSAs are established on the following bases:

a) Single market

The authorisation to take-up and pursue the business of insurance or reinsurance is valid for the EEA and covers the right of establishment and the freedom to provide services<sup>8</sup>. Once authorised by the Home NSA, insurance and reinsurance undertakings have the right to establish a branch within the territory of another Member State or may pursue their business in another Member State under the freedom to provide services. For such activities no further authorisation is needed, neither by the Home NSA nor the Host NSA. The intention to pursue insurance business in another Member State (branch operation or provision of services) has to be notified to the Home NSA. The latter communicates this to the Host NSA.

The single market approach requires that the same rules apply to all market participants and that proper consideration is given to the specificities of each insurance/reinsurance market.

b) Policyholder protection

A similar level of protection should be assured to policyholders across the EEA regardless of the location of the insurance or reinsurance undertakings' head office.

c) Supervisory cooperation and exchange of information

Information sharing and ongoing cooperation is essential for Home NSAs to perform effective prudential supervision and for Host NSAs to address the fair treatment of policyholders. Home NSAs should make use of the knowledge of the Host NSAs about the conduct of undertakings in their territory and

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<sup>8</sup> The concept of right of establishment presupposes a lasting presence in the Host Member State while provision of services is of temporary character. The temporary nature of the provision of services shall be assessed in the light of its duration, regularity, frequency and continuity, according to the case law of the Court of Justice. Additional guidance is provided by the Commission Interpretative Communication (2000/C 43/03): <http://eur-lex.europa.eu/legal-content/SV/TXT/?uri=URISERV:l24227>



### PART III CROSS-BORDER ACTIVITIES

Host NSAs should be able to utilise the knowledge of the Home NSAs about the prudential status of the undertakings under the home country control.

### **3.1 Establishment of a branch by an insurance undertaking**

Articles 145-146 of the Solvency II Directive

#### **3.1.1 Information to be communicated by the Home NSA to the Host NSA**

Section 3.1.1 defines the information that the Home NSA shall communicate to the Host NSA on the notification by an insurance undertaking to establish a branch in the Member State of the Host NSA, in particular:

- a) Paragraph 3.1.1.1 lists the information pursuant to Articles 145 and 146 of the Solvency II Directive;
- b) Paragraph 3.1.1.2 includes a non-exhaustive list of information to be communicated by the Home NSA to the Host NSA so that the latter can support the Home NSA in the supervision of the insurance undertaking's activities under the freedom of establishment;
- c) Paragraph 3.1.1.3 lists the information to be communicated by the Home NSA to the Host NSA on a non-systematic basis in order to allow the Host NSA to have a deeper understanding of the branch activity and to facilitate awareness for the ongoing supervision.

3.1.1.1 Where it does not oppose the establishment of a branch in another Member State, the Home NSA shall communicate the following non-exhaustive list of information to the Host NSA (communication of notification):

- a) the name and address of the head office of the insurance undertaking;
- b) the address of the branch in the Host Member State, from which documents, including all communications to the authorised agent, may be obtained or delivered to;
- c) the classes of insurance according to the Annexes I and II to the Solvency II Directive, into which the planned business falls;
- d) the scheme of operations setting out, at least, the following<sup>9</sup>:
  - i. the nature of the risks or commitments which the undertaking is proposing to cover through the branch;

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<sup>9</sup> The items below are consistent with Article 23 of the Solvency II Directive. Some items may be influenced by the local accounting framework. When necessary the Host NSA may ask clarifications from the Home NSA with regard to the components of those items.

## PART III CROSS-BORDER ACTIVITIES

- ii. if available, the guiding principles as to reinsurance and to retrocession with respect to the branch operations;
  - iii. if available, cost estimates for setting up the administrative services and organisation for securing business of the branch; the financial resources set aside for this purpose and, if the risks to be covered fall within class n°18 in Part A of Annex I to the Solvency II Directive, the company taking over assistance services or the resources available to the insurance undertaking to provide the promised assistance;
  - iv. the organisational structure of the branch;
  - v. if available, for the first three financial years of the branch:
    - estimates of management expenses, other than installation costs. In particular, general expenses and commissions;
    - estimates of premiums or contributions and claims;
  - e) the name of a person, and if available the e-mail address, who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent) and description of their powers;
  - f) if the insurance undertaking is to cover risks in class 10 in Part A of Annex I to the Solvency II Directive, not including carrier's liability, a declaration that the undertaking has become a member of the national bureau and the national guarantee fund of the Host Member State;
  - g) in cases where the insurance undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 200 of the Solvency II Directive;
  - h) a certificate attesting that the insurance undertaking covers the SCR and MCR as calculated in accordance with Articles 100 to 129 of the Solvency II Directive in the form provided for in Annex 1 hereto.
- 3.1.1.2 The Home NSA shall be able to make use of the knowledge of the Host NSAs about the specificities of their markets and conduct of business in their territories. In order to provide a proper context for this exchange of information (see Section 3.1.2 on the information requested from the Host NSA) the following information shall be

## PART III CROSS-BORDER ACTIVITIES

communicated by the Home NSA together with the information listed in 3.1.1.1. to the Host NSA.

- a) the legal entity identifier (LEI) of the undertaking notifying the intention to establish a branch (or if not available, the identification code used in the local market allocated by the Supervisory Authority);
- b) identification of the person(s) who effectively run the branch or are responsible for key functions for the branch<sup>10</sup>, if available;
- c) if the undertaking belongs to a cross-border group, the name of the group supervisor and the structure of the group as included in the coordination arrangement's annex, together with the last reported group solvency position;
- d) any available information regarding the planned distribution channel(s), relevant outsourcing contracts and partners that will be used in the Host Member State<sup>11</sup>;
- e) a description of the relevant policyholder guarantee funds in the Home Member State, where applicable.

3.1.1.3 Without prejudice to the proportionality principle and the principle of risk-based supervision, the Home NSA shall consider communicating additional information to allow the Host NSA to have a deeper knowledge of the branch activity and facilitate awareness for the ongoing supervision (see Part IV). See below examples of additional information that can be provided by the Home NSA to the Host NSA:

- a) a summary of the undertaking's system of governance, including the risk management system in place, which provides for the proper management of the business of the branch;
- b) any available information resulting from the discussions with the undertaking of its business strategy and how the branch fits into that strategy.

3.1.1.4 The Host NSA may ask, on an ad-hoc basis, the Home NSA for information in addition to that specified in paragraphs 3.1.1.1 and

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<sup>10</sup> Persons responsible for the activities of the branch within the undertaking (Home Member State).

<sup>11</sup> This information may be derived from the review carried out by the Home NSA concerning the notification provided by the undertaking including the scheme of operations. Information may also be obtained from the review of the outsourcing requirements laid down in the Solvency II Directive, its implementing measures and EIOPA's Guidelines on System of Governance.

3.1.1.2 and provided under 3.1.1.3, before the undertaking establishes the branch preferably within one month upon receipt of the communication of the notification. Any such request shall be proportionate to the type of business, risks or commitments that the undertaking intends to cover in the Host NSA's territory. The Host NSA shall indicate the rationale supporting that ad-hoc request. In this case, the Home NSA shall inform the insurance undertaking of the request. The additional information requested, where possible, shall be included in an updated communication. If the insurance undertaking is not in a position to provide the additional information, the Home NSA shall inform the Host NSA.

3.1.1.5 The information shall be communicated by the Home NSA to the Host NSA, as soon as possible, and in any event within three months from receiving the complete notification from the insurance undertaking which intends to establish a branch. The Home NSA shall ensure that the Host NSA receives the complete notification information. Immediately upon receiving the communication from the Home NSA, the Host NSA shall acknowledge its receipt.

3.1.1.6 The Home NSA may where appropriate have an informal exchange of information with the Host NSA before sending the complete notification. This may allow an exchange of information before the formal commencement of branch activity.

### **3.1.2 Information to be provided by the Host NSA to the Home NSA**

3.1.2.1 The Host NSA shall communicate to the Home NSA:

- a) any conditions under which, in the interest of the general good<sup>12</sup>, the activity must be pursued within the territory of the Host Member State or confirm that no conditions have been imposed in accordance with Article 146(3) of the Solvency II Directive. This information shall include the link to the website where the general good conditions are published;
- b) irregularities known to the Host NSA about the planned outsourcing activities, distribution partners, claims representatives, key persons as well as any relevant information following the analysis of the notification received from the Home NSA;

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<sup>12</sup>A Supervisory Authority will not be expected to provide information on general good provisions which extend beyond those directly relating to the area of financial services.

- c) if the insurance undertaking or its parent undertaking tried to establish an insurance undertaking in the Host Member State. Where an application for authorisation had been declined, the Host NSA shall provide additional information;
- d) if a related insurance undertaking, within the meaning of Article 212 of the Solvency II Directive, of the undertaking or its parent undertaking previously established in the Host NSA had its authorisation revoked or withdrawn and the reasons supporting such a decision;
- e) description of relevant policyholder guarantee funds in the Host Member State that would be applicable to the branch.

3.1.2.2 If the Host NSA considers the information contained within the communication to be incomplete, the Host NSA shall without delay inform the Home NSA. The Host NSA shall provide details of those areas where the information is considered to be incomplete and request the outstanding information.

3.1.2.3 All the information referred to in this Section shall be communicated as soon as possible by the Host NSA to the Home NSA and within two months of receipt of the communication of the notification. The Home NSA shall acknowledge receipt of all information received.

### **3.1.3 Information to be provided by the Home NSA to the insurance undertaking**

3.1.3.1 Upon receipt of a notification from an insurance undertaking, the Home NSA shall assess the completeness and accuracy of the information provided. Where the information provided is incomplete or incorrect, the Home NSA shall inform the insurance undertaking in writing without delay, indicating where the information is incomplete or incorrect.

3.1.3.2 Within three months of receiving the complete notification from the insurance undertaking, the Home NSA shall inform the insurance undertaking concerned that the information has been communicated to the Host NSA<sup>13</sup>. Branch activity shall not commence in the Host State until the occurrence of one of the events referred to in

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<sup>13</sup>The three-month period shall be considered as having commenced on the date of receipt of the complete notification by the Home NSA.

paragraph 3.1.4. This communication shall be done preferably after receiving the acknowledgement of receipt from the Host NSA.

3.1.3.3 The Home NSA shall communicate to the insurance undertaking the information received from the Host NSA about the conditions under which, in the interest of the general good, the activity must be pursued within the territory of the Host State or communicate that no conditions were communicated as being imposed.

3.1.3.4 In the case of a refusal of the Home NSA to communicate the information referred to in Article 145(2) of the Solvency II Directive to the Host NSA, the Home NSA shall state the reasons for the refusal to the insurance undertaking within three months of receiving all the information in question.

### **3.1.4 Starting the activity of the branch**

In accordance with Article 146(3) of the Solvency II Directive, the branch may commence activity at the earliest of either of the following:

- a) the date upon which the Home NSA has received the communication pursuant to paragraph 3.1.2.1 a); or
- b) if no such communication is received, on the expiry of the two months period from the date when the Host NSA received the notification from the Home NSA.

### **3.1.5 Changes to information concerning the branch**

3.1.5.1 In the event of a change in any of the particulars communicated under Article 145(2) (b), (c) or (d) of the Solvency II Directive, an insurance undertaking shall give written notice of the change to the Home NSA and Host NSA at least one month before making the change. This is to allow the Home and Host NSAs to fulfil their respective obligations under Article 146 of the Solvency II Directive.

3.1.5.2 If the Home NSA does not object to the proposed change(s) as notified by the insurance undertaking, it shall communicate the information, including where appropriate, an attestation that the insurance undertaking covers the SCR and the MCR. This shall be sent to the Host NSA as soon as possible and in any event no later than one month after it has received the information from the insurance undertaking.

### **3.1.6 Branch closure**

- 3.1.6.1 The Home NSA shall notify the Host NSA if business activities will no longer be continued due to the proposed closure of the branch as soon as possible and in any case before the discontinuation of the insurance activities by the branch.
- 3.1.6.2 In the event of the closure of the branch the Home NSA shall inform, before the closure, the Host NSA how the policies underwritten by the branch will be managed. The Home NSA shall, before the closure, closely cooperate with the Host NSA in order to address any issue that policyholder protection and/or the local law applicable to the insurance contracts could raise. The management of the policies underwritten by the branch shall take into consideration the protection of policyholders established in the jurisdiction of the Host NSA.
- 3.1.6.3 The procedure mentioned in paragraph 3.1.6.1 shall apply whenever a branch no longer accepts new business and the undertaking no longer administers its portfolio of contracts via this branch.

### **3.1.7 Establishment of a branch by a reinsurance undertaking**

- 3.1.7.1 Where a reinsurance undertaking intends to establish a branch in another Member State, the Home NSA shall, if available according to the laws of the Home Member State, communicate in writing the following information to the Host NSA:
- a) the name and address of the head office of the reinsurance undertaking;
  - b) the address of the branch, which shall also be that of the authorised agent;
  - c) the name and powers of the authorised agent;
  - d) the type of reinsurance activity, according to Article 15(5) of the Solvency II Directive, into which the planned business falls;
  - e) a certificate attesting that the reinsurance undertaking covers the SCR and MCR as calculated in accordance with Articles 100 to 129 of the Solvency II Directive, in the form provided for in Annex 1 hereto.
- 3.1.7.2 The information shall be communicated by the Home NSA to the Host NSA within one month after having received information from



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the reinsurance undertaking in respect of its intention to establish a branch in the territory of another Member State.

- 3.1.7.3 Any proposed change to the information submitted pursuant to paragraph 3.1.7.1 shall be, as far as possible, communicated by the Home NSA to the Host NSA as soon as possible and in any event no later than one month after having received the information from the reinsurance undertaking.
- 3.1.7.4 The Home NSA shall notify, as soon as possible and in any case before the closure, the Host NSA if business activities will no longer be continued due to the proposed closure of the branch.

## **3.2 Commencing activities by way of freedom to provide services by an insurance undertaking**

Articles 147 to 149 of the Solvency II Directive

The structure of 3.2 is the same as 3.1 (branches); however, it is important to take into account that in accordance with Article 148 (4) of the Solvency II Directive an insurance undertaking may start to pursue business under the freedom to provide services (FoS) business as from the date which is informed of the communication of the notification to the Host NSA by the Home NSA. As a result, in case of FoS the feedback from the Host NSA (3.2.2) shall be expected to occur after the commencing of the FoS activity by the insurance undertaking.

### **3.2.1 Information to be communicated by the Home NSA to the Host NSA**

Articles 147-148 of the Solvency II Directive

Section 3.2.1 defines the information that the Home NSA shall communicate to the Host NSA within the territory of which the insurance undertaking intends to pursue business under FoS, in particular:

- a) Paragraph 3.2.1.1 lists the information pursuant to Articles 147 and 148 of the Solvency II Directive;
- b) Paragraph 3.2.1.2 includes a non-exhaustive list of information to be communicated by the Home NSA to the Host NSA so that the latter can support the Home NSA in the supervision of the insurance undertaking's activities under the FoS;
- c) Paragraph 3.2.1.3 lists the information to be provided by the Home NSA to the Host NSA on a non-systematic basis in order to allow the Host NSA to have a deeper understanding of the FoS activity and to facilitate awareness for the ongoing supervision.

3.2.1.1 If the Home NSA has no reasons to refuse to communicate the notification provided by the insurance undertaking to the Host NSA, it shall communicate the following non-exhaustive list of information to the Host NSA (communication of notification):

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- a) the name and address of the head office of the insurance undertaking<sup>14</sup>;
- b) where applicable, the name and address of the establishments (other than the head office of the insurance undertaking), situated in the Member States from which it plans to provide services;
- c) the classes of insurance according to the Annexes I and II to the Solvency II Directive which the insurance undertaking has been authorised to offer
- d) the nature of the risks or commitments which the insurance undertaking proposes to cover in the Host Member State;
- e) if the insurance undertaking intends to cover risks in class 10 in Part A of Annex I to the Solvency II Directive not including carrier's liability:
  - i. the name and address of the claims representative as referred to in Article 18(1)(h);
  - ii. a declaration that it has become a member of the national bureau and national guarantee fund of the Host Member State;
- f) if the insurance undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 200 of the Solvency II Directive;
- g) a certificate attesting that the insurance undertaking covers the SCR and MCR calculated in accordance with Articles 100 and 129 of the Solvency II Directive, in the form provided in Annex I hereto;

3.2.1.2 The Home NSA shall be able to make use of the knowledge of the Host NSAs about the specificities of their markets and conduct of business in their territories. In order to provide a proper context for this exchange of information (see Section 3.2.2 on the information requested from the Host NSA) the following additional information shall be communicated by the Home NSA to the Host NSA:

- a) the LEI of the undertaking intending to pursue business under FoS (or if not available, the identification code used in the local market allocated by the Supervisory Authority);

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<sup>14</sup> If available it shall be indicated the email details of the head office of the insurance undertaking allowing the Host NSA to send the information referred on 3.2.3.2 by electronic means.

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- b) where the undertaking has clearly indicated its intention to operate exclusively, or almost exclusively, in the Host Member State, identification of the persons who effectively run the undertaking or are responsible for the key functions;
- c) if the undertaking belongs to a cross-border group, the name of the group supervisor and the structure of the group as included in the coordination arrangement's annex, together with the last reported group solvency position;
- d) any available information regarding local third or related parties involved in the underwriting activities in the Host Member State<sup>15</sup>;
- e) identification of the person who is responsible within the insurance undertaking for handling of complaints in relation to the FoS activities;
- f) description of the relevant policyholder guarantee funds in the Home Member State, where applicable.

3.2.1.3 Where the undertaking intends to operate exclusively, or almost exclusively, in other EEA Member State(s) on FoS basis and without prejudice to the proportionality principle and the principle of risk-based supervision, the Home NSA shall consider communicating additional information to allow the Host NSA to have a deeper knowledge of the FoS activity and facilitate awareness for ongoing supervision (see Part IV). See below examples of additional information that could be provided by the Home NSA to the Host NSA:

- a) a summary of the undertaking's system of governance, including the risk management system in place;
- b) any available information resulting from the discussions with the undertaking of its business strategy and how the FoS fits into that strategy.

3.2.1.4 The Host NSA may ask for ad-hoc information from the Home NSA in addition to that specified in paragraphs 3.2.1.1 and 3.2.1.2 and

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<sup>15</sup> This information may be derived from the review carried out by the Home NSA concerning the notification provided by the undertaking and from ongoing supervisory review process (SRP). Information may also be obtained from the review of the outsourcing requirements laid down in the Solvency II Directive, its implementing measures and EIOPA's Guidelines on System of Governance.

provided under 3.2.1.3<sup>16</sup>. Any such request shall be proportionate to the type of business, risks or commitments that the undertaking intends to cover in the Host NSA's territory. The Host NSA shall indicate the rationale supporting that ad-hoc request. The Home NSA shall inform the insurance undertaking of the request. If the insurance undertaking is not in a position to provide the additional information, the Home NSA shall inform the Host NSA.

3.2.1.5 The information shall be communicated by the Home NSA to the Host NSA, as soon as possible, and in any event within one month from receiving the complete notification from the insurance undertaking which intends to carry on business by way of FOS in the territory of another Member State. The Home NSA shall ensure that the Host NSA receives the complete notification. Immediately upon receiving the communication of notification from the Home NSA, the Host NSA shall acknowledge its receipt.

3.2.1.6 The Home NSA may where appropriate have an informal exchange of information with the Host NSA before sending the complete notification. This may allow an exchange of information before the formal start of the activity by FoS.

### **3.2.2 Information to be provided by the Host NSA to the Home NSA**

3.2.2.1 The Host NSA shall communicate to the Home NSA:

- a) any conditions under which, in the interest of the general good<sup>17</sup>, the activity must be pursued within the territory of the Host Member State or confirm that no conditions have been imposed. This information shall include the link to the website where the general good conditions are published;
- b) any irregularities known to the Host NSA, about the local third or related parties involved in the underwriting activities in the Host Member State, about key persons as well as any relevant information following the analysis of the notification received from the Home NSA;

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<sup>16</sup> For instance if the Host NSA has doubts as to the precise conditions under which the activity is to be pursued, in which case it may ask the Home NSA about the specific resources which the insurance undertaking proposes to use in marketing its products in the Host State.

<sup>17</sup> A Supervisory Authority will not be expected to provide information on general good provisions which extend beyond those directly relating to the area of financial services.

- c) if the insurance undertaking or its parent undertaking tried to establish an insurance undertaking in the Host Member State. Where an application for authorisation had been declined, the Host NSA shall provide additional information;
- d) if a related insurance undertaking of the undertaking or its parent, within the meaning of Article 212 of the Solvency II Directive, previously established in the Host NSA had its authorisation revoked or withdrawn and the reasons supporting such a decision;
- e) description of relevant policyholder guarantee funds in the Host Member State that would be applicable to the FoS.

3.2.2.2 If the Host NSA considers the information contained within the communication to be incomplete, the Host NSA shall without delay inform the Home NSA. The Host NSA shall provide details of those areas where the information is considered to be incomplete and request the outstanding information.

3.2.2.3 All the information referred in this Section shall be communicated as soon as possible by the Host NSA to the Home NSA. The Home NSA shall acknowledge receipt of all information received.

### **3.2.3 Information to be provided by the Home and Host NSAs to the insurance undertaking**

#### **3.2.3.1 By the Home NSA to the insurance undertaking**

3.2.3.1.1 Upon receipt of a notification from an insurance undertaking, the Home NSA shall assess the completeness and accuracy of the information provided. Where the information provided is incomplete or incorrect, the Home NSA shall inform the insurance undertaking in writing without delay, indicating in which respect the information is incomplete or incorrect.

3.2.3.1.2 The Home NSA shall inform the insurance undertaking concerned that the notification information has been sent to the Host State (see 3.2.4).

3.2.3.1.3 In case of refusal of the Home NSA to communicate the information referred to in Article 148(1) of the Solvency II Directive to the Host NSA, the Home NSA shall state the reasons

for the refusal to the insurance undertaking within one month of receiving all the information in question.

### **3.2.3.2 By the Host NSA to the insurance undertaking**

The Host NSA shall as soon as possible after the receipt of the communication of the notification, communicate in writing to the head office of the insurance undertaking any conditions, under which, in the interests of the general good, the activity must be pursued within the territory of the Host State or communicate that no conditions are imposed.

### **3.2.4 Starting of activity by the insurance undertaking**

In accordance with Article 148(4) of the Solvency II Directive, the insurance undertaking may commence activity by way of FoS when it is informed by the Home NSA that the communication of notification provided for in Article 147 to the Host NSA has been made.

### **3.2.5 Changes to information**

3.2.5.1 In the event of a change in any of the particulars communicated under Articles 147 of the Solvency II Directive, the insurance undertaking shall give written notice of the change to the Home NSA.

3.2.5.2 The Home NSA shall communicate the information to the Host NSA as soon as possible, but in any event, no later than one month after it has received the information from the insurance undertaking.

### **3.2.6 Cessation of Activities**

The Home NSA shall notify the Host NSA, if the information is available, if business activities will no longer be provided by FoS in the Host Member State, as soon as possible and before the discontinuation of the insurance activities. This shall include stop of writing new business, termination of the existing policies and settlement of the outstanding claims.

### **3.3 Other provisions common to branches and freedom to provide services**

#### **3.3.1 Language, communication means, contact points and lists**

3.3.1.1 All information exchanged between Supervisory Authorities in respect of notifications and changes to cross-border activity, shall be written in a language which is acceptable by the Supervisory Authorities in accordance with paragraph 3.3.1.4 b) where the Supervisory Authorities have not agreed bilaterally on other language for the exchange. The Supervisory Authorities shall make every effort to be as flexible as possible in respect of languages in which they accept notifications.

3.3.1.2 Each Supervisory Authority shall transmit the required information by electronic means (see contact points in paragraph 3.3.1.4 a)) where possible and in a format acceptable to the relevant Supervisory Authorities. The Supervisory Authorities shall agree on any applicable requirements (e.g. requirement on electronic signatures of authorised persons) and the security of data transmission.

3.3.1.3 Each Supervisory Authority shall establish a contact point or set up a general email account for all questions, requests and problems arising out from the notifications and changes to cross-border business activities. This contact point shall be used for all queries regarding cross-border business in order to avoid unintended delays.

3.3.1.4 Each Supervisory Authority shall keep the following information up to date on EIOPA's extranet:

- a) details of the contact point for all questions, requests and problems arising from the notification and changes to cross-border business activities, including name, email address and phone number. The contact point may be a general e-mail account, to which information shall be sent;
- b) the language(s) in which the Supervisory Authority accepts documents in respect of the notification of cross-border activities.

3.3.1.5 The Host NSAs shall upload on their website a list of all insurance undertakings which have notified their intention to establish a branch or provide business on a FoS basis in its territory once the



information is communicated by the Home NSA. The information shall be updated as necessary by the Home NSA.

3.3.1.6 The Supervisory Authorities shall maintain a data storage system that allows the extraction of information on an individual and aggregated basis. The data stored shall include at least the following:

- a) As a Home NSA, the data provided under paragraphs 3.1.1.1 a) to c), d) (i.), e) and f) and 3.2.1.1 a) to f) to the Host NSAs and the data received from the Host NSAs pursuant to paragraphs 3.1.2.1 and 3.2.2.1;
- b) As a Host NSA, the data received from the Home NSAs as per point a) and the data sent pursuant to paragraphs 3.1.2.1 and 3.2.2.1.

The Home and Host NSAs shall be able to analyse this data electronically (e.g. being able to extract a list of notifications per Member State, per insurance undertaking and per period and on an individual and aggregated basis). The referred data storage system shall apply to the new branch and FoS notifications.

The Supervisory Authorities shall endeavour to look for possible solutions at the earliest opportunity for the improvement of the collection of data for all the already existing business written by way of establishment or FoS in view of achieving a complete data storage.

3.3.1.7 Each Supervisory Authority shall publish an up-to-date list of the general good conditions of the respective jurisdiction on its website or communicate that no conditions are imposed, in its own language(s) and/or in English.

3.3.1.8 The Supervisory Authorities shall provide EIOPA with the links to where the general good conditions are published on the relevant websites in their jurisdiction. EIOPA shall publish these links on the Public Area of the EIOPA website.

### **3.3.2 Submission of policy conditions to the Host NSA (health insurance as an alternative to social security)**

Article 206 (1) of the Solvency II Directive

3.3.2.1 The Host NSA shall inform the relevant Supervisory Authorities of instances of contracts covering the risks under class 2 in Part A of Annex I of the Solvency II Directive, where these contracts may

serve as a partial or complete alternative to health cover provided by the statutory social security system, and the general and specific conditions of such policies must be provided to the Host NSA before they are applied. This information shall be updated as soon as existing legislation is changed or new legislation is introduced. This information shall include a link to the relevant website of the Host NSA.

3.3.2.2 The Home NSAs, who receives the information mentioned above, shall transmit it to the insurance undertakings wishing to establish a branch or take up FoS in the Member State concerned. The Home NSA shall advise that such contracts may not be concluded before the general and special conditions of that insurance are communicated to the Host NSA in the language(s) specified by the Host Member State's national law.

3.3.2.3 The Supervisory Authorities shall provide EIOPA 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 Host NSA. The aforementioned information shall be updated as necessary. EIOPA shall publish the relevant links on the Public Area of the EIOPA website.

### **3.3.3 Representative for the handling of claims (motor vehicle liability)**

3.3.3.1 In the area of motor vehicle liability insurance, and preferably prior to the notification from the Home NSA to the Host NSA, Supervisory Authorities shall co-operate with the Home NSA in case the Home NSA performs a check of the reliability and the professional qualification of the representatives mentioned in Article 152 of the Solvency II Directive, including the claims representative appointed pursuant to Article 4 of Directive 2000/26/EC.

3.3.3.2 The requested Supervisory Authority shall, as far as possible, endeavour to promptly supply the information requested by the Home NSA or confirm that they have no such information.

<p style="text-align: center;"><b>PART IV</b> <b>SUPERVISION ON A CONTINUOUS BASIS</b></p>
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Articles 29, 30, 33, 155 and 158 of the Solvency II Directive

## **4.1 Continuing cooperation between Home and Host NSAs (branches and FoS)**

### **4.1.1 Home NSA**

4.1.1.1 The financial supervision of the activities of insurance and reinsurance undertakings, both off-site and on-site, shall be the sole responsibility of the Home NSA in accordance with Article 30 of the Solvency II Directive. It shall encompass the supervision of the business pursued either through branches or under FoS but without prejudice to the powers of the Host NSA as recognised by Article 155 of that Directive.

4.1.1.2 The Home NSA shall consider increasing its cooperation with the Host NSAs to understand, within its continuous supervisory review process whether the insurance and reinsurance undertaking has a clear understanding of the risks that it faces, or may face, in the Host territories; and which specific related risk management tools and internal controls are in place, having regard to the proportionality principle and the risk-based approach to supervision. With the Host NSA's local knowledge in mind, as regards actual and potential risks, there shall be a particular focus in terms of cooperation on the following risk areas:

- a) system of governance including the ability of the head office management to understand the cross-border market specificities, related risk management tools and internal controls in place. In regards to the risk management system special attention shall be paid to underwriting, pricing and reserving;
- b) outsourcing contracts and distributions partners;
- c) claims handling;
- d) compliance;
- e) consumer protection.

4.1.1.3 Where appropriate, the Home NSA shall inform in a timely manner the Host NSA about any of outcomes from its supervisory review process which relate to risks arising from or impacting the cross-border activity. Furthermore, the Home NSA shall provide information in cases where the Host NSA has already raised concerns.

4.1.1.4 In order to allow and facilitate the exercise of the relevant supervisory tasks the Home NSA shall provide the affected Host NSA(s) with the following information in a timely manner:

- a) changes to the assessment of the suitability of shareholders and members with qualifying holdings, as well as to the assessment of the fitness and propriety of all persons who effectively run the undertaking or hold other key functions, which are connected to other member States, in line with Section 2.4;
- b) details of deteriorating financial conditions and instances of non-compliance with technical provisions, SCR and MCR and supervisory measures taken in accordance with Articles 137 138, 139 and 141 of the Solvency II Directive;
- c) any measure against person(s) who effectively run the undertaking or hold other key functions, or against its shareholders and members with qualifying holdings ;
- d) action against the shareholders and members with qualifying holdings as well as all persons who effectively run the undertaking or hold other key functions;
- e) in case of cessation of the activities (branch or FoS), details as to how the cross-border policies covering risks or commitments situated in the territory of the Host Member State are managed (see 3.1.6, 3.1.7.4 and 3.2.6);
- f) follow-up on investigation requests from the Host NSA following paragraph 4.1.2.7 and measures taken following 4.1.1.5 and 4.1.2.13<sup>18</sup>.

4.1.1.5 Where the Home NSA is informed about an insurance or reinsurance undertaking's failure to take actions to comply with the legal provisions applicable to it in the Host NSA, it shall, at the earliest opportunity, take all appropriate actions to ensure that the insurance undertaking remedies the irregular situation. The Home NSA shall inform the Host NSA about the actions taken by the Home NSA and the insurance undertaking. Any deviation from measures proposed by the Host NSA shall be properly explained to the Host NSA.

4.1.1.6 Where in accordance with Article 33 of the Solvency II Directive, the Home NSA decides to carry out on-site inspections in a branch of an insurance or reinsurance undertaking situated in another Member State,

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<sup>18</sup> If the Home NSA is unable to reply within the time indicated in the request it shall inform the other Supervisory Authority of the time by which it will provide feedback. If the information is not available, it shall inform the other Supervisory Authority accordingly.

it shall communicate it to the Host NSA in advance, preferably 4 weeks before the on-site inspection date, indicating the:

- name and position of the persons responsible for the investigation;
- dates planned for the action;
- reason(s) for the investigation; and
- programme for the proposed investigation.

4.1.1.7 On-site inspections of branches of an insurance or reinsurance undertaking shall enable the Supervisory Authorities to assess the situation of each establishment and the standard of its business activities. To this end, the Home NSA shall ask the insurance or reinsurance undertaking to place at its disposal, locally, any documents, books, registers, contracts, statements of claims, accounting documents, etc. which may be required, and personnel qualified to provide it with the information required.

4.1.1.8 Paragraph 4.1.1.6 shall not restrict the power of the Home NSA to extend its investigations beyond the initial programme. In such case, the Home NSA shall inform the Host NSA of such an extension.

4.1.1.9 The Host NSA may take part in the on-site inspection in accordance with Article 33 of the Solvency II Directive. If it chooses to do so, the Home NSA shall be informed without delay by the Host NSA which shall indicate the name and position of the persons who participate in the inspection. In accordance with Article 21(1) of Regulation (EU) No 1094/2010, EIOPA may participate in on-site inspections where they are carried out jointly by two or more Supervisory Authorities.

4.1.1.10 After concluding the on-site inspection, the Home NSA shall communicate the observations from the investigation, and any consequences that may arise, to the Host NSA.

4.1.1.11 If, at the express request of the Home NSA the Host NSA carries out an on-site inspection alone, on behalf of the Home NSA, the Home NSA shall 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.

#### **4.1.2 Host NSA**

4.1.2.1 The Host NSA shall inform in accordance with Article 30(3) of the Solvency II Directive the Home NSA if it has reasons to consider that the activities of an insurance or reinsurance undertaking might affect its financial soundness. The following are examples of information that shall be communicated by the Host NSA to the Home NSA at the earliest opportunity:

- a) situations that can influence the Home NSA's assessment of the suitability of shareholders and members with qualifying holdings as well as, of the fitness and propriety of all persons who effectively run the undertaking or hold other key functions, in line with Section 2.4;
- b) vulnerabilities discovered during the monitoring of compliance with the legal provisions of the Host State (4.1.2.2 and 4.1.2.4);
- c) vulnerabilities discovered following conduct of business supervision;
- d) potential irregularities including cases where the undertaking is pursuing an activity that has not been notified or has violated the legal provisions in force in the host Member State (4.1.2.11);
- e) undertakings' lack of action and proposed supervisory measures (4.1.2.12);
- f) measures taken by the Host NSA (4.1.2.14);
- g) other adverse developments such as significant increase of policyholders' complaints together with the complaints' topic(s), change of standards of the conduct of business, unsatisfactory commercial practices and any other issue that can significantly influence the Home NSA's assessment of the undertaking.

4.1.2.2 In order to investigate compliance with the legal provisions of the Host Member State also applicable to cross-border activities, any insurance or reinsurance undertaking operating through a branch or FoS, shall be requested to communicate to the Host NSA any documents the provision of which would have been compulsory if requested from an undertaking with its head office in that Host State.

4.1.2.3 Refusal to communicate such documents shall be treated as an irregularity within the meaning of Article 155 of the Solvency II Directive.

4.1.2.4 Where in order to investigate compliance with the legal provisions applicable in the Host Member State it is considered necessary to carry out an on-site inspection at the branch or an on-site inspection of an outsourced services provider (e.g. a managing general agent) where business is being carried out on an FoS basis, the Host NSA may carry out such an investigation on its own initiative.

4.1.2.5 In case of an investigation referred to in paragraph 4.1.2.4, the Host NSA shall inform the Home NSA of its decision as soon as possible, preferably 4 weeks before the on-site inspection date, communicating the

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

- 4.1.2.6 The Home NSA may participate in the on-site inspection. If it chooses to do so, the Host NSA shall be informed without delay by the other Supervisory Authority which shall indicate the name and position of the persons who will participate in the inspection. EIOPA may participate in on-site inspections where they are carried out jointly by two or more Supervisory Authorities.
- 4.1.2.7 When, for the purposes of monitoring compliance with the legal provisions applying to a branch or to operations conducted within its territory by way of FoS, an on-site inspection at the head office of the insurance or reinsurance undertaking is considered necessary, the Host NSA shall inform the Home NSA. The Home NSA may carry out the investigation and the Host NSA can participate.
- 4.1.2.8 Where the Home NSA would experience difficulties exercising its right to carry out an on-site inspection at the branch in the Host Member State or where the Host NSA would experience difficulties exercising its right to participate in the on-site inspection of such a branch, the Supervisory Authorities may refer the matter to EIOPA for mediation.
- 4.1.2.9 The Supervisory Authority carrying out the inspection shall inform the other Supervisory Authority of the observations from the investigation.
- 4.1.2.10 Where the Host NSA ascertains that an insurance or reinsurance undertaking with a branch or pursuing business under FoS is not complying with the legal provisions applicable in the Host State, it shall require the insurance or reinsurance to remedy such irregularity.
- 4.1.2.11 The Host NSA shall communicate in writing to the head office of the insurance or reinsurance undertaking, stating the type of infringement(s) observed and the measures to be taken. A copy of this communication shall also be sent to the Home NSA. Where the operations are engaged in by a branch, a copy of this communication shall also be sent to the authorised agent of the Branch.
- 4.1.2.12 If the insurance or reinsurance undertaking concerned fails to take the necessary action, the Host NSA shall inform the Home NSA and submit to the latter all relevant information, including an assessment of the situation and the supervisory measures proposed. The Home NSA shall acknowledge receipt of this information.
- 4.1.2.13 Where despite the measures taken by the Home NSA or because those measures prove to be inadequate or are lacking in the Home Member State, and the insurance or reinsurance undertaking persists in violating the legal provisions in force in the Host NSA, the Host NSA may:

- a) take appropriate measures, after informing the Home NSA, to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing the insurance or reinsurance undertaking from continuing to conclude new (re)insurance contracts with the territory of the Host Member State;
- b) refer the matter to EIOPA for binding mediation.

4.1.2.14 Notwithstanding the procedure defined above, in emergency situations, the Host NSA may take appropriate emergency measures to prevent irregularities committed on its territory. In this case, it shall without delay inform the Home NSA. These measures shall be notified in writing 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 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.

### **4.1.3 College of Supervisors and other specific cooperation platforms**

#### **4.1.3.1 Where a college of supervisors is established**

4.1.3.1.1 Upon its own initiative or following a reasoned request from the Supervisory Authority responsible for the supervision of a branch, where the branch meets at least one of the conditions in points (a) or (b) of Article 354(1) of Commission Delegated Regulation (EU) 2015/35<sup>19</sup> ("Delegated Regulation"), the group supervisor shall invite that supervisory authority to participate in any relevant activity of the college of supervisors.

4.1.3.1.2 The group supervisor shall consider, where relevant, inviting Host NSAs where the undertaking pursues business under FoS to specific sessions where activity carried out by way of FoS are being discussed.

4.1.3.1.3 Requests to participate in the meetings of a college of supervisors may come from the group supervisor, a member or participant of the college or by the Host NSA where the undertaking pursues business under FoS. These requests shall be assessed by the group supervisor.

#### **4.1.3.2 Where no college of supervisors is established**

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<sup>19</sup> COMMISSION DELEGATED REGULATION (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.01.2015. p.1)



4.1.3.2.1 In the absence of a college of supervisors the Home and Host NSAs shall consider agreeing on preferred forms of cooperation in order to efficiently monitor the activity carried out in the Host Member State through a branch or by way of FoS:

- a) where a branch holds, or where the FOS activity represents, a significant share, in the meaning as provided for in Article 354 of the Delegated Regulation, of the Host Member State's insurance market;
- b) where a significant part of the overall business of the insurance or reinsurance undertaking, in the meaning as provided for in Article 354 of the Delegated Regulation, is carried out in the form of a branch operations or FoS activities in the Host Member State.

4.1.3.2.2 In cases specified in the previous paragraph, the allocation of tasks and responsibilities between the Home NSA and Host NSA shall not prevent respectively:

- a) the Host NSA from utilising the knowledge of the Home NSA about the prudential status of the undertaking in order to achieve effective supervision and adequate protection of policyholders;
- b) the Home NSA from utilising the knowledge of the Host NSA about the local market and risks in order to achieve effective supervision and adequate protection of policyholders.

4.1.3.2.3 Where a branch holds, or where the FOS activity represents, a significant share, in the meaning as provided for in Article 354 of the Delegated Regulation, of the Host Member State's insurance market and taking into account the nature of the risks and commitments and the volume of business written the Home and Host NSAs shall consider establishing a permanent platform of cooperation. This shall be based on an arrangement that establishes the rules of cooperation and coordination. These arrangements for cooperation and coordination shall include at least the following:

- a) regular meetings and teleconferences with the involvement of the Home NSA and all relevant Host NSAs;
- b) regular exchange of information as follows:
  - i. the Home NSA to provide to the Host NSA the conclusions drawn by the SRP carried out at the level of the undertaking, including information about the financial strength and performance of the undertaking;
  - ii. the Home NSA to provide to the Host NSA information about the performance of the branch;

- iii. the Host NSAs to provide information on the local markets, their developments and competitive situation as well as on the performance of the industry;
- c) meetings of the Home NSA and the Host NSA with representatives of the undertaking, when necessary;
- d) sharing and delegation of tasks between Home and Host NSAs.

## **4.2 Portfolio transfer**

### **4.2.1 Transfer of portfolio of contracts of insurance undertakings**

Article 39 of the Solvency II Directive

4.2.1.1 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 established within the EEA, the Home NSA of the transferring insurance undertaking shall

- a) consult the Host NSA of the branch whose portfolio is to be transferred; and
- b) obtain the agreement of the Supervisory Authority(ies) of the Member State(s) where the contracts were concluded, including the agreement of the Host NSA of the Member State of the branch, in case of risks or commitments in that Member State.

4.2.1.2 These opinions and consents 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 Host NSA shall acknowledge receipt if so requested<sup>20</sup>. Once this period has expired, if no response was received, the opinion shall be considered positive or consent shall be deemed to have been given.

4.2.1.3 When the head office of the accepting insurance undertaking and that of the transferring insurance undertaking are not in the same Member State the Home NSA of the transferring insurance undertaking, shall also obtain a certificate of solvency from the Home NSA of the accepting insurance undertaking, stating that the accepting insurance undertaking covers the SCR as calculated in accordance with Articles 100 of the Solvency II Directive, taking account of the transfer. This certificate shall be issued as soon as possible and in any event no later than three months after receipt of the request.

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

4.2.1.4 In order to facilitate these measures as a whole, the Home NSA of the transferring insurance undertaking shall provide the following minimum information:

- a) to the Home NSA of the accepting insurance undertaking:
  - i. 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;
  - ii. the volume of gross and net technical provisions, established on the basis of the contracts to be transferred;
  - iii. the volume of gross and net written premiums;
  - iv. the volume of the gross and net burden of claims in non-life insurance;
  - v. details of assets transferred;
  - vi. 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
  - vii. name(s) of the country or countries of the risks or commitments.
- b) to the Host NSA of the branch whose portfolio is to be transferred:
  - i. 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);
  - ii. arrangements for the settlement of claims in the event of the closure of the branch following the transfer.
- c) to the Supervisory Authority of the Member State of the risks or commitments:
  - i. 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.

4.2.1.5 If the Home NSA of the accepting insurance undertaking has serious concerns about how that insurance undertaking will perform in the future, it shall inform the Home NSA 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.

4.2.1.6 Where the accepting insurance undertaking:

- a) has not previously taken up the business of direct insurance and therefore requires authorisation from the Home NSA or requires an extension of its authorisation; and/or
- b) 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
- c) will cover the risks or commitments through the provision of services where it has not previously done so;

the relevant Supervisory Authorities shall cooperate 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.

4.2.1.7 The Home NSA of the transferring insurance undertaking shall communicate its decision to the Supervisory Authority of the country or countries where the contracts were concluded and the other authorities which were consulted.

4.2.1.8 The Supervisory Authorities of the Member States of risks or commitments shall assist the Home NSA 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 Member States of risks or commitments. The Supervisory Authorities shall inform each other about the method of publication of the transfer of portfolio provided by their national law.

4.2.1.9 In case of a merger of insurance or reinsurance undertakings, the Supervisory 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.

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

4.2.1.11 Paragraphs 4.2.1.1 to 4.2.1.10 shall apply to the reinsurance business of insurance undertakings.

#### **4.2.2 Transfer of portfolio of contracts of reinsurance undertakings**

Articles 39 of the Solvency II Directive

4.2.2.1 Before a portfolio transfer is authorised, when the head office of the transferring reinsurance undertaking and that of the accepting undertaking are not in the same Member State, the Home NSA of the transferring reinsurance undertaking shall obtain a certificate of solvency from the Home NSA of the accepting undertaking, stating that the accepting insurance or reinsurance undertaking covers the SCR, taking the transfer into account, as calculated in accordance with Articles 100 of the Solvency II Directive. The certificate of solvency shall, wherever possible, be provided within three months from the date of receipt of the request.

4.2.2.2 The Supervisory 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.

4.2.2.3 In order to facilitate these measures as a whole, the Home NSA of the transferring reinsurance undertaking shall, wherever possible, provide the following minimum information to the Home NSA of the accepting undertaking within three months from the date of receipt of the request:

- a) 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 15 (5) of the Solvency II Directive;
- b) the volume of gross and net technical provisions, established on the basis of the contracts to be transferred;
- c) the volume of gross and net written premiums;
- d) the volume of the gross and net burden of claims in non-life reinsurance;
- e) details of assets transferred;
- f) 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.

4.2.2.4 If the Home NSA of the accepting undertaking has serious concerns about how that accepting undertaking will perform in the future, it shall inform the Home NSA of the transferring reinsurance 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.

4.2.2.5 Where the accepting undertaking:

- a) has not previously taken up the business of reinsurance and therefore requires authorisation from the Home NSA or requires an extension of its authorisation; and/or
- b) 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 Supervisory 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.

4.2.2.6 In the case of a merger of reinsurance undertakings, the Supervisory Authorities shall consult each other in accordance with the procedure laid down for portfolio transfers.

### **4.2.3 Transfer of portfolio of contracts of insurance branches of Third Countries**

Article 164 of the Solvency II Directive

4.2.3.1 Under the conditions provided for by national law, a Supervisory Authority 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 EEA ('Accepting Office'), subject to the following conditions:

- a) the Supervisory Authorities of the Home State of the Accepting Office attest that the Accepting Office possesses the necessary solvency;
- b) if the Accepting Office is a branch of a third country established in the Transferor's Member State, the Supervisory Authority responsible for supervising its overall solvency, shall certify that the Accepting Office possesses the necessary solvency, taking account of the transfer;
- c) 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 Supervisory 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, taking account of the transfer;
- d) the Supervisory 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;
  - e) that the Supervisory 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 Supervisory Authorities have not responded at the expiry of the three-month period, agreement will be assumed.

### **4.3 Supervisory measures**

#### **4.3.1 Restriction or prohibition of free disposal of assets**

Article 137, 138, 139, 140 of the Solvency II Directive

- 4.3.1.1 The Home NSA shall determine whether to initiate any measure(s) to restrict or prohibit the free disposal of the assets of an insurance or reinsurance undertaking. The Home NSA shall inform the Host NSA of its intention to initiate any such measure(s). The notification and the measure may happen simultaneously where immediate action is required.
- 4.3.1.2 The Home NSA shall, in writing, inform the Supervisory Authorities of the relevant Member States where the assets are located, whose disposal must be restricted or prohibited.
- 4.3.1.3 Insofar as it lies within their possibilities, the Supervisory Authorities of the Member States concerned shall check the existence or the location of the assets previously identified by the Home NSA, on the basis of information provided by the latter, and on its request.
- 4.3.1.4 The Supervisory Authority to which the request has been made shall restrict or prohibit the disposal of the assets and inform the Home NSA of the measures taken. It shall endeavour to provide any assistance required by the Home NSA.

### 4.3.2 Recovery plan

Article 138, 141, 142 of the Solvency II Directive

4.3.2.1 When an undertaking submits a recovery plan to the Home NSA, the Home NSA shall assume responsibility for approving and ensuring the implementation of the recovery plan.

4.3.2.2 The Home NSA shall inform the Host NSA that the undertaking is required to submit a recovery plan. It shall inform the Host NSA about the measures referred in Article 138(3) of the Solvency II Directive to achieve, within six months from the observation of non-compliance with the SCR, the re-establishment of the level of eligible own funds covering the SCR or the reduction of its risk profile to ensure compliance with the SCR, together with any information which it considers appropriate in the circumstances, on the request of the Host NSA.

4.3.2.3 If Supervisory Authorities from more than one Member State consider that an exceptional adverse situation, as referred to in the second subparagraph of Article 138 (4), of the Solvency II Directive, exists in their markets, that affects or may affect undertakings in their markets, those Supervisory Authorities shall share information and shall cooperate, where appropriate, to submit<sup>21</sup>, a joint request to EIOPA to declare such an exceptional situation to exist in their respective markets.

### 4.3.3 Short-term finance scheme

Article 139, 141, 142 of the Solvency II Directive

4.3.3.1 When an insurance or reinsurance undertaking is required to provide the Home NSA with the short-term realistic financial scheme, the Home NSA shall assume responsibility for approving and ensuring the implementation of the plan.

4.3.3.2 The Home NSA shall inform the Host NSA that the insurance or reinsurance undertaking submitted a short-term finance scheme. It shall inform the Host NSA about the measures to restore, within three months of that observation, the eligible basic own funds, at least to the level of the MCR or to reduce its risk profile to ensure compliance with the MCR, together with any information which it considers appropriate in the circumstances, on the request of the Host NSA.

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<sup>21</sup> In the meaning of paragraph 24 of Processes for declaring exceptional adverse situation for the purposes of Article 138 of Solvency II (Extension of the Recovery Period) (EIOPA-BoS-16/158-rev1 8 August 2016).



#### **4.3.4 Withdrawal or lapse of authorisation**

Article 144 of the Solvency II Directive

- 4.3.4.1 The Home NSA shall assume sole responsibility for terminating the activity of an undertaking. This shall be without prejudice to the competences of the Host NSA.
- 4.3.4.2 Except under special circumstances and before withdrawing authorisation in respect of one, several or all the classes for which the undertaking is authorised, the Home NSA shall inform the Supervisory Authorities of all affected Host States of its intention.
- 4.3.4.3 The Home NSA shall communicate the decision on withdrawal or the lapse of authorisation to the Supervisory Authorities of all other Member States in respect of which the undertaking has exercised rights under the freedom of establishment or FoS, and update its website accordingly.
- 4.3.4.4 The Supervisory 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 Supervisory Authority.
- 4.3.4.5 The Supervisory Authorities shall act collectively and collaboratively, to ensure a coordinated response to the consequences of the withdrawal or the lapse of authorisation.

#### **4.3.5 Application of reorganisation measures and winding-up proceedings of an insurance undertaking**

Articles 269, 270, 273, 296 of the Solvency II Directive

- 4.3.5.1 A decision adopted according to the Home Member State's legislation concerning reorganisation measures or the opening of winding-up proceedings of an insurance or reinsurance undertaking, including its branches in other Member States, shall be recognised without any further formalities 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.
- 4.3.5.2 The Supervisory Authority of the Home State shall assume sole responsibility for reorganising or terminating the activity of an insurance or reinsurance undertaking.
- 4.3.5.3 The Home NSA shall communicate, as a matter of urgency, where possible before the adoption of such a measure and failing that

immediately thereafter, the decision on the winding-up or adoption of reorganisation measures to all other Supervisory Authorities. The information shall include the possible practical effect of such measures.

4.3.5.4 When an insurance or reinsurance undertaking, whose head office is situated outside EEA, has branches established in more than one Member State, each branch shall be treated independently with regard to the application of Title IV of the Solvency II Directive (Reorganisation and winding-up of insurance undertakings).

4.3.5.5 The Supervisory Authorities of the relevant Member States shall endeavour to coordinate their actions.

**PART V**  
**REGULAR EXCHANGE OF QUANTITATIVE DATA**

**5. Exchange of quantitative information between the Home NSA and Host NSA**

Article 159 of the Solvency II Directive

5.1 The following information, extracted from the Solvency II quantitative reporting templates ("QRTs"), shall be derived from EIOPA Central Repository and made available by undertaking to each concerned Host NSA through EIOPA HUB<sup>22</sup> following the deadlines established for this tool:

- a) premiums written by line of business ("LoB"), split by:
  - i. business underwritten in the Host country through a branch established in the Host country;
  - ii. business underwritten through FoS by the branch established in the Host Country;
  - iii. business underwritten in the Host country through FoS by the undertaking or any EEA branch.
- b) claims incurred and commissions by LoB, split by a) i. and ii.
- c) frequency of claims for motor vehicle liability (except carrier's liability), split by a) i. and ii;
- d) average cost of claims for motor vehicle liability (except carrier's liability), split by a) i. and ii.

This information shall be extracted from S.04.01 and S.04.02 which are reported by undertakings on an annual basis.

5.2 Host NSAs may ask the Home NSA whether the information for the Host NSA is included in templates S.05.02, S.12.02 and S.17.02 reported by the undertaking to the Home NSA, and ask to be made available through

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<sup>22</sup> EIOPA HUB is a technical file transfer system established to collect submissions from competent authorities.

## PART V REGULAR EXCHANGE OF QUANTITATIVE DATA

EIOPA HUB specific information from those templates together with the information identified in paragraph 5.1.

5.3 The above paragraphs do not prevent Supervisory Authorities from exchanging more granular data on a more regular basis or upon request.

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

Articles 183 and 185 (3) (l) of the Solvency II Directive

- 6.1.1 In the context of the development of the single market in insurance, it is important that all complaints received by Supervisory Authorities 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.
- 6.1.2 The insurance undertaking shall inform the policy holder of the arrangements for handling complaints of policy holders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.
- 6.1.3 The manner in which complaints handling received by Supervisory Authorities<sup>24</sup> is organised within a jurisdiction is a matter for each jurisdiction and therefore not subject to this Decision. There are a wide variety of complaints handling systems in Member States. In some Member States, complaints are dealt with by Supervisory 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.
- 6.1.4 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.
- 6.1.5 The procedures outlined in this Decision are intended to facilitate the process of identifying the relevant complaints handling body and ensure that complaints filed with a Supervisory Authority are

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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> This Decision focuses on complaints received by Supervisory Authorities, and does not concern consumer complaints received by the undertakings or intermediaries, which are covered by the relevant EIOPA guidelines.

addressed and arrive at the body that is competent to deal with the complaint.

6.1.6 It is recognised that the Commission has set up a network (FIN-NET)<sup>25</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 Decision is intended to interfere with this agreement or the process developed under FIN-NET.

## **6.2 Complaints handling procedures**

6.2.1 A complaint shall be assessed by the Supervisory Authority which initially receives it, to establish which body is competent to deal with the complaint. Where possible, the Supervisory Authority shall keep the complainant informed about further handling of the complaint.

6.2.2 In cases where the Supervisory 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.

6.2.3 In cases where the Supervisory Authority that receives the complaint is not competent to deal with the complaint, but another body in the same jurisdiction is, the Supervisory 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.

6.2.4 In cases where the Supervisory Authority that receives the complaint is not competent to deal with the complaint, but a Supervisory Authority or a competent body in another jurisdiction is, the Supervisory Authority that receives the complaint shall, as soon as possible:

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<sup>25</sup> <http://ec.europa.eu/fin-net>

- if legally possible, pass the complaint directly to the Supervisory 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 Supervisory Authority or competent body in the other jurisdiction, in order to facilitate the referral of the complaint by the complainant;
- in case that the complaint was passed to a competent body other than the Supervisory Authority, inform, if legally possible, the Supervisory Authority of the other jurisdiction of the complaint.

6.2.5 If a complaint contains issues relevant to the supervision of an undertaking, which operates under the freedom of establishment or FoS, the Supervisory Authority that deals with the complaint shall, as soon as possible, and if legally possible, provide the Supervisory Authority of the Home State with relevant information on the complaint.

6.2.6 In the cases referred to in paragraphs 6.2.3 to 6.2.4, the Supervisory 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 Supervisory Authority or body to be competent.

### **6.3 Dispute over responsibilities**

6.3.1 A complaint shall not be passed to another Supervisory Authority or competent body, if the Supervisory Authority or competent body has already declined responsibility for dealing with the complaint.

6.3.2 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.

6.3.3 If the question of responsibility cannot be settled, the Supervisory Authority which initially received the complaint from the complainant may refer the matter to EIOPA for the purpose of settling the disagreement through non-binding mediation.

## 6.4 Information to the public

6.4.1 The Supervisory Authorities shall provide the following information<sup>26</sup> about their national complaints handling system, including updates, as necessary:

- a) Authorities/bodies competent to deal with policyholder complaints (indicating, in particular, whether it is an ombudsman or a supervisory service);
- b) Contact information for the Supervisory Authority/body competent to deal with policyholder complaints (name, postal address, phone number, fax number, any e-mail address, any website address);
- c) Organisation for the Supervisory Authority/body competent to deal with policyholder complaints (e.g. whether it is a statutory/voluntary system, any charges payable by the complainant);
- d) Coverage for the Supervisory Authority/body competent to deal with policyholder complaints (e.g. insurers/intermediaries covered, insurance products covered);
- e) Competence for the Supervisory Authority/body competent to deal with policyholder complaints (e.g. out of court settlement/system that does not issue decisions; information on whether the decision is binding or not);
- f) Preconditions of the Supervisory Authority/body competent to deal with policyholder complaints (e.g. necessity to address the undertaking in the first place);
- g) Restrictions of the Supervisory Authority/body competent to deal with policyholder complaints (e.g. any limit on the amount awarded, time limits in bringing the complaint to the Supervisory Authority, restrictions on the type of complainant - professional/non-professional, consumer associations/other third parties);

6.4.2 The Supervisory Authorities shall make the aforementioned information available through their public website.<sup>27</sup> The Public Area of EIOPA's website shall provide links to the relevant national websites.

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<sup>26</sup> This paragraph does not impose a requirement on the Supervisory Authority to provide the information in a particular format.

<sup>27</sup> A Supervisory Authority may make the information in paragraph 6.4.1 available by way of a link on their website to the relevant information.



<p style="text-align: center;"><b>PART VII OTHER ISSUES</b></p>
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**7.1 Assistance (class 18)**

Article 197 of the Solvency II Directive

- 7.1.1 When an undertaking is authorised in class 18 in Part A of Annex I of the Solvency II Directive the Host NSA shall collaborate with the Home NSA, 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.
- 7.1.2 In order to carry out this supervision, the Supervisory 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.

## ANNEXES

### ANNEX 1: Certificate of Solvency

#### CERTIFICATE OF SOLVENCY

#### ISSUED BY THE SUPERVISORY AUTHORITY OF THE HOME STATE

relating to .....  
(registered name of the Undertaking, legal form<sup>28</sup>, head office)

issued by .....  
(Supervisory Authority)

#### PART I

The issuing Supervisory Authority certifies that the above mentioned undertaking is entitled to carry on the following classes or groups of classes:

##### A. Life assurance

Classes (according to Article 15(2) and as set out in Annex II to the Solvency II Directive):

.....  
(N°) (Name)  
since (\*) ..... authorisation limited to (\*\*) .....

##### B. Non-life insurance

1. Classes (according to Article 15(2) and (3) and as set out in point A of Annex I to the Solvency II Directive):

.....  
(No) (Name)  
since (\*) ..... authorisation limited to (\*\*) ..... (subdivision) .....

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(\* ) Indicate the date of authorisation or the date on which the undertaking began carrying on the class if this preceded compulsory authorisation. When dates are five years and more previously, mention only this fact.

(\*\* ) Indicate, where appropriate, the part of the risk to which authorisation is limited, as provided for in the second paragraph of Article 15(3) of the Solvency II Directive.

<sup>28</sup> As per Annex III to the Solvency II Directive

ANNEXES

2. Groups of classes (according to Article 15(2) and (3) and as set out in point B of Annex I to the Solvency II Directive):

.....  
(letter) (Name)  
since (\*) ..... authorisation limited to (\*\*) .....

**C. Reinsurance**

Type of authorisation granted in accordance with Article 15(5) of the Solvency II Directive:

.....  
(Name)  
since (\*) ..... authorisation limited to (\*\*) .....

**PART II**

The issuing Supervisory Authority certifies that the above mentioned undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 100 and 129 of the Solvency II Directive.

The undertaking possesses the necessary Solvency Capital Requirement and Minimum Capital Requirement, taking into account the portfolio transfer. (\*\*\*)

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The above attestations and information are valid at the date of issuance of this certificate of solvency.

.....  
(date, signature, position)

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(\* ) Indicate the date of authorisation or the date on which the Undertaking began carrying on the class if this preceded compulsory authorisation. When dates are five years and more previously, mention only this fact.

(\*\* ) Indicate, where appropriate, the part of the risk to which authorisation is limited, as provided for in the second paragraph of Article 15(3) of the Solvency II Directive.

(\*\*\*) Delete as appropriate