CEIOPS-ConCo-17/08

Criteria for the assessment of supervisory equivalence under Directive 2005/68/EC ('Reinsurance Directive')

This paper outlines the methodology for the assessment of supervisory equivalence for the purposes of the application of Article 49 of the Reinsurance Directive[1]. The results of any such assessments will also be relevant should the European Commission submit proposals to the Council for the negotiation of an agreement with a third country under Article 50 of the aforementioned Directive[2].

The methodology adopts a similar approach to that pursued by the Interim Working Committee on Financial Conglomerates in assessing the equivalence of third country regimes under Directive 2002/87/EC (Financial Conglomerates Directive); namely it identifies the key supervisory principles encapsulated in the Reinsurance Directive and the objectives each supervisory principle seeks to achieve. It is against these principles and objectives that the third country regime will be assessed. The methodology also outlines the key 'indicators' of equivalence - namely, those factors which provide guidance in determining whether the relevant principles and objectives are achieved.

1. Principle – Supervisory Authority

Objective – The supervisory authority must be fully empowered to enable the effective carrying out of the supervisory authority's responsibilities.

Articles – Recital 16

Indicators - The supervisory authority should be/have:

Indicator	Description
Legal basis	• Legal basis specifying supervisory responsibilities and enforcement powers
Independence and accountability	• Freedom from undue political, governmental and industry interference in the performance of

[1] Article 49 prohibits Member States from treating reinsurance undertakings with their head offices outside the Community more favourably than reinsurance undertakings which have their head offices within a Member State.

[2] Article 50 provides that the Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over reinsurance undertakings which (i) have their head offices situated in a third country and conduct reinsurance business in the Community; and/or (ii) those which have their head offices in the Community and conduct reinsurance business in the territory of a third country. The agreement should seek to ensure, under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings and mutual recognition of supervisory rules and practices on reinsurance.

	supervisory responsibilities
Transparency	• Transparency of supervisory processes/procedures
Adequate Resources	• Financial and non-financial (e.g. sufficient numbers of appropriately skilled staff) resources
Legal protection	• Appropriate protection from being liable for actions taken in good faith

2. Principle – Authorisation Requirements

Objective - To ensure the reinsurance undertaking satisfies basic standards (which are clear, objective and accessible), prior to becoming authorised to undertake regulated activities and on a continuous basis thereafter.

Articles – 3-13, 15(4), 44

Indicators – Existence of standards in respect of:

Indicator	Description
(i) Conditions for authorisation	
Legal Entity	• Legal form • Location of head office • Articles of Association
Operations	• Limitation to reinsurance and related operations • Scheme of operations (including, for the first three years, estimates regarding:- cost, premiums, claims and financial resources to cover underwriting liabilities) • Minimum guarantee fund
Controls	• Sound management • Adequate internal control mechanisms • Sound administrative/accounting procedures
(ii) Connections	
Shareholders/Members	Provision of information on: • identity of shareholders/members with qualifying holdings • amount of holdings
Close links	• Continuous monitoring of close links

(iii) Refusal / withdrawal of authorisation	
Refusal / withdrawal of authorisation	Refusal/withdrawal of authorisation possible: • legally • due to qualifications of shareholders/members • where close links prevent effective supervision

3. Principle – Business Change Assessment

Objective – To ensure the acceptability of any proposed changes to the business from an operational, management and supervisory perspective.

Articles – 18 - 22

Indicators – Existence/extent of provisions in respect of:

Indicator	Description
Acquisitions	• Notification of intention to hold and/or increase directly/indirectly a qualifying holding • Right of supervisory authority to oppose proposed acquisition • Existence of thresholds prompting notification • Possibility for assessment of acquisition by financial undertakings to be subject to prior consultation
Disposals	• Notification of intention to dispose directly/indirectly of a qualifying holding • Thresholds prompting notification
Information obtainable from undertaking	• Thresholds prompting notification of acquisitions/disposals • Regular notification (e.g. annual) of qualifying holdings, including size
Ongoing disclosure of relevant information	Disclosure of information, including information in respect of: • portfolio transfers • changes to Board/senior management • scheme of operation

4. Principle – Supervisory Cooperation and Exchange of information

Objective – To ensure co-ordination and proper exchange and use of information between supervisory authorities involved in the supervision of reinsurance undertakings and others, where relevant.

Articles – 14, 15(1), 24, 26-31, 42

Indicators – The existence and extent of provisions in respect of:

Indicator	Description
(i) Practical Cooperation	
Authorisation/ongoing assessment of compliance with operating conditions	• Preauthorisation consultation in respect of undertakings which form part of a cross-border group
Supervisory Activity	• Communication of concerns regarding the reinsurance undertaking, including those relevant to the soundness of the undertaking's financial position, policies and procedures.
Suitability Assessments	Ability and willingness to cooperate in respect of the assessment of: • shareholder suitability • reputation/experience of directors
Cooperation agreements	• Ability to enter into cooperation agreements (subject to guarantees of professional secrecy – see (iii) below)
Crisis situations	• Information sharing
(ii) Exchange of Information	

Information Exchange	Exchange of information with:
	• supervisory authorities
	• other authorities/bodies/persons/institutions responsible for, or having oversight of:
	  ▪ supervision of financial organisations/markets
	  ▪ liquidation/bankruptcy proceedings
	  ▪ carrying out statutory audits of accounts
	  ▪ detection/investigation of breaches of company law

	• central banks • government administrations responsible for financial legislation
(iii) Professional Secrecy[3]	

Conditions of obligation	• Ability to protect confidential information
	• Applicable to relevant individuals (i.e. those who work, have worked or act(ed) on behalf of the supervisory authority)
	• Ongoing obligation (applicable whilst working/acting on behalf of the supervisory authority and on continuous basis thereafter)
	• Use of confidential information only in the course of supervisory duties:
	  ▪ compliance monitoring (including monitoring of technical provisions, solvency margins, administrative/accounting procedures and internal controls)
	  ▪ imposition of penalties
	  ▪ court proceedings/appeals

Exceptions to obligation	• Express agreement to disclose/use • Summary/aggregate disclosure (individual undertaking not identifiable) • Civil/criminal proceedings

[3] The Equivalence Sub-Group of the CEIOPS Convergence Committee is developing criteria for assessing the equivalence of the professional secrecy requirements of third countries.

5. Principle – Supervisory and Enforcement Powers

Objective – To ensure that authorities responsible for the supervision of reinsurance undertakings possess adequate supervisory powers (including enforcement powers) and that these are properly exercisable.

Articles – 15(1)-(2), 16, 17, 23, 42-44, 47

Indicators – Existence/extent of powers in respect of:

Indicator	Description
Ensuring compliance	• Ensuring compliance with laws, regulations and administrative provisions (including through onsite inspections)
Financial supervision	Verification of: • state of solvency of undertaking • establishment of technical provisions and covering assets • administrative/accounting procedures • internal controls (including those applied to ensure that data received from cedents is reliable and timely)
Information obtainable from the undertaking	• Accounting, prudential, statistical and other information (e.g. contracts with affiliates, outsourcing arrangements, assessment of the quality of data received from cedents)
Qualifying holdings	Persons (natural/legal) whose actual/proposed qualifying holding may operate against prudent/sound management: • injunctions • penalties against directors/managers • suspension of voting rights attaching to shares held by relevant shareholders/members Qualifying holding acquired despite opposition of supervisory authority: • suspension of voting rights • nullity of votes cast/possibility of annulment
Undertakings in difficulties	• Prohibit disposal of assets • Financial recovery plan • Higher solvency margin

	• Downward revaluations • Withdrawal of authorisation • Measures relating to directors, managers, controllers and other relevant persons
Non-compliance with legal provisions	• Measures to prevent/penalise further infringements including preventing the conclusion of new contracts
Enforcement	• Cooperation in respect of enforcement action

6. Principle – Financial Supervision and Solvency Requirements

Objective – To ensure that reinsurance undertakings act prudently in maintaining adequate financial resources in order to prevent disorderly failure.

Articles – 15(1), 17(1)-(2), (4), 31 – 41

Indicators – Existence/extent of provisions in respect of:

Indicator	Description
Financial supervision	• Communication of concerns, including those relating to the undertaking's financial position • Obligation on undertaking to respond to concerns raised
Information obtainable from undertaking	Accounting, prudential, statistical information: • annual accounts (covering all operations, financial situation and solvency) • returns/statistical documents • information regarding contracts held with intermediaries

Technical Provisions and investment of assets covering technical provisions	Adequate technical provisions in respect of entire business:
	• the amount:
	  ▪ at all times such that an undertaking can meet any reasonably foreseeable liabilities
	  ▪ in principle computed separately for each contract
	  ▪ for provision for claims outstanding, computed on the basis of costs expected to arise (including claim settlement costs). Alternatively, provision for claims outstanding computed in accordance with recognised statistical/mathematical

	methods, resulting in adequate provision, having regard to the nature of the risk, subject to prior approval • equalisation reserves for classes of risk • rules for investment of assets: ▪ take account of business type including the pattern of claims payments so as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments ▪ diversified and adequately spread ▪ prudent levels of investments in assets not admitted to trading ▪ investment in derivative instruments possible insofar as they contribute to reduction of investment risks or facilitate efficient portfolio management; valued on prudent basis; included in valuation of institution's assets, avoidance of excessive risk exposure to single counterparty/other derivative operations ▪ avoid excessive reliance on any one particular asset, issuer or accumulations of risk; no excessive risk concentration • establishment of quantitative rules provided they are prudentially justified (amounts in brackets reflect limits EU Member States may lay down under the Reinsurance Directive): ▪ limitations on investments of gross technical provisions in, for example: – other currencies (30%); shares and other negotiable securities treated as shares/bonds/debt securities not admitted to trading (30%), including those treated as shares etc from the same undertaking (5%) or undertakings which are members of the same group (10%)
Solvency Margin	• Adequate solvency margin in respect of entire business at all times • Eligible items ▪ Components (conditions applicable) ▪ Deductions - own shares, participations • Required Solvency Margin: ▪ equivalent to Solvency I for reinsurers (articles 37-38 Reinsurance Directive), where appropriate taking into account the supplementary supervision of reinsurers forming part of a group ▪ undertakings simultaneously conducting non-life reinsurance and life assurance activities

	must have available solvency margin to cover the total sum of required solvency margins in respect of both non-life and life insurance activities.
Guarantee Fund	Amount: • not less than the guarantee fund requirement
Auditors' duty to report	Duty to report: • breach of laws, regulations, administrative provisions • issues which may affect the continuous functioning of the undertaking • refusal (or reservations) in respect of certification of accounts