

**Peer Review about the Exchange of Information  
and Cooperation Provisions of the  
Budapest Protocol**

**Final Report**

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## **EXECUTIVE SUMMARY**

The process of completing the self-assessment questionnaire on the application of the Budapest Protocol (hereinafter referred to as the "Protocol") has allowed CEIOPS Members to enhance their understanding of the Protocol and at the same time has revealed cross-border cooperation issues which might benefit from further analysis.

The analysis of the responses to the questionnaire has on the one hand confirmed the conclusions which lead to a revision of the Budapest Protocol in 2009 and on the other hand provided further evidence which can be used in any further work relating to cross-border Institutions for Occupational Retirement Provision (hereafter referred to as 'IORPs').

In general there was and to date is a low level of cross-border IORP activity, reflected in the large number of 'No Cases'/'Not Applicable' responses to the self-assessment questionnaire. The decision of IORPs not to start cross-border activity could be connected to a lack of clarity (partly resolved by the revision of the Budapest Protocol) and to obstacles that go beyond the dialogue between supervisors (and that in part will be addressed in the revision of the IORP Directive).

Several Member States (MS) have responded generally with 'Not Applicable' to the questionnaire, owing either to the fact that IORPS cannot be established under their legislation or that there is no relevant Social and Labour Law.

With regard to the exchange of information during the notification process, on the basis of the responses provided, there is an indication that this process has faced certain challenges. The differences between MS as regards the definition of cross-border activity are a source of such challenges and these have also tended to interrupt the flow of information. It is worth noting that the Budapest Protocol has been revised since the self-assessment exercise, using results from this exercise and also the practical experience gained from cross-border activity, to further clarify the information exchange process between Member State Competent Authorities (MSCAs) in various situations during the notification process. The revised Budapest Protocol does not provide solutions to resolve the different definitions for cross-border activity, as this is outside the Protocol's scope, but rather serves to improve the communication process between MSCAs. Further to that, the revised Budapest Protocol has made changes touching on other areas of cooperation where some experience has been gained. The results of the peer review suggest that in the future some references to strengthening the dialogue and cooperation could be included in the Budapest Protocol.

Through the peer review the Review Panel has observed that MS are in general adhering to the provisions of the Protocol. The number of cases of non-compliance is very low, in which cases conclusions have been drawn for the respective MSCA's own reflection.

Future revisions of the Budapest Protocol and future peer reviews of the application of the Protocol should be timed so that any revisions of the Protocol can incorporate the results of Peer Review exercises.

## INTRODUCTION AND BACKGROUND

In 2009 CEIOPS' Review Panel initiated the first Peer Review exercises aiming at assessing the application by CEIOPS Members and Observers of the provisions on information exchange and supervisory cooperation ("Provisions") in the context of various Protocols<sup>1</sup> that CEIOPS has published regarding co-operation among supervisory authorities.

The peer review was carried by the Review Panel<sup>2</sup> of CEIOPS in collaboration with high-level experts from national supervisory authorities from the EEA (see Annex).

The Review Panel met 15 times since the creation of the Review Panel in August 2008 (the first 2 meetings were under the Chairmanship of Peter Braumüller, the next 13 meetings under the Chairmanship of Michel Flamée).

The first Peer Review exercises were carried out according to the Protocol for the Review Panel<sup>3</sup> and the CEIOPS Methodology for Peer Review<sup>4</sup> (hereinafter referred to as 'the Methodology'). This methodology allows for a two-phase process:

- The first phase is carried out through a self-assessment questionnaire, by which CEIOPS Authorities assess themselves regarding their application of each provision in the respective Protocols;
- The second stage is the Review by Peers which involves each Authority's self-assessment being challenged by its peers.

With regard to the **Budapest Protocol** (hereinafter referred to as 'the Protocol'), the Review Panel has decided not to launch a Review by Peers, having in mind the changes<sup>5</sup> introduced to the Protocol since the beginning of the Peer Review exercise, but instead to produce an in-depth analysis of the responses provided in the self-assessments.

The analysis of the self-assessments is focused on the communication practices among national supervisors for the purposes of cross-border occupational pension schemes under the IORP Directive<sup>6</sup>.

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<sup>1</sup> General Protocol, Budapest Protocol, Helsinki Protocol:

<https://www.ceiops.eu/publications/protocols/index.html>

<sup>2</sup> <https://www.ceiops.eu/review-panel/index.html>

<sup>3</sup> [https://www.ceiops.eu/fileadmin/tx\\_dam/files/publications/protocols/CEIOPS-DOC-28-08-Protocol-Review-Panel.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/publications/protocols/CEIOPS-DOC-28-08-Protocol-Review-Panel.pdf)

<sup>4</sup> [https://www.ceiops.eu/fileadmin/tx\\_dam/files/publications/protocols/CEIOPS-DOC-29-08-Methodology-Peer-Review.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/publications/protocols/CEIOPS-DOC-29-08-Methodology-Peer-Review.pdf)

<sup>5</sup> [https://www.ceiops.eu/fileadmin/tx\\_dam/files/publications/protocols/Revised-Budapest-protocol-20091105/CEIOPS-Revised-Budapest-protocol.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/publications/protocols/Revised-Budapest-protocol-20091105/CEIOPS-Revised-Budapest-protocol.pdf)

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0041:EN:NOT>

## METHODOLOGY

### Stages of the analysis



As explained in the Introduction and Background above, the review of the application of the Budapest Protocol, was conducted in one phase - a self-assessment, in accordance with Articles 7-16 of the Methodology. The Competent Authorities answered a number of questions that have been established for each provision against a set of benchmarks.

A mapping of the responses to the self-assessment questionnaire was provided in the Summary Report<sup>7</sup> published in 2009.

The present in-depth analysis of the self-assessments allows for further insight into the reasons behind the responses and develops propositions and conclusions, which might be used in any further work relating to cross-border IORPs.

### Approach to transparency

The self-assessment questionnaire, the responses provided by the Member States, as well as a summary of the responses was published on the CEIOPS website<sup>8</sup>.

The publication of the results from the self-assessments plays an integral role in promoting transparency and serves as a peer pressure tool in stimulating convergent behaviour in Member States.

### Actual cases

For the purpose of gaining accurate information about actual application of the Protocol, the competent authorities were requested to provide responses only on the basis of actual cases during the reference period, and not on procedures or legislation in place.

### Reference Period

The reference period for the responses to the self-assessment ranged from the date of approval of the Budapest Protocol in February 2006 until June 2009.

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<sup>7</sup> [https://www.ceiops.eu/fileadmin/tx\\_dam/files/ReviewPanel/2009-Self-assesment-replies/CEIOPS-Summary-Report-Self-Assessment-Budapest-Protocol.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/ReviewPanel/2009-Self-assesment-replies/CEIOPS-Summary-Report-Self-Assessment-Budapest-Protocol.pdf)

<sup>8</sup> <https://www.ceiops.eu/review-panel/self-assessments/index.html>

## Self-assessment Questionnaire

For the purpose of developing the self-assessment questionnaire, each provision of the Protocol included in this exercise was divided into assessment criteria and corresponding key questions. Questions were addressed to either the Home MSCA, the Host MSCA, or to both.

The questionnaire was sent to the CEIOPS Membership on 30 April 2009 with a deadline for replies by 30 June 2009.

Supervisory authorities were asked to respond to each question with yes ('Y'), no ('N'), not applicable ('NA') or no cases ('NC'):

Yes	if the requirement is in general complied with for actual cases.
No	if the requirement is in general not complied with for actual cases.
not applicable	if the requirement is not relevant for the Authority and therefore a case could not occur (e.g., when the Authority has no competence in respect of the relevant issue).
no cases	if there are no actual cases or no experience with the respective requirement.

The result of each response or combination of responses was benchmarked according to 3 possible grades:

- fully applied;
- partially applied - this benchmark is a possible result only for a limited number of provisions;
- not applied.

There was no benchmark applied if 'no cases' were reported, if the respective provisions were 'not applicable', or if questions were asked for information purposes only.

### Guidelines for comments

Respondents were requested to comment on each reply, taking into account the '*Guidelines for comments*' provided in a separate worksheet of the self-assessment questionnaire.

### Data

CEIOPS Authorities were also asked to report quantitative figures (number of cases, average timing), for information purposes only and for cross-checking the responses. This information has not been made public with the responses to the self-assessment.

## Implementing measures

In cases where a supervisory provision or practice had been applied, either in full or partially, the Competent Authorities were asked to also provide information on the national implementing measures (including policies, procedures and other practices), considering that peer reviews aim at compliance and convergence in practice, not just from a legal perspective (Methodology, Article 22).

## Responses to the Self-assessment Questionnaire

Not all respondents were able to deliver full responses. There are several reasons for this:

- The national competent authorities that are neither Members nor Observers of CEIOPS did not take part in this exercise. This is the case for **GR** and **CY**. The Cyprus pension supervisory authority only joined CEIOPS in July 2009;
- In some MS the competences are split between several authorities, which are not necessarily all Members or Observers of CEIOPS. This is the case in **LU** for which 2 authorities are competent as Home MSCA, both being a CEIOPS Member, and 1 authority is competent as Host MSCA, but not a CEIOPS Member. CEIOPS Member Authorities therefore replied with 'not applicable' where relevant;
- The IORP Directive has not been implemented in **IS**, making this Protocol not applicable in this country;
- One MS (**CZ**) does not allow the establishment of IORPs in their country and as such the provisions of the Protocol as a Home MSCA are not applicable;
- One MS (**EE**) reported that it does not have IORP regulation, only host country based regulation.

As stated above all individual responses of the relevant CEIOPS Member and Observer Authorities to the questionnaire (28 in total) are published on the CEIOPS website<sup>9</sup>, together with a summary report<sup>10</sup> presenting the benchmark results of the application of each provision and explanatory comments on some results, where deemed necessary, for a better understanding of the replies. Replies and comments considered to be confidential by the respondent were not published.

For each provision, this report outlines the relevant sections of the Protocol and an analysis of the responses to the questions regarding the respective provision. General comments on specific parts of the questionnaires are presented in the beginning of the respective sections below. The questions posed, the established benchmarks and the results from the self-assessment exercise can be found in Annex 1 of this report.

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<sup>9</sup> <https://www.ceiops.eu/review-panel/self-assessments/index.html>

<sup>10</sup> [https://www.ceiops.eu/fileadmin/tx\\_dam/files/ReviewPanel/2009-Self-assesment-replies/CEIOPS-Summary-Report-Self-Assessment-Budapest-Protocol.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/ReviewPanel/2009-Self-assesment-replies/CEIOPS-Summary-Report-Self-Assessment-Budapest-Protocol.pdf)

## **Confidentiality**

The public version of the responses to the self-assessments was, prior to publication, subject to scrutiny on the basis of an identifiability criterion developed by the CEIOPS Review Panel. The criterion does not allow for any reference to another MS or MSCA, or to a company to be mentioned in the public version so that these could be identified.

## **Revision of the responses to the self-assessment questionnaire**

According to Articles 49 and 50 of the Methodology, MS have the right to update their responses to the self-assessment. The CEIOPS Secretariat has developed guidance<sup>11</sup> for the revision of responses to the self-assessments, which provides a matrix for the respective revisions. The possibility to revise the responses to the self-assessments is a general option valid for all Protocols or other provisions subject to Peer Review.

With regard to the Budapest Protocol, the update of responses is not advisable due to the revision of the Protocol. Nevertheless several MS have provided the CEIOPS Secretariat with updated comments to some responses to their self-assessments. One MS has changed its response about the implementation of one provision of the Protocol due to an improved understanding of the respective requirement. The updates to the self-assessments will be published externally on the CEIOPS website.

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<sup>11</sup> [https://www.ceiops.eu/fileadmin/tx\\_dam/files/ReviewPanel/CEIOPS-RP-147-10%20Guidance%20Revisions%20Self-Assessments\\_final\\_Rev3.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/ReviewPanel/CEIOPS-RP-147-10%20Guidance%20Revisions%20Self-Assessments_final_Rev3.pdf)

## FINDINGS/ISSUES IN THE THREE PARTS OF THE PROTOCOL

### General findings

At the outset it is worth stating that in general there is a low level of cross-border activity by IORPs in the European Economic Area. Hence the majority of CEIOPS Authorities reported 'no cases' for many of the questions in the self-assessment. For those MS which reported actual cases of cross-border activity, the number of cases is very limited, e.g. the replies were often related to only one case. Therefore the Review Panel is of the opinion that any conclusions regarding cross-border activity for occupational pension schemes should be considered with caution, taking into consideration the limited experience of MS.

The Market Developments Report<sup>12</sup>, published annually by CEIOPS, provides an overview of IORPs' cross-border activity and identifies the respective Home and Host States involved. However, it should also be noted that MS use different definitions as to what constitutes cross-border activity. This fact is recognised in the Market Developments Report 2010<sup>13</sup>. As a result of this situation, MS might have different opinions on whether a specific activity can be considered as a cross-border activity or not. Therefore, where a MS is reported by the Home State to be a Host State in the Market Developments Report, the identified Host State may not agree under its own legislation.

The self-assessment required MS to provide answers according to actual cases (practices) under their respective legislation. Hence MS have responded as Host State for this report if their legislation identifies an IORP activity as a cross-border activity. As a result, the number of Host States shown in this report differs from the number of Host States identified in the Market Developments Report 2010. In addition, through the present analysis MS profited from a second check regarding the cross-border nature of the cases reported in the Market Developments Reports, leading to a recognition of the fact that some of them were in fact not of a cross-border nature.

For the purposes of this report, on the basis of the self-assessments, the following overview of cross-border activity applies:

	Home State	Host State	No cross-border activity
Which Member State	AT, BE, DE, FI, IE, LI, LU(CAA + CSSF), PT, UK	AT, BE, DE, EE, FR, HU, IE, LI, NL, PL, SE, SI, SK, UK	BG, CZ, DK, ES, IT, LT, LV, MT, NO, RO
How many Member States	9	14	10
How many Competent Authorities	10	14	10

'NA' responses are due to the lack of legislation allowing some MS to be a Home State (**CZ, EE**).

<sup>12</sup> See for the 2010 Report: [https://www.ceiops.eu/fileadmin/tx\\_dam/files/publications/reports/CEIOPS-IORP-Market-Developments-Report-2010.pdf](https://www.ceiops.eu/fileadmin/tx_dam/files/publications/reports/CEIOPS-IORP-Market-Developments-Report-2010.pdf).

<sup>13</sup> CEIOPS has presented an in-depth analysis of this issue to the European Commission.

**GR** did not take part in the exercise since its MSCA in the field of occupational pensions is not a CEIOPS Member. The same is true for **CY**, whose MSCA in the field of occupational pensions was not a CEIOPS Member when the self-assessment exercise was performed<sup>14</sup>. **IS** did not take part in the exercise because it has not adhered to the IORP Directive.

Three MS for which no cross-border activity was reported (**BG, ES, RO**) were involved in notification processes for cross-border activity, as an intended Host State. These MS were therefore able to provide answers to questions directed to Host States. However, no actual cross-border activity was started after the respective notifications.

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<sup>14</sup> The Cyprus' 'Supervisory Authority of Occupational Retirement Benefits Funds' joined CEIOPS in July 2009.

## **PART I – General considerations**

### **➤ Provision 1.3: Harmonisation of documents used (Qs. 1-3)**

#### **1.3. Harmonisation of documents used**

1.3.3. The supervision of IORPs operating cross-border is facilitated by using a standard document for the exchange of the information Competent Authorities need to share, such as the information described in Article 20 (3) of the Directive.

1.3.4. Hence the Competent Authorities have developed a standard document to share information on the main characteristics of a pension scheme to be operated cross-border including the legal form of an IORP (see Appendices 2 and 3). This document will not restrict Competent Authorities that require or wish to share additional information, and its content will be reviewed periodically in the light of experience and use.

**Questions 1 to 3** relate to the standardised document that was developed to share information on the main characteristics of an IORP that wants to operate cross-border. Question 1 asks whether a Home State sends all the relevant information to the intended Host State. The next two questions ask for the use of the standardised document (Q2) and for the order used in the standardised document (Q3).

There are 10 CEIOPS Authorities (**AT, BE, DE, FI, IE, LI, LU (CAA) and (CSSF), PT, UK**) that operate as Home MSCAs. All of them responded positively to these questions and sent the relevant information using the standard document for the main characteristics.

➤ **Provision 1.4: Language (Qs. 4-14)**

**1.4. Language**

1.4.1. The Competent Authorities agree that communications between any two Competent Authorities should be conducted in a manner conducive to effective supervision of IORPs operating cross-border. Bearing this in mind they have agreed the languages that they will normally use for the exchange of information.

1.4.2. They agree that

- the main characteristics of the scheme provided by the home Member State Competent Authority to the host Member State Competent Authority during the notification process shall be in the language of the host Member State or such other language as they agree;
- relevant social and labour law and all communications relating to it will be conducted in the language of the host Member State;
- the disclosure and potential investment provisions shall be communicated in the language of the host Member State requiring them to be applied.

The host Member State Competent Authority may additionally provide a full or summary version of the applicable social and labour law and disclosure and investment provisions translated into the language of the home Member State or other agreed language.

Questions 4 to 14 relate to the language that is used during the notification process where information is shared between Home and Host MSCA. The analysis of these questions can be undertaken by reviewing together questions 4 and 5, 6 to 8, 9 to 11, and then 12 to 14.

**Questions 4 and 5** relate to the language that the Home MSCA uses when sending the main characteristics to the Host MSCA. The Protocol requires that this information is either sent in the language of the Host State or in any other language that is agreed between Home and Host MSCAs.

All MS which declared that they have been involved in cross-border activity as a Home State, have fully applied the obligations regarding the main characteristics. 7 MS (**AT, BE, DE, IE, PT, UK**) reported that they have complied with this provision and have provided the main characteristics in the language of the Host State and 2 MS (**FI, LU**) have provided the main characteristics in a previously agreed language.

**Questions 6 to 8** relate to the language that the Host MSCA uses when sending the relevant social and labour law to the Home MSCA. The Protocol requires that this information must be sent in the language of the Host State. The Host MSCA may additionally provide a full or summary version of the relevant social and labour law in the language of the Home State or in any other language agreed between Home and Host MSCAs.

Most reported Host MSCAs responded that they complied with this provision by sending the social and labour law in their own language. However, 1 MS (**HU**) only reported that it had provided the social and labour law in an English version and not in its own language. One MS (**EE**) replied that they did not have relevant social and labour law, meaning these questions were not applicable to them.

**Questions 9 to 11** relate to the language that the Host MSCA uses when sending the disclosure requirements to the Home MSCA. The Protocol requires that this information must be sent in the language of the Host State. The Host

MSCA may additionally provide a full or summary version of the disclosure requirements in the language of the Home State or in any other language agreed between Home and Host MSCAs.

Most reported Host MSCAs responded that they complied with this provision by sending the disclosure requirements in their own language. However, 2 MS (**EE**, **HU**) only responded that they provided the disclosure requirements in an English version and not in their own language.

3 Host MSCAs (**BE**, **IE**, **UK**) answered 'not applicable' since they did not have additional information requirements.

**Questions 12 to 14** relate to the language that the Host MSCA uses when sending the relevant investment provisions (in addition to the limitations on self-investment of the IORP Directive) to the Home MSCA. The Protocol requires that this information must be sent in the language of the Host State. The Host MSCA may additionally provide a full or summary version of the investment provisions in the language of the Home State or in any other language agreed between Home and Host MSCAs.

7 MS (**BE**, **IE**, **LI**, **NL**, **SE**, **SI**, **UK**) reported 'NA', as they do not apply specific investment requirements.

Most reported Host MSCAs responded that they complied with this provision by sending the investment provisions in their own language. However, 2 MS (**EE**, **HU**) only responded that they provided the disclosure requirements in an English version and not in their own language.

**On the basis of the responses provided regarding the implementation of provision 1.4 of the Protocol, the following issues might benefit from further reflection:**

There are MS which provide only an English version of the relevant social and labour law, investment provisions and/or disclosure requirements. This part of the Host State law is applicable to cross-border operations to ensure that the protection of the rights of members and beneficiaries in the Host State is equal, irrespective of where the IORP that operates the pension scheme is located. Therefore, it is necessary to provide this information in the language of the Host State as a minimum.

➤ **Provision 1.7: Additional Cooperation (Qs. 15-16)**

**1.7. Additional Cooperation**

1.7.1. Given the importance to supervision of the good repute, competence and professional experience of the persons running the IORP, the Competent Authorities shall endeavour to share the information available to them in those fields.

**Questions 15 and 16** relate to sharing information regarding the good repute, competence and professional behaviour of persons running IORPs. Q15 asks whether such information is sent on the initiative of a MS and Q16 asks whether such information is sent on request.

The majority of MS reported 'no cases' for Q15 and Q16. Nevertheless, most MS provided comments regarding the legal framework on sharing information in case of cross-border activity. These comments show that most MS do not share the information specified in provision 1.7.1 of the Protocol on their own initiative, but almost all respondents would share the information on request. Some MS (BE, BG, DE, PT, RO) reported having legal constraints regarding the nature/range of the information available for disclosure (e.g. data protection requirements or data subject to confidentiality).

The reason for the majority of 'no cases' answers to Q15 and Q16 is the low level of cross-border activity for occupational pension schemes. Even for those MS which reported cross-border activity, the number of actual cases is small.

**On the basis of the responses provided by MS regarding the implementation of provision 1.7 of the Protocol, the following issues might benefit from further consideration:**

Having regard to the fact that Article 1.7.1. of the Protocol refers to *additional cooperation* as a voluntary action in sharing the relevant information on the 'good repute, competences and professional experience', best practices of cooperation and a proactive behaviour of MSCAs should be encouraged.

Therefore further clarification might be beneficial as to how it can be ensured that MS "shall endeavour to share" the respective information - on own initiative or upon request.

In addition to that it could be considered whether the nature/range of information provided should be specified in further detail.

Possible national legal constraints, such as confidentiality rules, could be taken into consideration with view of ensuring the provision of the respective information.

## **PART II – Authorised IORPs and the exchange of information for the notification process**

### **➤ Provisions 2.2-2.3: Information from the IORP to the Home MSCA (Qs. 17-18)**

#### **2.2. Requirements for an initial dialogue when an IORP expresses its intention to accept sponsorship as a Guest IORP from a sponsoring undertaking located in another Member State – the notification process**

(...)

2.2.2. When an undertaking located in another Member State wishes to sponsor a Guest IORP, the IORP shall inform its home Member State Competent Authority of its intention to accept the proposed sponsorship. This notification starts a process of exchanging information between

- the IORP and its home Member State Competent Authority; and
- the home Member State Competent Authority and the host Member State Competent Authority.

2.2.3. These requirements will apply on each occasion that a sponsoring undertaking located in any host Member State wishes to sponsor a Guest IORP.

(...)

#### **2.3. Initial dialogue between the IORP and its home Member State Competent Authority**

2.3.1. The home Member State Competent Authority shall receive the following information from the IORP:

- the name of the host Member State(s) in which it intends to operate;
- the name of the sponsoring undertaking in the host Member State(s); and
- the main characteristics of the pension scheme to be operated for the sponsoring undertaking in the host Member State(s) (see paragraph 1.3.4 and Appendices 2 and 3).

2.3.2. The date the home Member State Competent Authority receives this information is called the 'Start Date' in this Protocol. If the information required is not all supplied at the same time, the date on which it receives the last item of information will be the Start Date.

Questions 17 and 18 relate to the information a Home MSCA should receive from an IORP wishing to operate cross-border or wishing to extend its cross-border operations into another Host State.

**Question 17** asks whether a Home MSCA ensures that it receives the full range of information that is needed to be able to assess the intended cross-border operations from the IORP.

All 10 reported Home MSCAs (**AT, BE, DE, FI, IE, LI, LU (CAA and CSSF), PT, UK**) responded that they complied with this requirement.

**Question 18** asks whether the check about the completeness of the information is performed each time a sponsoring undertaking wishes to sponsor an IORP. This situation could relate to both the start of the cross-border operations (if more than one Host State is envisaged) and the extension of a cross-border activity with new sponsoring undertakings and/or new Host States.

8 of the reported Home MSCAs (**AT, BE, DE, IE, LI, LU (CAA and CSSF), UK**) reported that they complied with this requirement. The other 2 existing Home MSCAs (**FI, PT**) reported 'NC', as the only cross-border IORP in their jurisdiction only operated in one Host State. In addition to these replies, the description of legislation sent by other MS respondents to the questionnaire shows that

provisions are in place to ensure that the Home MSCA is receiving the information *on each occasion*.

Almost all MS have mentioned that the '*start date*'<sup>15</sup> refers to the day in which the last set of documents is received by the Host MSCA.

**On the basis of the responses provided by MS regarding the implementation of provisions 2.2 – 2.3 of the Protocol, the following issues might benefit from further consideration:**

- It is uncertain what the nature of the information is that the Home MSCA needs to receive (as a minimum) from the IORP in order to assess the notification. In other words: when is the information that the Home MSCA receives complete?
- There is no common procedure regarding mechanism for ensuring that the information is received.
- If an existing cross-border IORP extends its cross-border operations to other sponsoring undertakings, it should inform the Home MSCA. There is however no common mechanism a Home MSCA can use to ensure that the necessary information is received on each occasion that a sponsoring undertaking wishes to sponsor an IORP from another MS.

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<sup>15</sup> According to provision 2.3.2. of the Budapest Protocol, "The date the home Member State Competent Authority receives this information is called the 'Start Date' in this Protocol. If the information required is not all supplied at the same time, the date on which it receives the last item of information will be the Start Date."

➤ **Provisions 2.4 - 2.5.1: Information from Home to Host MSCA and IORP (Qs. 19-24)**

**2.4. Home Member State Competent Authority's doubts as to an IORP's proposed acceptance of sponsorship**

2.4.1. An IORP can operate as a Guest IORP for a sponsoring undertaking in another Member State unless the home Member State Competent Authority has reason to doubt that

- the administrative structure of the IORP or
- the financial situation of the IORP or
- the good repute and professional qualifications or experience of the persons running the IORP are compatible with the operations proposed in the host Member State.

2.4.2. It is recognised that each home Member State Competent Authority will have its own procedures to satisfy itself about each of these requirements.

2.4.3. If, during the notification process, the home Member State Competent Authority has reason to doubt that these requirements are met, the IORP shall not be permitted to engage in the proposed cross-border activity with that particular sponsoring undertaking. The home Member State Competent Authority will make its own arrangements to inform the IORP and, where it considers it appropriate, the proposed host Member State Competent Authority.

Questions 19 to 24 relate to the part of the notification process where information is shared between Home and Host MSCA. The analysis of these questions can be undertaken firstly by reviewing together questions 19 to 21, 22 and 23, and then question 24.

**Questions 19 to 21** relate to the situation where the Home MSCA has reasons to doubt that the IORP is capable of performing the intended cross-border activity. Q19 asks whether the IORP is informed of such a case, the next two questions ask whether the intended Host MSCA will be informed of such a case (Q20) or whether informing the host MSCA is decided by using a case-by-case approach (Q21).

During the reference period, only one MSCA (**LU(CAA)**) had a case in which it had reasons for doubts as to an IORP's proposed acceptance of sponsorship. Since neither the Protocol nor the IORP Directive contain a requirement to always inform the intended host MSCA involved in case of doubts as to the proposed acceptance of sponsorship, LU decided not to inform.

**2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP**

2.5.1. The home Member State Competent Authority has a maximum period of three months from the Start Date to decide whether it has reason to doubt that the IORP meets the requirements to operate cross-border as proposed in the host Member State(s). If the home Member State Competent Authority has no reason to doubt then, within three months from the 'Start Date', it must

- pass in writing the information described in paragraph 2.3.1. to the host Member State Competent Authority;
- inform the IORP that it has passed the information to the host Member State Competent Authority and of the date it did so.

**Questions 22 and 23** relate to the situation where the Home MSCA has no reason to doubt that the IORP is capable of performing the intended cross-border activity and information needs to be sent to the Host MSCA. Q23 asks whether the full set of information is sent to the Host MSCA and Q22 asks whether it is sent within three months from the Start Date (the date on which the Home MSCA received all relevant information). All MS with Home State experience answered both questions positively.

**Question 24** asks whether the Home MSCA informs the IORP of the fact that the information was sent to the Host MSCA and the date that it was sent. Again, all relevant MS answered this question positively.

➤ **Provision 2.5.2-2.5.9: Information from Host to Home MSCA and from Home MSCA to the IORP (Qs. 25-30)**

**2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP**

2.5.2. The host Member State Competent Authority shall acknowledge receipt of the information described in paragraph 2.3.1. as soon as possible. The date the information is received by the host Member State Competent Authority starts the two months time limit in which it shall provide, if appropriate, the home Member State Competent Authority with any information noted in paragraph 2.5.4.

(...)

2.5.4. Having received the information described in paragraph 2.3.1. from the home Member State Competent Authority, the host Member State Competent Authority shall notify the home Member State Competent Authority of its requirements for compliance with any

- social and labour law relevant to the field of occupational pensions under which the pension scheme must be operated in the host Member State;
- special rules about investment that are to apply to those assets of the Guest IORP attributable to activities carried out in the host Member State, as allowed by Article 18 (7) of the Directive (investment rules); and
- additional information requirements to be met by IORPs operating in the host Member State, as allowed by Article 20 (7) of the Directive (information to be given to the members and beneficiaries).

2.5.5. The information in paragraph 2.5.4. must be provided to the home Member State Competent Authority within two months (the 'Expiry Date') of the host Member State Competent Authority receiving the information referred to in paragraph 2.3.1.

2.5.6. The host Member State Competent Authority will provide the requirements described in paragraph 2.5.4. in sufficient time for the home Member State Competent Authority to pass the information about the host Member State's requirements to the IORP by the Expiry Date at the latest.

Questions 25 to 30 relate to the part of the notification process where information on Host State requirements is communicated to the Home MSCA and the IORP. The analysis of these questions can be undertaken firstly by reviewing question 25, followed by questions 26 to 28 together, and then questions 29 and 30 together.

**Question 25** asks whether, when acting as Host State, the respective MSCA acknowledges receipt of the information provided by the Home MSCA. This relates to the information provided by the IORP to the Home MSCA relevant to an application for cross-border activity. According to the Protocol (Article 2.5.3), the Host MSCA should acknowledge as soon as possible receipt of this information.

Some Host MSCAs responded that they did not apply this provision, because they sent their relevant social and labour law and other provisions to the Home MSCA involved, without first acknowledging receipt of the notification. However, this step in the procedure is important to determine the start of the two-month time limit in which the Host MSCA should send its relevant legislation and, more importantly, which will indicate the ultimate start date of the cross-border activity. It was introduced in the Protocol to clarify the procedures to be followed by MSCAs in these circumstances.

Only 2 MS (**HU, RO**) reported non-compliance. Non-compliance might not raise concerns if all the other required information had been sent promptly by the Host MSCA so that the processes for cross-border operation could be finalised within two months – thus making the date the information is received by the Host of less importance. For **RO**, all required data was provided within 1,5 months. However, **HU** reported a sixty-eight-day period for sending the required information to the Home MSCA. Therefore, it would have been useful to the Home MSCA and the IORP to have known when the information was received by the Host MSCA.

As explained in the general findings, a discussion might arise between a Home MSCA and the Competent Authority of an intended Host State whether or not the case at hand actually constitutes cross-border activity. The Protocol originally did not deal with such situations. Following the Protocol's revision, however, it now includes further clarification about how MSCAs should communicate with each other if there is disagreement over the notification. Under the Revised Protocol, the intended Host MSCA should inform the Home MSCA of any disagreement within two months. The Revised Protocol allows for the intended Host MSCA to still send the Home MSCA all the relevant information for a cross-border IORP, even if there is disagreement over the proposed status of the IORP. Where the Host MSCA identifies a clash with its Social and Labour Law, the revised Protocol requires the Host MSCA to inform the Home MSCA of this and to suggest solutions if possible.

**LU (CAA)** and **(CSSF)** both reported, for questions 25 to 28, that they were not the competent authority with respect to being a Host State. Appendix 6 of the Protocol shows another authority as being competent as a Host MSCA (**LU(IGSS)**). However, this authority is not a CEIOPS Member or Observer and was therefore not included in the self-assessment exercise.

**Questions 26 to 28** relate to the Host State law which applies to IORPs from other MS operating in the Host State. The applicable Host State law is, as a minimum, the relevant social and labour law (Q26) and could also include special rules about investments (Q27) or additional information disclosure requirements (Q28).

There are no cases of non-compliance for these questions. 9 MSCAs (**AT, BG, DE, ES, FR, HU, PL, RO** and **SK**) reported having sent special rules on investments, in addition to the relevant social and labour law. 7 MSCAs (**BE, IE, LI, NL, SE, SI, UK**) reported 'NA', as they do not apply specific investment requirements (in addition to the limitations on self-investment in the IORP Directive).

According to the responses to Q28, 4 Host States (**BE, HU, IE, UK**) reported that they do not have additional information requirements.

One Host State (**EE**) did communicate special rules on investments and additional information requirements, but was not able to communicate the relevant social and labour law. This response can be attributed to the fact that social and labour law relevant to the issues reflected in the Protocol is currently not available in this MS.

**2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP**

2.5.7. After receiving the information described in paragraph 2.5.4, the home Member State Competent Authority will pass it to the IORP. The date this information is received by the IORP is called the 'Information Date' in this Protocol.

2.5.8. In the event that the host Member State Competent Authority has not provided the information described in paragraph 2.5.4. to the home Member State Competent Authority before the Expiry Date, the home Member State Competent Authority will pass the information to the IORP when it has been received.

2.5.9. An IORP can operate as a Guest IORP on the earlier of

- the Information Date; or
- the Expiry Date.

**Questions 29 and 30** relate to Home MSCAs passing on the information they received from the Host MSCA to the IORP. All MS responded positively to these questions.

**On the basis of the responses provided regarding the implementation of provisions 2.5.2-2.5.9 of the Protocol, the following issues might benefit from further consideration:**

The start of the cross-border activities under the Budapest Protocol is connected to the date on which the notification was received by the Host MSCA. For this reason, it is important that the Home MSCA knows as soon as possible when the notification is received. The results of the self-assessments show that this is not always the case. Two practices appear to be applied by MSCAs in such cases:

1. The Home MSCA asks the Host MSCA to immediately acknowledge receipt of the information for notification of cross-border activity so the start of the two-month time limit can be noted; and
2. The notification is sent by the Home MSCA to the Host MSCA by way of 'Registered mail with advice of receipt'. This allows for an 'automatic' message to the Home MSCA that the notification is received by the Host MSCA.

A suggestion was made during the discussions at the Review Panel, in addition to the written procedure as required by the IORP Directive, to allow for sending the notifications by certificated email. This proposition could be investigated further, taking into consideration at least the confidentiality issues connected to this type of communication.

For **LU (CAA and CSSF)**, it is recommended to clarify if **LU (IGSS)** wishes to participate in any future peer review / self-assessment exercise.

## **PART III - Ongoing supervision and the exchange of additional information – after the notification process**

### ➤ **Provisions 3.3-3.4: Changes to information previously supplied (Qs. 31-35)**

#### **3.3. Changes to information previously supplied about relevant social and labour law, investment and disclosure of information provisions applicable to the operation in the host Member State**

3.3.1. The home Member State Competent Authority will need to be informed about any significant changes to the information, with which it was previously supplied, about

- relevant social and labour law;
- any applicable investment rules; and
- applicable requirements for the disclosure of information

as soon as possible and in any event by the later of the date the changes take effect or the date that the host Member State Competent Authority has been able to give full and due consideration to the changes.

3.3.2. The host Member State Competent Authority informs the home Member State Competent Authority in writing of any significant changes in respect of the relevant social and labour law, the applicable investment rules and disclosure requirements.

3.3.3. Upon being advised of a change to the information it has been given, the home Member State Competent Authority will

- As soon as possible pass on the information to the IORP and, if it has been provided with it, information about the likely impact of the change;
- Confirm to the host Member State competent authority, in writing that it has passed on the information to the IORP and the date it did so.

The analysis of the responses to questions 31 to 35 can be undertaken by firstly reviewing questions 31 and 32 together, then question 33, and then questions 34 and 35 together, as they are related.

**Questions 31 and 32** refer to the provision of information on significant changes in the relevant Host MS social and labour law, investment rules and disclosure requirements.

Three MSCAs (**AT**, **LI** and **UK**) responded to these questions with other than 'NA' or 'NC' responses. Each of them confirmed that upon receipt of information from the host MSCA regarding changes to social and labour law, they all passed the information to the IORP and confirmed that to the host MSCA.

**Question 33** refers to the Host MSCA passing on information to the Home MSCA on changes to the relevant social and labour law (see Q31 and Q32).

Five MS (**BE**, **DE**, **EE**, **NL**, and **SK**) confirmed that they had done that. The other MS reported that they had no cause to do so or that the provision was not applicable to their country, owing to the nature of their legislation.

### **3.4 Changes to information previously supplied about an IORP**

3.4.1. The Competent Authorities recognise that events, or significant changes to an IORP, will give rise to a need for the Competent Authorities to exchange information. These may include changes to the information passed between the Competent Authorities during the notification process and other significant changes to an IORP or its sponsoring undertakings.

3.4.2. Where any information about such changes may be needed by either Competent Authority for supervision purposes or could result in significant risk to the interests of members or beneficiaries, the information about the event or change will be shared.

3.4.3. On receiving information about an event or change to the IORP, the home Member State Competent Authority will take any supervisory actions it considers necessary and which it is competent to perform, informing the host Member State Competent Authority as appropriate.

**Questions 34 and 35** concern the general obligation for an MSCA to inform other MSCAs of significant events and of supervisory actions taken. The nature of the significant events or supervisory actions is not defined in the Protocol.

Three MSCAs (**BG, IE** and **UK**) reported that they had a reason to pass such information to other MSCAs, the other MSCAs reported either that they had no cause to do so or that, given the lack of cross-border activity in their country, the need to exchange information as referred to in provision 3.4 of the Protocol could not arise in their situation.

### **On the basis of the responses provided regarding the implementation of provisions 3.3-3.4 of the Protocol, the following observations can be made:**

As regards the exchange of post notification information, great reliance is placed on both Home and Host MSCA to be pro-active with regard to the provision of information to other MSCAs. To a significant degree, this also requires judgement on behalf of the MSCAs as to when an exchange of information is appropriate (e.g., when an event is deemed to be significant).

It is noted that the revised Protocol has been expanded to clarify the actions that MS should take. Also, arrangements have been made for the relevant Social and Labour Law to be made available via CEIOPS' website.

➤ **Provisions 3.5-3.8: Non-compliance or other concerns (Qs. 36-40)**

**3.5. Home or host Member State Competent Authority identifies non-compliance or has other concerns**

3.5.4. The home Member State Competent Authority will – in coordination with the host Member State Competent Authority – take action to ensure future compliance, including, where appropriate, any actions set out under Article 14. Where, in respect of the host Member State’s relevant requirements of social and labour law, such actions prove ineffective, or because appropriate measures are lacking in the home Member State, then, and only after informing the home Member State Competent Authority of its intentions, the host Member State Competent Authority may take action against the Guest IORP, but only in the circumstances and to the extent permitted by the Directive.

3.5.5. Any action taken under paragraph 3.5.4. by the host Member State Competent Authority to penalise a Guest IORP must be notified to the home Member State Competent Authority before it is taken.

3.5.6. Examples of the matters involving a Guest IORP which might give rise to concerns by the home Member State Competent Authority include

- possible non-compliance with any host Member State rules about investment that apply to the assets of the Guest IORP, as allowed by Article 18 (7) of the Directive;
- failure to comply with the full funding requirements determined by the home Member State and, where appropriate, the requirement for regulatory own funds as provided for in Article 17.

3.5.7. If the home Member State Competent Authority has such concerns it will take appropriate action, and, depending on the nature of the concern, it will notify, in writing, the host Member State Competent Authority of the details of that event, the name of the Guest IORP, and sponsoring undertaking involved.

**3.6. Sharing information about interventions**

3.6.1 The home Member State Competent Authority will advise the host Member State Competent Authority of any action taken under Article 14 in respect of the IORP in so far as it may significantly affect the operation of the Guest IORP in the host Member State.

3.6.2 The host Member State Competent Authority will inform the home Member State Competent Authority of any action to be taken in respect of a Guest IORP under Article 20(10) before such action is taken.

The analysis of these questions can be undertaken firstly by reviewing together questions 36 and 37, then questions 38 and 39, and then question 40.

Questions 36 and 37 relate to actions that need to be taken to correct a breach of host state legislation by a Guest IORP. It can be anticipated that the limited number of actual cases for this provision is also due to the low number of cross-border cases.

**Question 36** concerns the notification of the Home MSCA by the Host MSCA before the latter takes actions against a Guest IORP. Only one MSCA (**SK**) responded to the question with other than a ‘NA’ or ‘NC’ response This MSCA however stated additionally that there had been no actual case yet in which they had to take actions against a Guest IORP, but that their legislation provided for such notification if there would be an actual case. Therefore, their answer should be interpreted as ‘NC’.

**Question 37** concerns the notification of the Host MSCA by the Home MSCA before actions are taken against an IORP operating in that Host State. Only one

MSCA (**DE**) responded to the question with other than a 'NA' or 'NC' response. This MSCA confirmed that actions had been taken against an IORP operating cross-border.

### **3.7. Ring-fencing of an IORP's assets and liabilities**

3.7.1. Under Article 21 (5) the host Member State Competent Authority may ask the home Member State Competent Authority to decide on "ring-fencing" of the assets and liabilities of a Guest IORP which are attributable to its activities in the host Member State, so that these assets are kept separate from the remaining assets and liabilities of the IORP.

3.7.2. If the home Member State Competent Authority decides that the assets and liabilities of a Guest IORP should be ring-fenced, the home Member State Competent Authority will notify the IORP that appropriate forms of ring-fencing, as envisaged in Articles 16 (3), 18 (7) and 21 (5) apply. It will also notify the IORP of which parts of its assets and liabilities are to be kept separate under the appropriate forms of ring-fencing: and the host Member State Competent Authority that ring fencing is to apply to the assets and liabilities of the Guest IORP and the date from which the ring-fencing will apply.

**Questions 38 and 39** relate to the notification to the Host MSCA by the Home MSCA of the application of ring-fencing of the assets and liabilities of a guest IORP and the starting date thereof.

Only two MS (**LU** and **PT**) responded to these questions with other than 'NA' or 'NC'. **LU** fully complied with this provision.

### **3.8. Interaction with the Life Directive**

3.8.3. The home Member State Competent Authority will notify the host Member State Competent Authority that Article 4 applies.

**Question 40** relates to the option, provided by Article 4 of the IORP Directive, to apply the IORP Directive to the occupational pensions activities of life insurance undertakings.

All but four MS have responded with 'NA', indicating that in their jurisdiction the option is not used. All four MS that did implement the Article 4-option answered with 'NC', indicating either that they had not operated as a Home State yet (**FR, LT, SE**) or that the cross-border activities originating from that jurisdiction at the time of the response were not performed by insurance undertakings (**LI**).

## CONCLUSIONS

The peer review exercise not only looked at the application of the Budapest Protocol, but also at the application of the General Protocol<sup>16</sup>. Within the discussions related to the results from the peer review of the General Protocol, several issues were raised that could benefit the future work on the Budapest Protocol and/or the IORP Directive. An example of this is the recommendation from the exercise on the General Protocol that MSCAs should ensure the use of an internal registration system to keep track of cross-border cases (see CEIOPS-RP-150-10).

In general there was and to date is a low level of cross-border IORP activity within MS. The decision of IORPs not to start cross-border activity could be connected to a lack of clarity (partly resolved by the revision of the Budapest Protocol) and to obstacles that go beyond the dialogue between supervisors (and that in part will be addressed in the revision of the IORP Directive).

Given the low level of cross-border activity, it is extremely difficult to elaborate realistic conclusions on the policies in place. Since a significant number of MS had no cases, the policies defined in these jurisdictions are indeed only potential, and therefore it is still too early to produce a fact-based assessment of them.

### **Social and Labour Law published on CEIOPS/EIOPA website**

It might facilitate the communication between MSCAs and the IORP with regard to the relevant Social and Labour Law, if it is not only transmitted from the Host to the Home MSCA (as required by the IORP Directive), but if additional requirements are introduced:

- for the Host MSCA to provide the Social and Labour Law to CEIOPS/EIOPA for publication on the CEIOPS/EIOPA website, and update these when necessary;
- for the Home MSCA to inform the IORP of the fact that the intended Host State's social and labour law can be found on the CEIOPS/EIOPA website. Home MSCAs could then ask the IORP to confirm that it has familiarised itself with the relevant Social and Labour Law, for instance as part of the main characteristics document.

### **Enhanced Cooperation**

MS are in general adhering to the provisions of the Budapest Protocol. It should also be noted that the Protocol has been revised since this exercise was carried out. The changes made will also help in MSCAs communicating with each other, especially where there is disagreement over cross-border activity.

Amongst the MSCAs, the need is felt to extend the dialogue between supervisors to substantial aspects of the cross-border activity, in addition to the formal rules. In particular, in order to make the dialogue more effective, the MSCAs should enhance the exchange of information, for instance regarding statistical information and the question whether the notification is actually followed by a real cross-border activity.

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<sup>16</sup> CEIOPS-RP-150-10 (to be published simultaneously with this report )

## ANNEX 1: THE SELF-ASSESSMENT QUESTIONNAIRE AND THE RESPONSES

This annex contains the questions that were asked in the self-assessment, the benchmarks that were used when analysing the responses and the benchmark results that can be identified from the responses.

### Provision 1.3. Harmonisation of documents used

**There were 3 questions** asked in relation to the provision of information as in Appendix 2 of the Protocol:

- 1 **When acting as home MSCA**, do you provide the Host MSCA with all the information set out in Appendix 2 of the Protocol?
- 2 In the positive, do you provide this information in a standard document with the list of main characteristics as set out in Appendix 2 of the Protocol?
- 3 In the positive to the first question, do you provide this information with the list of main characteristics in the same order as set out in Appendix 2 of the Protocol?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 1.

**Not applied:** If a negative answer is given to question 1.

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

### Provision 1.4. Language

**Questions related to the provisions of main characteristics of the scheme in the language of the host:**

- 4 **When acting as Home MSCA**, do you provide the Host MSCA the main characteristics in the language of the Host MS?
- 5 In the negative, do you provide the Host MSCA the main characteristics in another language agreed in advance with the Host MSCA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 4 or 5.

**Not applied:** If a negative answer is given to question 5.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

**Questions related to the provision of the relevant Social and Labour Law:**

- 6** When acting as Host MSCA, do you provide the Home MSCA with the relevant social and labour law in the language of the host MS?
- 7** Do you provide the Home MSCA with a fully translated version of the relevant social and labour law in a language previously agreed with the Home MSCA?
- 8** Do you provide the Home MSCA with a summary version of the relevant social and labour law drafted in a language previously agreed with the Home MSCA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 6.

**Not applied:** If a negative answer is given to question 6.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE BG DE ES FR IE LI NL PL RO SE SI SK UK		HU	EE LU(CAA) LU(CSSF)	CZ DK FI IT LT LV MT NO PT
How many MS	15	0	1	3	9

**Questions related to the provision of disclosure provisions (i.e. information requirements):**

- 9** When acting as Host MSCA, do you provide the Home MSCA with the disclosure provisions, if any, in the language of the host MS?
- 10** Do you provide the Home MSCA with a fully translated version of the disclosure provisions, if any, in a language previously agreed with the Home MSCA?
- 11** Do you provide the Home MSCA with a summary version of the disclosure provisions, if any, drafted in a language previously agreed with the Home MSCA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 9, if applicable.

**Not applied:** If a negative answer is given to question 9, if applicable.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BG DE ES FR LI NL PL RO SE SI SK		EE HU	BE IE LU(CAA) LU(CSSF) UK	CZ DK FI IT LT LV MT NO PT
How many MS	12	0	2	5	9

**Questions related to the provision of investment requirements:**

- 12** When acting as host MSCA, do you provide the Home MSCA with the investment provisions, if any, in the language of the host MS?
- 13** In the negative, do you provide the Home MSCA with a fully translated version of the investment provisions, if any, in a language previously agreed with the Home MSCA?
- 14** In the negative, do you provide the Home MSCA with a summary version of the investment provisions, if any, drafted in a language previously agreed with the Home MSCA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 12, if applicable.

**Not applied:** If a negative answer is given to question 12, if applicable.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BG DE ES FR PL RO SK		EE HU	BE IE LI LU(CAA) LU(CSSF) NL SE SI UK	CZ DK FI IT LT LV MT NO PT
How many MS	8	0	2	9	9

### Provision 1.7. Additional Cooperation

**There were 3 questions** asked in relation to the provision of the sharing of information on competence and professional experience of persons running an IORP:

- 15** Do you share information on good repute, competence and professional experience of the persons running an IORP to the relevant CA, on your own initiative?
- 16** If you are requested by another CA, do you share information on good repute, competence and professional experience of the persons running an IORP to the relevant CA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 15 or 16.

**Not applied:** If a negative answer is given to question 16.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	BE ES LI RO SE				AT BG CZ DE DK EE FI FR HU IE IT LT LU(CAA) LU(CSSF) LV MT NL NO PL PT SI SK UK
How many MS	5	0	0	0	23

### Provisions 2.2 – 2.3. Information from the IORP to the Home MSCA

**2.2. Requirements for an initial dialogue when an IORP expresses its intention to accept sponsorship as a Guest IORP from a sponsoring undertaking located in another Member State – the notification process**

**2.3. Initial dialogue between the IORP and its home Member State Competent Authority**

**There were 2 questions** asked in relation to the provision of information listed under Article 2.3.1:

- 17** When acting as Home MSCA, do you ensure that you receive the full range of information listed under art. 2.3.1 of the Protocol?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 17.

**Not applied:** If a negative answer is given to question 17.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

**There was 1 question asked in relation to the provisions of information on each occasion the sponsoring undertaking (in any host Member State) sponsors the IORP:**

**18 When acting as Home MSCA, do you ensure that you receive the information on each occasion that a sponsoring undertaking located in any host Member State wishes to sponsor the IORP?**

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 18.

**Not applied:** If a negative answer is given to question 18.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE IE LI LU(CAA) LU(CSSF) UK			CZ EE	BG DK ES FI FR HU IT LT LV MT NL NO PL PT RO SE SI SK
How many MS	8	0	0	2	18

**Provision 2.4. – 2.5.1. Information from Home to Host MSCA and IORP**

**2.4. Home Member State Competent Authority's doubts as to an IORP's proposed acceptance of sponsorship**

**2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP**

**There were 3 questions asked in relation to the provision of the acceptance for a sponsoring undertaking to sponsor an IORP to operate cross-border activity:**

**19 When your Authority acts as home MSCA and has reason to doubt that the requirements to operate cross-border are met, do you inform the IORP that it will not be permitted to operate cross-border?**

**20 In the same occasion, do you always inform the host MSCA?**

**21 In the negative, do you consider case by case to inform the host MSCA?**

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 19.

**Not applied:** If a negative answer is given to question 19.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	LU(CAA)			CZ EE	AT BE BG DE DK ES FI FR HU IE IT LI LT LU(CSSF) LV MT NL NO PL PT RO SE SI SK UK
How many MS	1	0	0	2	25

**Question related to the provision of respecting of time limits:**

**22** When acting as Home MSCA, do you respect the time limit of 3 months?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 22.

**Not applied:** If a negative answer is given to question 22.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

**Question related to the provision of passing on information under Article 2.3.1 to the Host MSCA:**

**23** When your Authority receives the information listed under art. 2.3.1. of the Protocol from the IORP, and if you have no reason to doubt that the requirements to operate cross-border are met, do you always pass on this information to the Host MSCA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 23.

**Not applied:** If a negative answer is given to question 23.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

**Question related to the provision of informing the IORP about passing on information:**

**24** When acting as Home MSCA, do you inform the IORP that you passed on this information to the host MSCA and of the date you did so?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 24.

**Not applied:** If a negative answer is given to question 24.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

### Provisions 2.5.2. – 2.5.6. Information from Host to Home MSCA

#### 2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP

**25 When acting as Host MSCA**, do you acknowledge receipt of the information described in paragraph 2.3.1.?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 25.

**Not applied:** If a negative answer is given to question 25.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE BG DE EE ES FR IE LI NL PL SE SI SK UK		HU RO	LU(CAA) LU(CSSF)	CZ DK FI IT LT LV MT NO PT
How many MS	15	0	2	2	9

**26 When acting as Host MSCA**, do you provide the home MSCA with the relevant social and labour law?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 26.

**Not applied:** If a negative answer is given to question 26.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE BG DE ES FR HU IE LI NL PL RO SE SI SK UK			EE LU(CAA) LU(CSSF)	CZ DK FI IT LT LV MT NO PT
How many MS	16	0	0	3	9

**27 When acting as Host MSCA**, do you provide the home MSCA with the special rules about investment, if any?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 27.

**Not applied:** If a negative answer is given to question 27.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BG DE EE ES FR HU PL RO SK			BE IE LI LU(CAA) LU(CSSF) NL SE SI UK	CZ DK FI IT LT LV MT NO PT
How many MS	10	0	0	9	9

**28 When acting as Host MSCA**, do you provide the home MSCA with the additional information requirements, if any?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 28.

**Not applied:** If a negative answer is given to question 28.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BG DE EE ES FR LI NL PL RO SE SI SK			BE HU IE LU(CAA) LU(CSSF) UK	CZ DK FI IT LT LV MT NO PT
How many MS	13	0	0	6	9

**Provisions 2.5.7 – 2.5.9. Information from the Home MSCA to the IORP**

**2.5. Dialogue during the notification process between the Competent Authorities, and between the home Member State Competent Authority and the IORP**

**There were 2 questions** asked in relation to this provision of the transferral of information from Host MSCA to the IORP:

**29 When acting as a home MSCA**, do you pass on the information received from the Host MSCA to the IORP?

**30 When acting as a home MSCA**, in the case you received the information from the host MSCA after the expiry date, do you pass on this information to the IORP anyway?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 29 and 30.

**Not applied:** If a negative answer is given to question 29 or 30.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT BE DE FI IE LI LU(CAA) LU(CSSF) PT UK			CZ EE	BG DK ES FR HU IT LT LV MT NL NO PL RO SE SI SK
How many MS	10	0	0	2	16

### Provision 3.3. – 3.4. Changes to information previously supplied

**3.3. Changes to information previously supplied about relevant social and labour law, investment and disclosure of information provisions applicable to the operation in the host Member State**

**3.4 Changes to information previously supplied about an IORP**

**Questions related to the provision of information on significant changes in Social and Labour Law (Home to Host):**

- 31 If as a Home MSCA** you received the information regarding any significant changes, did you pass the information to the IORP?
- 32 If as a Home MSCA** you passed on the information regarding any significant changes to the IORP, did you confirm this with the host MSCA?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 31 and 32.

**Partially applied:** If a positive answer is given to question 31 and a negative answer to question 32.

**Not applied:** If a negative answer is given to question 31.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	AT LI UK			CZ EE	BE BG DE DK ES FI FR HU IE IT LT LU(CAA) LU(CSSF) LV MT NL NO PL PT RO SE SI SK
How many MS	3	0	0	2	23

**Question related to the provision of information on significant changes in Social and Labour Law, investment rules and disclosure requirements (Host to Home):**

- 33 As a Host MSCA** do you inform the home MSCA in writing of any significant changes in respect of the relevant social and labour law, the applicable investment rules and disclosure requirements?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 33.

**Not applied:** If a negative answer is given to question 33.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	BE DE EE NL SK			LU(CAA) LU(CSSF)	AT BG CZ DK ES FI FR HU IE IT LI LT LV MT NO PL PT RO SE SI UK
How many MS	5	0	0	2	21

**There were 2 questions** asked in relation to the provision of information about significant events and changes:

- 34 As a MSCA**, do you inform the other MSCA about other significant events and changes?  
**35 As a home MSCA**, when appropriate, do you inform the host of any supervisory actions taken?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 34.

**Not applied:** If a negative answer is given to question 34.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	BG IE UK				AT BE CZ DE DK EE ES FI FR HU IT LI LT LU(CAA) LU(CSSF) LV MT NL NO PL PT RO SE SI SK
How many MS	3	0	0	0	25

**Provisions 3.5. – 3.8. Non-compliance or other concerns**

**3.5. Home or host Member State Competent Authority identifies non-compliance or has other concerns**

**3.6. Sharing information about interventions**

**3.7. Ring-fencing of an IORP's assets and liabilities**

**3.8. Interaction with the Life Directive**

**There was 1 question** asked in relation to the provision of the advance notification of actions taken (Host to Home):

- 36 As a Host MSCA**, if you take actions against a Guest IORP, do you notify the Home MSCA before the action?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 36.

**Not applied:** If a negative answer is given to question 36.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	SK			LU(CAA) LU(CSSF)	AT BE BG CZ DE DK EE ES FI FR HU IE IT LI LT LV MT NL NO PL PT RO SE SI UK
How many MS	1	0	0	2	25

**There was 1 question asked in relation to the provision of the advance notification of actions taken (Home to Host):**

**37 As a Home MSCA**, if you take any actions against an IORP that is operating cross-border, do you notify the Host MSCA about your actions?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 37.

**Not applied:** If a negative answer is given to question 37.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	DE			CZ EE	AT BE BG DK ES FI FR HU IE IT LI LT LU(CAA) LU(CSSF) LV MT NL NO PL PT RO SE SI SK UK
How many MS	1	0	0	2	25

**There were 2 questions asked in relation to the provision of the notification of ring-fencing to Host MSCA:**

**38 As a Home MSCA** if you apply ring-fencing of the asset and liabilities of a Guest IORP, do you notify to the host MSCA?

**39** In the positive to question 38, do you inform the host MSCA the date from which the ring-fencing will apply?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 38 and 39.

**Partially applied:** If a positive answer is given to question 38 and a negative answer to question 39.

**Not applied:** If a negative answer is given to question 38.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS	LU(CAA)		PT	CZ EE HU	AT BE BG DE DK ES FI FR IE IT LI LT LU(CSSF) LV MT NL NO PL RO SE SI SK UK
How many MS	1	0	1	3	23

**There was 1 question** asked in relation to the provision of the notification on application of Article 4:

**40** If applicable, **when acting as home MSCA** did you notify the host MSCA that Article 4 applies?

and the benchmarks for the assessment are:

**Fully applied:** If a positive answer is given to question 40, if applicable.

**Not applied:** If a negative answer is given to question 40, if applicable.

which gives the following results:

	Fully applied	Partially applied	Not applied	Not applicable	No cases
Which MS				AT BE BG CZ DE DK EE ES FI HU IE IT LU(CAA) LU(CSSF) LV MT NL NO PL PT RO SI SK UK	FR LI LT SE
How many MS	0	0	0	24	4

## ANNEX 2: LIST OF ABBREVIATIONS

### Member States Codes and CEIOPS Members and Observers

<b>AT</b>	Austria	Finanzmarktaufsichtsbehörde (FMA)
<b>BE</b>	Belgium	Banking, Finance and Insurance Commission (CBFA)
<b>BG</b>	Bulgaria	Financial Supervision Commission
<b>CY</b>	Cyprus	Insurance Companies Control Service (ICCS) Supervisory Authority of Occupational Retirement Benefits Funds
<b>CZ</b>	Czech Republic	Czech National Bank
<b>DE</b>	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)
<b>DK</b>	Denmark	Finanstilsynet
<b>EE</b>	Estonia	Financial Supervision Authority/FINANTSINSPEKTSIOON
<b>ES</b>	Spain	Dirección General de Seguros y Fondos de Pensiones, Ministerio de Economía y Hacienda
<b>FI</b>	Finland	Financial Supervisory Authority
<b>FR</b>	France	Autorité de Contrôle Prudentiel (ACP)
<b>GR</b>	Greece	Bank of Greece - Department of Private Insurance Supervision Private Insurance Supervisory Committee (PISC)
<b>HU</b>	Hungary	Pénzügyi Szervezetek Állami Felügyelete Hungarian Financial Supervisory Authority
<b>IE</b>	Ireland	Insurance Supervision Department in the Central Bank of Ireland The Pensions Board (PB)
<b>IS</b>	Iceland	Financial Supervisory Authority (FME) (Fjármálaeftirlitid)
<b>IT</b>	Italy	Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo (ISVAP) Commissione di Vigilanza sui Fondi Pensione (COVIP)
<b>LI</b>	Liechtenstein	Financial Market Authority (FMA)
<b>LT</b>	Lithuania	Insurance Supervisory Commission of the Republic of Lithuania
<b>LU</b>	Luxembourg	Commissariat aux Assurances (CAA) Commission de Surveillance du Secteur Financier (CSSF)
<b>LV</b>	Latvia	Financial and Capital Market Commission
<b>MT</b>	Malta	Malta Financial Services Authority
<b>NL</b>	The Netherlands	De Nederlandsche Bank (DNB)
<b>NO</b>	Norway	Kredittilsynet (The Financial Supervisory Authority of Norway)
<b>PL</b>	Poland	Polish Financial Supervision Authority
<b>PT</b>	Portugal	Instituto de Seguros de Portugal
<b>RO</b>	Romania	Insurance Supervisory Commission (CSA) Romanian Private Pension System Supervision Commission (RSCPPS)
<b>SE</b>	Sweden	Financial Supervisory Authority
<b>SI</b>	Slovenia	Insurance Supervision Agency
<b>SK</b>	Slovakia	National Bank of Slovakia
<b>UK</b>	United Kingdom	Financial Services Authority (FSA) The Pensions Regulator (TPR)

### Other abbreviations

CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
EIOPA	European Insurance and Occupational Pensions Authority
IORP	Institution for Occupational Retirement Provision
MS	Member State
MSCA	Member State Competent Authority

### ANNEX 3: List of Persons who participated in the Review Panel meetings and in the Review by Peers

This list is not exhaustive as many persons who worked offsite from their offices have also greatly contributed to the work of the Review Panel for the finalisation of the peer review exercises and this report.

Adina Dragomir (RO)	Iwona Kraśniewska (PL)
Agnė Vaitkevičiūtė (LT)	Jan Dezort (CZ)
Alexander Warzilek (AT)	Janice Lambert (UK)
Ana María Aznar (ES)	Jiří Kalivoda (CZ)
Ana Teresa Mutiñho (PT)	John Kok (NL)
Angèle Grech (MT)	Jos Kleverlaan (NL)
Ann Devos (BE)	Jovita Burlėgienė (LT)
Anthony Kruizinga (NL)	Jurij Gorisek (SI)
Anu Kõve (EE)	Maarten Gelderman (NL)
Athéné Leskó (HU)	Maciej Hajewski (PL)
Axel Oster (DE)	Maike Grau (DE)
Carina Andersson (SE)	Markku Sorvari (FI)
Catherine Coucke (CEIOPS Secretariat)	Michel Flamee (BE)
Chris Clark (UK)	Michèle Osweiler (LU)
Christina Panagiotopoulou (GR)	Noël Guibert (FR)
Ciaran Nugent (IE)	Pat O'Sullivan (IE)
Danielle Hoscheid (LU)	Patricia Ballantine (IE)
Dora Iltcheva (CEIOPS Secretariat)	Peter Braumueller (AT)
Edward Forshaw (UK)	Petra Hielkema (NL)
Elena Barra Caracciolo (IT)	Raffaele Capuano (IT)
Elena Moiraghi (IT)	Rick Hoogendoorn (NL)
Erika Žalytė (LT)	Rodica Popescu (RO)
Evert Haaksma (NL)	Seppo Juutilainen (FI)
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Fiona Rogers (UK)	Thijs van Woerden (NL)
François Témpe (FR)	Tomáš Tureček (SK)
Gerlinde Taurer (AT)	Tony Jeffery (IE)
Gorazd Čibej (SI)	Truus Stadt (NL)
Gudrun Bolek (AT)	Victor Rod (LU)
Hannah King (UK)	