



EIOPA REGULAR USE

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28 September 2018

### **Decision of the Board of Supervisors**

#### **on the cooperation of the competent authorities of the Member States of the European Economic Area with regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution**

THE BOARD OF SUPERVISORS OF THE EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY,

Having regard to Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pension Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC<sup>1</sup>, in particular Article 29 thereof;

Whereas:

- (1) The Protocol relating to the cooperation of the competent authorities of the Member States of the European Union in particular concerning the application of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (CEIOPS-DOC-02/06) (the 'Luxembourg Protocol'), provided for a framework for cooperation and exchange of information between competent authorities regarding the implementation of that directive;

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<sup>1</sup> OJ L 331, 15.12.2010, p. 48.

- (2) Directive (EU) 2016/97 of the European Union and of the Council of 20 January 2016 on insurance distribution repealed Directive 2002/92/EC as of 1 October 2018;
- (3) The competent authorities of the European Economic Area (the 'competent authorities') consider that the new insurance and reinsurance distribution regime requires the deepening of the cooperation among them to allow for an increased level of market integration. This requires updating the Luxembourg Protocol in accordance with the new insurance and reinsurance distribution framework;
- (4) Cooperation and exchange of information between the competent authorities are essential to protect customers and ensure the soundness of insurance and reinsurance business in the internal market. The exchange of information should be promoted, in particular, both in the process of registration and on an ongoing basis, with reference to information concerning the good repute and the professional and knowledge competences of persons responsible for carrying out the activity of an insurance or reinsurance distributor. In order to ensure a high quality insurance distribution service and effective consumer protection, home and host Member States, including the EEA EFTA States, should closely cooperate in the enforcement of the obligations set out in Directive (EU) 2016/97;
- (5) This Decision reflects the joint decision of the competent authorities to replace the Luxembourg Protocol with a new arrangement which is developed and agreed upon by the European Insurance and Occupational Pensions Authority (EIOPA) and the competent authorities with regard to the provisions of Directive (EU) 2016/97.

HAS DECIDED AS FOLLOWS:

#### Article 1

This Decision, including the provisions relating to the cooperation of the competent authorities with regard to the application of Directive (EU) 2016/97, as set out in the Annex hereto, shall enter into force on **1 October 2018**.

It shall repeal the Luxembourg Protocol from that date.

## Article 2

1. This Decision shall apply to the :
  - (a) all national authorities competent for the supervision of insurance and reinsurance distributors, which are Members of EIOPA, and
  - (b) the EEA EFTA Members of the Board of Supervisors of EIOPA to the extent to which Directive (EU) 2016/97 is binding on them.
  
2. If certain supervisory tasks, as laid down in Directive (EU) 2016/97, fall under the competence of other competent authorities that are not Members of the Board of Supervisors of EIOPA, those national authorities may, subject to approval by the Board of Supervisors of EIOPA, apply the provisions of this Decision set out in the Annex to this Decision by signing a declaration of commitment, if this contributes to further strengthening cross-border cooperation.



28 September 2018

## **Annex**

**Cooperation of the competent authorities of the Member States of the European Economic Area with regard to the application of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution**

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## **PART I**

### **GENERAL CONSIDERATIONS**

#### **1.1. General aims and principles**

The Competent Authorities – as defined in Appendix I –, whilst recognising the principle of single registration and division of competences between home and host Member States<sup>2</sup> established in Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (the 'IDD'), acknowledge the importance of effective cooperation to facilitate the carrying out of their respective supervisory duties.

This Decision needs to be read together with the relevant provisions (including the definitions) of the IDD.

The Competent Authorities intend to uphold practical cooperation between national administrative services for the purpose of facilitating the supervision of insurance and reinsurance distributors (the 'Distributors') within the European Economic Area (EEA) and of examining any difficulties which may arise in the application of the IDD.

The procedures and information described in the Decision constitute minimum requirements and provide considerations on the communication of additional information. Nothing in the Decision should be interpreted in such a way as to hinder the exchange of further information and the extended collaboration between the Competent Authorities, as concerns the supervision of Distributors.

The information exchange requirements described in the Decision should take into account preventive and risk-based supervision, which includes the verification on a continuous basis of the proper operation of the insurance distribution activities and the compliance with supervisory provisions by Distributors.

#### **1.2. Cooperation between the Competent Authorities**

As laid down in Article 13 of the IDD, the Competent Authorities shall cooperate among themselves and exchange any relevant information on Distributors in order to ensure the proper application of the IDD.

The Competent Authorities ascertain that a similar level of protection should be assured to policyholders across the EEA regardless of the location of the Distributor, that the supervision of Distributors has an ongoing character and that

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<sup>2</sup> References to home and host Member States include respectively home and host EEA EFTA States, as appropriate and subject to Article 2(1)(b) of this Decision.

its efficiency should be based upon the knowledge of the situation of the Distributors and the possibility of joint action.

The Competent Authorities intend to cooperate in all cases necessary for the proper application of Union law and to mutually facilitate the carrying out of their tasks and to guarantee the good functioning of the internal market.

Notwithstanding the cooperation mechanisms already foreseen in the IDD, the Competent Authorities felt the need to further develop internal mechanisms that enable them to foster regular exchanges and a genuine dialogue between themselves in view of the cross-border activities of Distributors. These internal mechanisms should include *inter alia* the use of common templates for notification procedures<sup>3</sup> and the establishment of contact points with dedicated institutional e-mail addresses in each Competent Authority.

The Competent Authorities acknowledge that the internal mechanisms may not, in any case, result in the removal from the various authorities of the competence which is laid down by the IDD.

### **1.3. Scope of and relationship with the Decision on the collaboration of the insurance supervisory authorities**

The rules on registration and notification of an insurance or reinsurance intermediary (together an "Intermediary") and an ancillary insurance intermediary ("Ancillary Intermediary") established in Part II of this Decision shall not apply to the activity of insurance and reinsurance undertakings. The Competent Authorities should refer to the relevant provisions of the Decision on the collaboration of the insurance supervisory authorities for the respectively applicable rules<sup>4</sup>.

The rules detailed in Part I, Part III and IV are relevant to the activity of all Distributors.

### **1.4. Rules on professional secrecy**

The Competent Authorities agree to exchange confidential information whenever possible, within the limits of the rules laid down in Article 13(4) of the IDD in order to improve the effectiveness of the supervision of insurance and reinsurance distribution.

### **1.5. Supervision of professional requirements**

In view of the importance of supervision of the professional and organisational requirements for Distributors, as determined in Article 10 of the IDD, the Competent Authorities endeavour to share all relevant information available to them in those fields.

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<sup>3</sup> The template for the notification for an insurance or reinsurance intermediary or ancillary intermediary to operate under the freedom of establishment can be found in Appendix II-A and the template to operate under the freedom to provide services in Appendix II-B of this Decision.

<sup>4</sup> Decision of the Board of Supervisors on the collaboration of the insurance supervisory authorities of the Member States of the European Economic Area of 30 January 2017 (EIOPA-BoS-17/014).

Within the context of the internal market, the Competent Authorities stress the importance of a rigorous examination of the registration files for new Intermediaries and Ancillary Intermediaries by the Competent Authority of the home Member State (“Home Competent Authority”) and the consistent application of the minimum criteria relating to the supervision of access to the insurance distribution activity.

### **1.6. Bilateral agreements**

The Competent Authorities acknowledge that the rules for cooperation set out in this Decision may be insufficient when faced with actual cases requiring deeper cooperation. As a result, the Competent Authorities may enter into bilateral agreements when there is the need for further and deeper cooperation in specific subjects, provided that they always ensure compliance with the principles set out in the IDD and in Union law.

### **1.7 Language, communication means and contact points**

For notification and information exchange purposes, the Competent Authorities shall communicate in English, unless otherwise agreed upon by the authorities concerned.

The Competent Authorities shall transmit the required information by electronic means, using the contact points mentioned below and in a format acceptable to relevant Competent Authorities. The Competent Authorities may agree on a bilateral basis on any applicable requirements (e.g. requirement on electronic signatures of authorised persons) and the security of data transmission.

The Competent Authorities shall establish a contact point in the format of a dedicated institutional e-mail address for all questions, requests and problems arising out of notifications and information exchanges. The contact point shall be used for all queries and, in case the contact point in a specific Competent Authority does not belong to the competent body in the authority’s structure or another national authority is competent on the subject matter, it shall directly forward the request to the competent body or authority and inform the requesting authority thereof.

In the event where, in a Member State<sup>5</sup>, the authority responsible for registration differs from the authority responsible for ongoing supervision, the Competent Authority of that Member State may decide to establish an alternative contact point exclusively for registration and cross-border notification matters, regulated in Part II below.

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<sup>5</sup> All references to Member State include EEA EFTA States, as appropriate.

The Competent Authorities shall transmit and update the information on EIOPA's Extranet about the contact points relevant and, if applicable, about the contact point established for registration and cross-border notification matters only.

### **1.8. Difference of opinion among the Competent Authorities**

In case of divergent views in terms of application of this Decision, the relevant Competent Authorities should strive to a mutually agreed solution. In cases where no such solution can be reached, recourse should be made to EIOPA for mediation.

EIOPA may carry out mediation in accordance with Article 19 and 31 of Regulation (EU) No 1094/2010.

## **PART II**

### **REGISTRATION AND NOTIFICATION OF INSURANCE AND REINSURANCE INTERMEDIARIES AND ANCILLARY INSURANCE INTERMEDIARIES**

#### **2.1. Register**

Article 3(1) of the IDD

Appendix III-1 and III-2 include the list of website addresses of public registers for insurance and reinsurance intermediaries in the Member States as well as the list of website addresses of the online registration system for insurance and reinsurance intermediaries.

##### **2.1.1. Registration**

In accordance with the principle of single registration, the decision to register an Intermediary and an Ancillary Intermediary, valid for the whole of the EEA, shall be the sole responsibility of the Home Competent Authority in accordance with Article 3(1) of the IDD. An additional registration with the competent authority of the host Member State (the "Host Competent Authority") is not required.

For information purposes only, details about Intermediaries and Ancillary Intermediaries may also be made available in the public register of the host Member State.

The public registers shall be available online.

##### **2.1.2. Exchange of information at the time of registration**

Article 13(2) of the IDD

###### **2.1.2.1. Exchange of information where registration was previously sought in other Member States**

Where possible under its national legislation, the Home Competent Authority shall request the applicant for the registration to declare if there has been a formal or informal request for a registration in another Member State or third country that has been rejected or withdrawn and the reasons why the application has been rejected or withdrawn.

Where appropriate, the Home Competent Authority shall engage with the Competent Authority from whom a previous application has been sought in order to understand the circumstances of a rejected or withdrawn application, before making a decision on the registration.

The Competent Authorities shall provide input in a timely manner, preferably within 2 weeks upon receipt of a request, with a view to exchanging information

before the decision on the particular application is taken by the Home Competent Authority.

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

In cases where there are strong reasons to conclude that the applicant has the intention to direct its activity entirely or principally towards the territory a host Member State on a freedom to provide services or freedom of establishment basis, the Home Competent Authority shall ask the Intermediary or Ancillary Intermediary for the reasons supporting that strategy.

The Home Competent Authority is encouraged to engage with the Host Competent Authority(ies) in order to facilitate its understanding of the background of the application, before making a decision on the registration.

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

#### **2.1.3. Minimum contents of public register**

Article 3(1) of the IDD

The registration requirements apply to natural and legal persons. It is recommended to publish the headings of the public register in the national language and in English.

The Competent Authorities agree on the following minimum information to be contained in the register of the Home Competent Authority:

##### **2.1.3.1. Natural Persons**

For an Intermediary or Ancillary Intermediary which is a natural person, the minimum information to be contained in the register shall be the following:

- First name and surname;
- Registration number, if any;
- Address;
- Category of Intermediary or Ancillary Intermediary, if applicable;
- Classes of insurance to which the registration applies in the home Member State, if applicable;
- The current Home Competent Authority, if different from the registration authority;
- Member States for which the intention to act under the freedom to provide services has been notified; and

- Member States for which the intention to act under the freedom of establishment has been notified and the address of the establishment in the host Member State.

In the case of an Intermediary or Ancillary Intermediary acting under the responsibility of one or more insurance or reinsurance undertakings or Intermediaries, it is recommended that the name of those insurance or reinsurance undertakings or Intermediaries should also be contained in the register.

### **2.1.3.2. Legal persons**

For an Intermediary or Ancillary Intermediary which is a legal person, the minimum information to be contained in the register is the following:

- Name;
- Registration number, if any;
- Address of its registered office, and if under its national law it has no registered office, the address of its head office;
- Name of the natural persons within the management who are responsible for the distribution business;
- Category of Intermediary or Ancillary Intermediary, if applicable;
- Classes of insurance to which the registration applies in the home Member State, if applicable;
- The current Home Competent Authority, if different from the registration authority;
- Member States for which the intention to act under freedom to provide services has been notified; and
- Member States for which the intention to act under freedom of establishment has been notified and the address of the establishment in the host Member State.

In the case of an Intermediary or Ancillary Intermediary acting under the responsibility of one or more insurance or reinsurance undertakings or Intermediaries, it is recommended that the name of those insurance or reinsurance undertakings or Intermediaries should also be contained in the register.

## **2.2. Notification**

### **2.2.1. Common understanding of “Freedom to provide services” and “Freedom of establishment”**

2.2.1.1. EIOPA understands freedom to provide services in the case of Intermediaries and Ancillary Intermediaries as meaning:

An Intermediary or Ancillary Intermediary is operating under freedom to provide services ("FoS") if it intends to provide a policyholder, who is established in a Member State different from the one where the Intermediary or Ancillary Intermediary is registered, with an insurance contract relating to a risk situated in a Member State different from the Member State where the Intermediary or Ancillary Intermediary is registered.

The Intermediary or Ancillary Intermediary shall notify its intention to operate under FoS in the sole Member State where the policyholder is established or has his residence, also in the case the policyholder acts on behalf of different insured and/or risks established or situated in one or more other Member States.

If the Intermediary or Ancillary Intermediary already notified its intention to operate under FoS in a specific Member State, this notification procedure is considered as the legal proof of its intention to carry on insurance distribution under FoS with/for residents of that Member State.

Non-exhaustive list of examples regarding activity carried on under FoS:

- An Intermediary or Ancillary Intermediary is actively marketing, providing insurance distribution services or seeking business from a customer resident or established in another Member State.
- An Intermediary or Ancillary Intermediary asks for and organises on its own initiative meetings with customers established in another Member State.
- Regarding advertisement: an Intermediary or Ancillary Intermediary gives/sends information on specific products, conditions etc. to selected groups of customers established in a given country/in specific languages of some Member States etc. Here the advertisement has an active character, the intention of the Intermediary or Ancillary Intermediary to contact customers in another Member State is clear.
- Regarding electronic distance or distance marketing activities: If the content of the website of an Intermediary or Ancillary Intermediary is general and only in the language of the Member State of the Intermediary or Ancillary Intermediary, if it is not addressed to a specific group of customers or customers in specific Member States and when the customer is not able to directly or indirectly conclude an insurance contract using a website or other media, then the Intermediary or Ancillary Intermediary cannot be considered as actively seeking these customers and therefore cannot be considered as having the intention to do FoS in the Member State, where those customers are established. If an Intermediary or Ancillary Intermediary is contacted by those customers, it will not be considered as an intention to write business under FoS in the Member State of residence or of establishment of these customers.
- Where an Intermediary or Ancillary Intermediary opens a branch in another host Member State under freedom of establishment and where this branch sells insurance contracts to residents of the Intermediary's or Ancillary

Intermediary's home Member State, it shall not be deemed as being an activity provided under FoS.

2.2.1.2. EIOPA understands freedom of establishment, in the case of Intermediaries and Ancillary Intermediaries, as meaning if they intend to carry out of insurance distribution activities through a branch or permanent presence established in a different Member State according to Article 6(1) of the IDD.

## **2.2.2. Opening a branch by way of freedom of establishment**

Article 6 of the IDD

2.2.2.1. Contents of the notification made by the Home Competent Authority to the Host Competent Authority

Unless it has reason to doubt the adequacy of the organisational structure or the financial situation of the Intermediary or Ancillary Intermediary, taking into account the distribution activities envisaged, the Intermediary's or Ancillary Intermediary's Home Competent Authority shall transmit electronically to the Host Competent Authority and in accordance with Article 6(1) of the IDD, a notification with the following contents:

- The name, the address and, where applicable, the registration number and e-mail details of the head office of the Intermediary or Ancillary Intermediary;
- The Member State within the territory of which the Intermediary or Ancillary Intermediary plans to establish a branch or a permanent presence;
- The category of Intermediary or Ancillary Intermediary and, if applicable, the name of the insurance or reinsurance undertaking represented;
- The relevant classes of insurance according to Annex I and II of Directive 2009/138/EC for which the Intermediary or Ancillary Intermediary is registered in his home Member State, if applicable;
- The address in the host Member State from which documents may be obtained from the Intermediary or Ancillary Intermediary and to which they may be delivered;
- The name of any natural person responsible for the management of the branch or permanent presence.

In addition to the requirements of Article 6(1) of the IDD, the notification shall specify:

- The name of the current Home Competent Authority, if different from the registration authority;
- In the case of an Intermediary or Ancillary Intermediary acting under the responsibility of one or more insurance or reinsurance undertakings or Intermediaries, the name of those insurance or reinsurance undertakings or Intermediaries for which the Intermediary or Ancillary Intermediary is registered to market insurance products, if available;

- The address of the online register in which details about the Intermediary or Ancillary Intermediary may be found;
- Where available, the nature of the risks and commitments which will be covered by the insurance contracts which the Intermediary or Ancillary Intermediary intends to distribute in the host Member State.

The Home Competent Authority shall consider communicating any other available information to allow the Host Competent Authority to have a deeper knowledge of the branch activity and facilitate awareness for ongoing supervision. An example of additional information that can be provided by the Home Competent Authority to the Host Competent Authority could be the provision of any available information resulting from discussions with the Intermediary or Ancillary Intermediary about its business strategy and how the branch fits into that strategy.

At the same time, the Home Competent Authority shall advise the Intermediary or Ancillary Intermediary concerned that the notification has been sent. The Home Competent Authority shall ensure that the Host Competent Authority receives the complete notification information. Immediately upon receiving the communication from the Home Competent Authority, the Host Competent Authority shall acknowledge its receipt without undue delay by e-mail or by any other means agreed upon by the authorities concerned.

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

#### 2.2.2.2. Information to be provided by the Host Competent Authority to the Home Competent Authority

The Host Competent Authorities shall communicate the following information to the Home Competent Authority:

- a) the relevant legal provisions protecting the general good applicable to insurance distribution in its territory in accordance with Article 6(2) of the IDD;
- b) irregularities known to the Host Competent Authority about any person responsible for the management of the branch or permanent presence, as well as any relevant information following the analysis of the notification received from the Home Competent Authority;
- c) where available, if the Intermediary or the Ancillary Intermediary tried to seek registration in the host Member State. Where an application for registration has been declined, the Host Competent Authority shall provide additional information.

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

All the information referred to in this paragraph shall be communicated as soon as possible by the Host Competent Authority to the Home Competent Authority. The communication in point a) shall be communicated, in any event, within 1 month after the receipt of the information from the Home Competent Authority. The Home Competent Authority shall acknowledge receipt of all information received.

#### 2.2.2.3. Information to be provided by the Home Competent Authority to the Intermediary or Ancillary Intermediary

Upon receipt of a notification from an Intermediary or Ancillary Intermediary, the Home Competent Authority shall assess the completeness and accuracy of the information provided. Where the information provided is incomplete or incorrect, the Home Competent Authority shall inform the Intermediary or Ancillary Intermediary without delay, indicating where the information is incomplete or incorrect.

Upon receipt of the information on the legal provisions protecting the general good from the Host Competent Authority as referred to in paragraph 2.2.2.2., the Home Competent Authority shall communicate that information to the head office of the Intermediary or Ancillary Intermediary.

#### 2.2.2.4. Changes to information concerning the branch

The notion of "change to any of the particulars communicated", as referred to in Article 6(4) of the IDD, shall include, but not be limited to:

- the change of intention to provide insurance distribution activities on the territory of the host Member State through a branch or permanent presence; or
- the Intermediary's or the Ancillary Intermediary's removal from the register in its home Member State.

### **2.2.3. Exercise of activities by way of freedom to provide services**

Article 4 of the IDD

#### 2.2.3.1. Contents of the notification made by the Home Competent Authority to the Host Competent Authority.

The Intermediary's or Ancillary Intermediary's Home Competent Authority shall transmit electronically to the Host Competent Authority and in accordance with Article 4(1) of the IDD, a notification with the following content:

- The name, the address and, where applicable, the registration number and email details of the head office of the Intermediary or Ancillary Intermediary;
- The name of the Member State in which the Intermediary or Ancillary Intermediary intends to operate;
- The category of Intermediary or Ancillary Intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
- The relevant classes of insurance according to Annex I and II of Directive 2009/138/EC for which the Intermediary or Ancillary Intermediary is registered in his home Member State, if applicable.

In addition to the requirements of Article 4(1) of the IDD, the notification shall specify:

- The name of the current Home Competent Authority, if different from the registration authority;
- The address of the online register in which details about the Intermediary or Ancillary Intermediary may be found;
- Where available, the nature of the risks and commitments which will be covered by the insurance contracts which the Intermediary or Ancillary Intermediary intends to distribute in the host Member State.

Where the Intermediary or Ancillary Intermediary intends to operate, entirely or principally, in other Member State(s) on a FoS basis, the Home Competent Authority shall consider communicating any other available information to allow the Host Competent Authority to have a deeper knowledge of the FoS activity and facilitate awareness for ongoing supervision. An example of additional information that could be provided by the Home Competent Authority to the Host Competent Authority could be the provision of any available information resulting from discussions with the Intermediary or Ancillary Intermediary about its business strategy and how its FoS activity fits into that strategy.

The Home Competent Authority shall ensure that the Host Competent Authority receives the complete notification. Immediately upon receiving the communication of notification from the Home Competent Authority, the Host Competent Authority shall acknowledge its receipt without undue delay by electronic means or by any other means agreed upon by the authorities concerned. Following this information, the Home Competent Authority shall advise the Intermediary or Ancillary Intermediary concerned that the notification has been made and it can commence its business in the host Member State.

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

#### 2.2.3.2. Information to be provided by the Host Competent Authority to the Home Competent Authority

In addition to the information foreseen in Article 4(2) of the IDD, the Host Competent Authority shall communicate to the Home Competent Authority, information regarding any irregularities known to the Host Competent Authority, about local third parties or related parties involved in the distribution activities in the host Member State, as well as any relevant information following the analysis of the notification received from the Home Competent Authority. Where available, the Host Competent Authority shall inform the Home Competent Authority if the Intermediary or Ancillary Intermediary has tried to seek registration in the host Member State. Where an application for registration has been declined, the Host Competent Authority shall provide additional information.

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

All the information referred in this paragraph shall be communicated as soon as possible by the Host Competent Authority to the Home Competent Authority. The Home Competent Authority shall acknowledge receipt of all information received.

#### 2.2.3.3. Information to be provided by the Home Competent Authority to the Intermediary or Ancillary Intermediary

Upon receipt of a notification from an Intermediary or Ancillary Intermediary, the Home Competent authority shall assess the completeness and accuracy of the information provided. Where the information provided is incomplete or incorrect, the Home Competent Authority shall inform the Intermediary or Ancillary Intermediary without delay, indicating in which respect the information is incomplete or incorrect.

The Home Competent Authority shall, as soon as possible after the receipt of the communication of the notification, communicate to the head office of the Intermediary or Ancillary Intermediary that information about the general good rules applicable in the host State are available through the means referred to in Article 11(3) and (4) of the IDD and that the Intermediary or Ancillary Intermediary must comply with these provisions in order to commence its business in the host State, or communicate that no conditions are imposed.

#### 2.2.3.4. Changes to information concerning the freedom to provide services activity

The notion of "change to any of the particulars communicated", as referred to in Article 4 (3) of the IDD, shall include, but not be limited to:

- the change of intention to provide insurance distribution activities by FoS in a specific host Member State in the future; or
- the Intermediary's or the Ancillary Intermediary's removal from the register in its home Member State.

### **2.3. Additional information to be given to Host Competent Authorities**

Article 13(1) of the IDD

The Home Competent Authority shall inform the Host Competent Authority if the Home Competent Authority becomes aware either during the registration or the notification process, that in its business model the Intermediary or Ancillary Intermediary is directing its relevant activity entirely or principally towards the territory of the host Member State with the sole purpose of avoiding the legal provisions, which would be applicable if that Intermediary or Ancillary Intermediary had its residence or registered office in that host Member State.

### **2.4. Provision of relevant information by the Home Competent Authorities to EIOPA on Intermediaries and Ancillary Intermediaries having notified their intention to carry on distribution activities on a cross-border basis**

Article 3(4) of the IDD

The Home Competent Authorities shall promptly provide to EIOPA, relevant information on Intermediaries and Ancillary Intermediaries having notified their intention to carry on distribution activities on a cross-border basis in order to enable EIOPA to comply with its obligations under Article 3(4) of the IDD.

### **2.5. Mutual recognition**

Even if there is no specific mutual recognition clause in the IDD, Directive 2005/36/EC<sup>6</sup> applies under the conditions and circumstances as described below:

Natural persons fully qualified as Insurance Intermediaries or Ancillary Intermediaries in a Member State wishing to take up the same profession in another Member State on the basis of permanent establishment, without keeping their original registration, should also be able to benefit from Title III, Chapter I of Directive 2005/36/EC as the situation is not covered by the IDD. (note: Title III, Chapter I of Directive 2005/36/EC lays down the general system for the recognition of evidence of training).

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<sup>6</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications

## **PART III**

### **EXCHANGE OF INFORMATION AND ONGOING SUPERVISION OF INSURANCE AND REINSURANCE DISTRIBUTORS**

#### **3.1. General principles regarding exchange of information and cooperation**

3.1.1. The Competent Authorities concerned shall collaborate, in accordance with Article 13 of the IDD, during the supervision of Distributors, in good faith and in mutual recognition of each other's competence.

3.1.2. With a view to efficient exchange of information and cooperation, the Competent Authorities shall take the necessary measures so that the exchange of information and cooperation takes place as quickly as possible, is complete and useful, and allows, where necessary, for contact to be made with the person at the Competent Authority who can explain or supplement the information received.

Where available, the Competent Authorities shall inform each other, in a timely manner, about any relevant information which relates to risks from or impacting the cross-border activities of Distributors. This exchange shall include information about the nature of the risks and commitments which will be covered by the insurance contracts which the Distributors intend to distribute in the host Member State.

Furthermore, the Competent Authorities shall provide each other with information in cases where a Competent Authority raises concerns or requests information to allow and facilitate the exercise of its supervisory tasks as specified under this Decision and the IDD from another Competent Authority. A Competent Authority that concludes that another Competent Authority is not willing to respond to a specific request within a reasonable timeframe, or to exchange information or to cooperate efficiently may ask that authority to state the reasons for this the refusal.

This provision is without prejudice to Article 19 and 31 of Regulation (EU) No 1094/2010.

3.1.3. The exchange of information shall take place in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

3.1.4. The exchange of information shall be done electronically, where appropriate, and in accordance with paragraph 1.7. The Competent Authorities

may, in addition to the electronic exchange of information, also convey the information in hard copy.

### **3.2. Specific provisions on cooperation**

#### **3.2.1. Home Competent Authority to Host Competent Authority**

Without prejudice to the rules on the exchange of information as laid down in the IDD, the Home Competent Authority shall, in cases where known to the Home Competent Authority, provide the Host Competent Authorities, in a timely manner, with all available information as regards:

- a) the professional and organisational requirements of Distributors as laid down in Article 10 and referred to in Article 6(2) of the IDD, where there are concerns/grounds for suspecting that a Distributor may not be meeting these requirements, including:
  - the requirement to possess the appropriate knowledge and ability to adequately carry out insurance or reinsurance distribution activities,
  - the requirement for natural persons to be of good repute,
  - the requirement to hold professional indemnity insurance,
  - the requirements in place in the home Member State to protect customers against the risks of an intermediary being unable to transfer premium/amount of claim,
  - the organisational structure and financial situation of the Distributor.
  
- b) breaches with regard to the information requirements and conduct of business rules as laid down in Chapter V and Chapter VI of the IDD, including:
  - the requirements with regard to the product oversight and governance arrangements for insurance products distributed within the host Member State as laid down in Article 25 of the IDD, such as:
    - an inadequate product approval process;
    - an inappropriate target market identification;
    - an inappropriate product testing;
    - an inappropriate product monitoring and product review; or
    - a deficient monitoring of the distribution channels.
  
  - remuneration arrangements (including sales targets) which prevent the employees of Distributors from carrying out

distribution activities in accordance with the best interests of their customers.

- c) a significant number of complaints from customers and/or the nature of the complaint(s) from a customer located in the host Member State about the insurance distribution activities of a Distributor or a third party acting on behalf of the Distributor, where known by the Home Competent Authority because for example they were directly addressed to it;
- d) any measure, action or sanctions taken by the Home Competent Authority in view of, or, as a result of, shortcomings or breaches as laid down under point a) and b);
- e) a Distributor's lack of action to respond to the measures of the Home Competent Authority taken under point d);
- f) indications that a Distributor is directing its relevant activity entirely or principally towards the territory of the host Member State;
- g) information that could contribute to assessing whether the activities of a Distributor seriously endanger the proper functioning of insurance and reinsurance markets in the host Member State with respect to the protection of consumers (Article 9(2) of the IDD).

### **3.2.2. Host Competent Authority to Home Competent Authority**

Without prejudice to the rules on the exchange of information as laid down in the IDD, the Host Competent Authority shall, in cases where known to the Host Competent Authority, provide the Home Competent Authority, in a timely manner, with all available information as regards:

- a) the professional and organisational requirements of Distributors as laid down in Article 10 and referred to in Article 6(2) of the IDD, where there are concerns/grounds for suspecting that a Distributor may not be meeting these requirements, including:
  - a. the requirement to possess the appropriate knowledge and ability to adequately carry out insurance or reinsurance distribution activities,
  - b. the requirement for natural persons to be of good repute,
  - c. the requirement to hold professional indemnity insurance,
  - d. the requirements in place in the home Member State to protect customers against the risks of an intermediary being unable to transfer premium/amount of claim,
  - e. the organisational structure and financial situation of the Distributor;

- b) breaches with regard to the information requirements and conduct of business rules as laid down in Chapter V and Chapter VI of the IDD, including:
  - a. the requirements with regard to the product oversight and governance arrangements for insurance products distributed within the host Member State, such as distributing insurance products on a large scale to customers outside of the target market;
  - b. remuneration arrangements (including sales targets) which prevent the employees of Distributors from carrying out distribution activities in accordance with the best interests of their customers;
- c) a significant number of complaints from customers and/or the nature of the complaint(s) from a customer located in the host Member State about the insurance distribution activities of a Distributor or a third party acting on behalf of the Distributor;
- d) any measure, action or sanction taken by the Host Competent Authority;
- e) a Distributor's lack of action to respond to measures of the Host Competent Authority taken under point d);
- f) indications that a Distributor is directing its relevant activity entirely or principally towards the territory of the host Member State;
- g) information that could contribute to assess whether the activities of a Distributor seriously endanger the proper functioning of insurance and reinsurance markets in the host Member State with respect to the protection of consumers (Article 9(2) of the IDD);
- h) other irregularities including cases where the Distributor is pursuing an activity that has not been notified or has violated the legal provisions in force in the host Member State (e.g. general good rules or criminal law provisions).

### **3.2.3. Cooperation in monitoring**

With regard to cooperation regarding the monitoring of the market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, their Member State (Article 1(5) of the IDD), the Competent Authorities shall endeavour to exchange available information relating to this area on an on-going basis. Reference is made to EIOPA's Extranet to be used

for sharing information resulting from monitoring activities of the Competent Authorities.

#### **3.2.4. Cooperation in the event of branch closure or cessation of FoS**

In the event of the closure of the branch, or a cessation of FoS activities of an Intermediary or Ancillary Intermediary, implying a risk for policyholders in one or more host Member State, the Home Competent Authority shall inform, as soon as possible, the Host Competent Authority on how this may affect the policyholders of the host Member States and which contingency plans the Intermediary or Ancillary Intermediary takes. In this case, the Home Competent Authority shall closely cooperate with the Host Competent Authority in order to address any issue that policyholder protection could raise.

#### **3.3.1. Cooperation between the Competent Authorities in case of serious consumer detriment or danger to the market**

If a Competent Authority has reasons to consider that the activities of a Distributor could be detrimental to the interests of the consumers at large scale or could seriously endanger the properly functioning of the insurance market, it shall inform the Home Competent Authority and, if necessary, the Host Competent Authorities without undue delay. If asked, the Competent Authority shall inform the other Competent Authority of any decision it has been led to take and, in any case, shall check that the Distributor concerned is complying with Articles 5, 8 and 10 of the IDD, the "general good" rules, Chapter V and VI of the IDD and the rights of consumers in general.

#### **3.3.2. Ways of cooperation with prudential supervisors**

The Competent Authorities shall endeavour to establish ways of cooperation with national counterparts competent for prudential supervision in order to exchange any relevant information on decisions or restrictions regarding the distribution activity of a Distributor without undue delay.

## **PART IV**

### **TREATMENT OF COMPLAINTS**

#### **4.1. Complaints-handling systems in Member States**

In the context of the development of the internal market of Distributors, it is important that all complaints from policyholders are dealt with by the relevant complaints-handling body, irrespective of whether the complaint involves policyholders, insurance undertakings and Intermediaries or Ancillary Intermediaries in different Member States.

The manner in which complaints-handling is organised within a jurisdiction is a matter for each jurisdiction and therefore not subject to this Decision. There are a wide variety of complaints-handling systems in Member States. In some Member States, complaints are dealt with by the Competent Authorities, whilst others have developed Ombudsman services or other systems, or have a combination of both. The ways in which these systems operate vary considerably across the Member States.

Where complaints have a cross-border component, it is important for individual policyholders and for consumer confidence generally, that the differences in complaints-handling systems do not prevent or deter complaints from being directed to the relevant bodies and subsequently dealt with.

The procedures outlined in this Decision are intended to facilitate the process of identifying the relevant complaints-handling body and ensure that complaints filed with a Competent Authority are addressed and arrive at the body that is competent to deal with the complaint.

It is recognised that the Commission has set up a network (FIN-NET) to facilitate the out-of-court resolution of consumer complaints, where the service provider is established in a Member State other than the Member State where the consumer is domiciled. Nothing in this Decision is intended to interfere with this agreement or the process developed under FIN-NET.

#### **4.2. Complaints-handling procedures**

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

In cases where the Competent Authority that receives the complaint is competent to deal with the complaint, it shall inform the complainant, as soon as possible, of applicable national procedures.

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

- if legally possible, pass the complaint directly to the body competent to deal with the complaint and inform the complainant of the referral;
- if legally not possible, provide the complainant with any relevant information about the body competent to deal with the complaint, to facilitate the referral of the complaint by the complainant.

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

- if legally possible, pass the complaint directly to the Competent Authority or competent body in the other jurisdiction and inform the complainant of the referral;
- if legally not possible, provide the complainant with any relevant information about the Competent Authority or competent body in the other jurisdiction, in order to facilitate the referral of the complaint by the complainant;
- in case that the complaint was passed to a competent body other than the Competent Authority, inform, if legally possible, the Competent Authority of the other jurisdiction of the complaint.

If a complaint contains issues relevant to the supervision of an Intermediary or Ancillary Intermediary, the Competent Authority that deals with the complaint shall, as soon as possible, and if legally possible, provide the Home Competent Authority with relevant information on the complaint.

In the cases that the Competent Authority that initially receives the complaint is not competent, it shall explain to the complainant why it considers itself not to be competent to deal with the complaint, and why it considers the other Competent Authority or body to be competent.

#### **4.3. Dispute over responsibilities**

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

Where differences of opinion exist as to who assumes responsibility for the complaint, every best endeavour shall be made to resolve the issue in good faith within four weeks from the date on which the complaint was initially received from the complainant.

If the question of responsibility cannot be settled, the Competent Authority which initially received the complaint from the complainant, shall refer the matter to

EIOPA for the purpose of settling the disagreement through non-binding mediation.

#### **4.4. Information to the public**

The Competent Authorities shall provide the following information about their national system, including updates, as necessary:

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

The Competent Authorities shall make the aforementioned information available through their public website. The Public Area of the EIOPA's website shall provide links to the relevant national websites.

Done at Frankfurt am Main, 28 September 2018

For the EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY  
(EIOPA)

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Name

For the FINANZMARKTAUFSICHTSBEHÖRDE (FMA)

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Name

For the NATIONAL BANK OF BELGIUM (NBB)

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Name

For the FINANCIAL SERVICES AND MARKETS AUTHORITY (FSMA)

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Name

For the FINANCIAL SUPERVISION COMMISSION (FSC)

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Name

For the FINANCIAL SERVICES SUPERVISORY AGENCY (HANFA)

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Name

For the INSURANCE COMPANIES CONTROL SERVICE

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Name

For the REGISTRAR OF OCCUPATIONAL RETIREMENT BENEFIT FUNDS

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Name

For the CZECH NATIONAL BANK (CNB)

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Name

For the FINANSTILSYNET

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Name

For the FINANCIAL SUPERVISION AUTHORITY

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Name

For the FIN-FSA

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Name

For the AUTORITE DE CONTROLE PRUDENTIEL ET DE RESOLUTION (ACPR)

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Name

For the BUNDESANSTALT FÜR FINANZDIENSTLEISTUNGSAUFSICHT (BaFin)

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Name

For the DEPARTMENT OF PRIVATE INSURANCE SUPERVISION (Bank of Greece)

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Name

For the HELLENIC MINISTRY OF LABOUR, SOCIAL SECURITY AND SOCIAL SOLIDARITY

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Name

For the MAGYAR NEMZETI BANK (Central Bank of Hungary)

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Name

For the FINANCIAL SUPERVISORY AUTHORITY (Fjármálaeftirlitið)

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Name

For the CENTRAL BANK OF IRELAND (CBI)

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Name

For the PENSIONS AUTHORITY

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Name

For the ISTITUTO di VIGILANZA SULLE ASSICURAZIONI (IVASS)

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Name

For the COMMISSIONE DI VILIGENZA SUI FONDI PENSIONE (COVIP)

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Name

For the FINANCIAL AND CAPITAL MARKET COMMISSION (FKTK)

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Name

For the FINANCIAL MARKET AUTHORITY (FMA)

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Name

For the BANK OF LITHUANIA

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Name

For the COMMISSARIAT AUX ASSURANCES (Commassu)

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Name

For the COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER (CSSF)

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Name

For the MALTA FINANCIAL SERVICES AUTHORITY (MFSA)

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Name

For the DE NEDERLANDSCHE BANK (DNB)

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Name

For the FINANSTILSYNET (THE FINANCIAL SUPERVISORY AUTHORITY OF NORWAY)

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Name

For the KOMISJA NADZORU FINANSOWEGO (POLISH FINANCIAL SUPERVISION AUTHORITY) (KNF)

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Name

For the AUTORIDADE DE SUPERVISAÇÃO DE SEGUROS E DE FUNDOS DE PENSÕES (PORTUGUESE INSURANCE AND PENSION FUNDS SUPERVISORY AUTHORITY) (ASF)

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Name

For the FINANCIAL SUPERVISORY AUTHORITY (ASF)

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Name

For the NATIONAL BANK OF SLOVAKIA (NBS)

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Name

For the INSURANCE SUPERVISION AGENCY (A-ZN)

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Name

For the DIRECCIÓN GENERAL DE SEGUROS Y FONDOS DE PENSIONES (DGFSP)

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Name

For the FINANSINSPEKTIONEN (FINANCIAL SUPERVISORY AUTHORITY)

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Name

For the PRUDENTIAL REGULATION AUTHORITY (PRA)

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Name

For the PENSIONS REGULATOR

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Name