

PEER REVIEW

on EIOPA's Decision on the collaboration of the insurance supervisory authorities



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PEER REVIEW

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EXECUTIVE SUMMARY

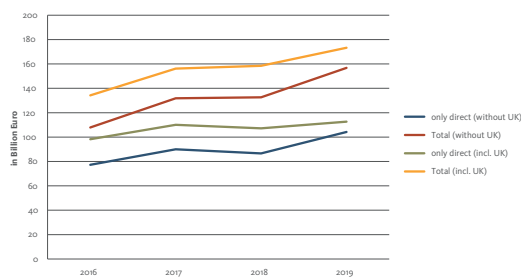
Increased cross-border activity in the EU internal market makes strong, close and timely collaboration between insurance supervisory authorities necessary for effective supervision. EIOPA's Decision on the collaboration of the insurance supervisory authorities (EIOPA-BoS-17/014) (Decision) is a fundamental tool in reinforcing this collaboration and in building a common European supervisory culture. A continued and effective collaboration between home and host national supervisory authorities (NSAs) to discuss undertakings operating (or intending to operate) on freedom of establishment (FoE) or freedom of providing services (FoS) bases is crucial. This peer review explores and analyses selected supervisory practices related to the Decision concerning cross-border activities, data storage and portfolio transfer.

➤ Background and objectives

The share of cross-border business in total business (direct and indirect) is substantial in European Economic Area (EEA) countries: almost 11% in 2019 (EUR 173 billion) and slightly but consistently rising every year. The share of direct insurance is 65%.

If we exclude UK business (EUR 16 billion in 2019), the share of cross-border business (direct and indirect) in total business slightly increases to almost 13%. The share of the direct cross-border business is in such case 66% although slightly decreasing in the last few years.

Figure 1: Written premiums in cross-border activities (with and without the United Kingdom as well as for direct business only (2019)

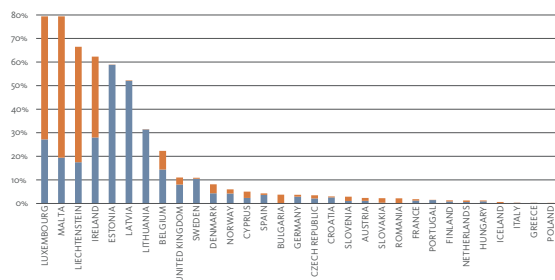


Source: Written premiums based on Solvency II prudential reporting – EIOPA

Figure 2 shows the importance of cross-border business as a percentage of outgoing business. For six countries (Estonia, Ireland, Latvia, Liechtenstein, Luxembourg, Malta), over 50% of business is carried out outside the home country.

In comparison, in terms of the gross written premiums (GWP), there is slightly more non-life than life business done on a cross-border basis and overall there is an equal split between FoS and FoE business. However, in the countries with a majority of their business outside their jurisdiction the activity is mainly done on FoS basis.

Figure 2: Direct insurance business in terms of total GWP outside the home country (2019)



Source: Written premiums based on Solvency II prudential reporting – EIOPA

Notwithstanding the improvements made in the Decision with regard to the collaboration between supervisory authorities in the area of cross-border activity in 2017, critical cases still occur where policyholder protection is at serious risk. This makes it necessary to further improve cooperation, in particular including regular information exchanges to set effective preventive measures and allow for early identification of potential issues.

PEER REVIEWS IN THE CONTEXT OF REVIEW OF SUPERVISORY PRACTICES

One of the main tasks of EIOPA is to enhance supervisory convergence. EIOPA addresses supervisory convergence from different perspectives depending on the issue and risks at stake. In order to support supervisory convergence and to protect policyholders, EIOPA reviews existing practices, both from NSAs and from the market. EIOPA organises and conducts peer reviews on activities of NSAs in order to further strengthen consistency in supervisory assessments and outcomes. Peer reviews have also proved productive in strengthening dialogue within and between supervisory authorities and in facilitating sharing of best practices.

EIOPA conducts peer reviews pursuant to Article 30 of Regulation (EU) No 1094/2010 (EIOPA regulation). In line with its mandate, the outcomes of peer reviews, including identified best practices, are made public. Where there may be a risk to the stability of the financial system, the EIOPA Board of Supervisors may decide not to publish certain outcomes.

› Main findings

The peer review identified divergent practices among NSAs in a number of areas, in particular:

- › The effective implementation of the Decision, both at internal level (through internal guidelines, internal handbooks or procedures) and at external level to inform the industry of the information to be provided to the NSA to assess applications in compliance with the Decision.
- › The authorisation of a new undertaking in case of previous authorisations sought in other Member States or where the applicant intends to operate exclusively (or almost exclusively) in another Member State.
- › The notification process for FoE/FoS activities.
- › The supervision on a continuous basis.
- › Data storage aimed to keep all necessary information to share with other authorities concerning cross-border activity.

These divergent practices may have a negative impact on the level playing field for EEA undertakings. Therefore, EIOPA issued a number of recommended actions that NSAs should take to promote greater convergence in their approaches and a more consistent implementation of the principle of proportionality. No divergent practices from those indicated in the Decision were identified in the area of portfolio transfers.

› Overview of recommended actions

EIOPA issued 60 recommended actions, addressed to 26 NSAs. Several NSAs have implemented improvements after the reference period (from the application date of the Decision, which is 1 May 2017 till 1 July 2019) as an immediate response to the peer review or to the issued recommended actions. These will be taken up in the follow-up measures (see section 4.2).

- › The recommended actions can be grouped into five categories:
 - › 16 recommended actions in the area of effective application of the Decision;
 - › 18 recommended actions in the area of authorisation;
 - › 6 recommended actions in the area of notification;
 - › 3 recommended actions in the area of supervision on a continuous basis;
 - › 17 recommended actions in the area of data storage.

A full list of the recommended actions and NSAs to which they have been issued can be found in Annex III.

Topic	NSAs
Area of recommended action: Effective application of the Decision	
<p>The NSA should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and to make sure that undertakings are made aware of the information to be provided to the NSA for the implementation of the Decision (through external guidelines, circulars or notification templates).</p> <p>Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.</p>	<p>Finanzmarktaufsicht (Austria), Financial Supervision Commission (Bulgaria), Cyprus Insurance Companies Control (Cyprus), Czech National Bank (Czech Republic), Danish Financial Supervisory Authority (Denmark), Estonia Financial Supervision and Resolution Authority (Estonia), Magyar Nemzeti Bank (Hungary), Hrvatska agencija za nadzor financijskih usluga (Croatia), Fjármálaeftirlitið (Iceland), Lietuvos Bankas (Lithuania), Finanstilsynet (Norway), Autoridade de Supervisão de Seguros e Fundos de Pensões (Portugal), Financial Supervisory Authority (Romania), Finansinspektionen (Sweden), Insurance Supervision Agency (Slovenia), The Prudential Regulation Authority (United Kingdom)</p>
Area of recommended action: Authorisation	
<p>The NSA should include, in line with Article 2.5. of the Decision, in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn and subsequently engage with these NSAs to understand the circumstances of withdrawals or rejections.</p>	<p>Finanzmarktaufsicht (Austria), Financial Supervision Commission (Bulgaria), Danish Financial Supervisory Authority (Denmark), Dirección General de Seguros y Fondos de Pensiones - Ministerio de Asuntos Económicos y Transformación Digital (Spain), Financial Supervision Authority (Finland), Autorité de Contrôle Prudentiel et de Résolution (France), Finanzmarktaufsicht Liechtenstein, (Liechtenstein), Autoridade de Supervisão de Seguros e Fundos de Pensões (Portugal), National Bank of Slovakia (Slovakia)</p>
<p>The NSA should also foresee, in order to ensure a consistent application of Article 2.5.2 of the Decision, in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has previously requested in another Member state or third country an authorisation that had been rejected or withdrawn, the NSA from whom the application had been sought should be contacted in order to understand the circumstances of the rejected or withdrawn application.</p>	<p>Financial Supervisory Authority (Romania), The Prudential Regulation Authority (United Kingdom)</p>
<p>The NSA should, in line with Article 2.6 of the Decision, add in its procedure, a specific question addressed to the applicants regarding the reasons supporting the business strategy to focus (almost) exclusively on FoS, and that the Home NSA engages with the Host NSA to understand the situation and the circumstances of the undertaking before making a decision on the authorisation.</p>	<p>Financial Supervision Commission (Bulgaria), Cyprus Insurance Companies Control (Cyprus), Danish Financial Supervisory Authority (Denmark), Commissariat aux Assurances (Luxembourg), Financial Supervisory Authority (Romania), National Bank of Slovakia (Slovakia)</p>
<p>The NSA should align its interpretation of the concept of 'exclusively' with Article 2.6 of the Decision so that it is ensured that the Host NSA is contacted in advance in case an undertaking had stated its intention to operate (almost) exclusively in several other Member States.</p>	<p>Malta Financial Services Authority (Malta)</p>
Area of recommended action: Notification¹	
<p>The NSA should, in accordance with Article 2.6 of the Decision, use the possibility of informal exchange with the Host NSA in advance of a notification to understand the situation and the circumstances of the undertaking before making a decision on the authorisation.</p>	<p>Financial Supervision Commission (Bulgaria), Gibraltar Financial Services Commission (UK-Overseas Territory of Gibraltar)</p>
<p>The NSA should improve communication and quality of exchange of information with Host NSAs when the latter ask for information during the notification phase according to Articles 3.1.1.4 and 3.1.1.5 of the Decision. In addition, the NSA should ensure that the Host NSA receives the complete notification information.</p>	<p>Financial Supervisory Authority (Romania)</p>
<p>The NSA should strengthen its internal processes aimed at assessing whether the notification to the Host NSA is complete and sufficiently comprehensive, in order to ensure, on a systematic basis, the accuracy and completeness of the notifications submitted to Host NSAs.</p>	<p>Malta Financial Services Authority (Malta)</p>
<p>The NSA should adapt its internal procedures and internal templates in order to comply with Articles 3.1.1.2 and 3.1.1.3 (for FoE) and 3.2.1.1 and 3.2.1.2 (for FoS) of the Decision.</p>	<p>Finansinspektionen (Sweden), Gibraltar Financial Services Commission (UK-Overseas Territory of Gibraltar)</p>
Area of recommended action: Supervision on a continuous basis²	
<p>The NSA should, based on Article 4.1.2.5 of the Decision, as Host NSA inform the Home NSA on the (outcome of) the on-site inspection based on Article 4.1.2.9. in a branch on Host jurisdiction territory.</p>	<p>Dirección General de Seguros y Fondos de Pensiones - Ministerio de Asuntos Económicos y Transformación Digital (Spain)</p>
<p>The NSA should, based on Article 4.1.1.4 b) of the Decision, as Home NSA inform the Host NSA about supervisory measures taken against an undertaking carrying out activity on cross-border basis.</p>	<p>Finanzmarktaufsicht Liechtenstein, (Liechtenstein)</p>
<p>The NSA should, based on Articles 4.1.1.3 and 4.1.1.4 f) of the Decision, as Home NSA inform the Host NSA about the follow-up of supervisory measures taken against an undertaking carrying out activity on cross-border basis.</p>	<p>Financial Supervisory Authority (Romania)</p>

1 Recommended actions based on specific cases in the context of this peer review regarding the notification and ongoing supervision of cross-border activities.

2 See previous footnote.

Topic	NSAs
Area of recommended action: Data storage	
The NSA should develop a data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision and enable the extraction of the information, so that information can be provided, where necessary, to other authorities in a timely manner.	Financial Supervision Commission (Bulgaria), Hrvatska agencija za nadzor financijskih usluga (Croatia), Finanzmarktaufsicht Liechtenstein, (Liechtenstein), Insurance Supervision Agency (Slovenia)
The NSA should further improve and update its current data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.	Cyprus Insurance Companies Control (Cyprus), Czech National Bank (Czech Republic), Financial Supervision Authority (Finland), Lietuvos Bankas (Lithuania), De Nederlandsche Bank (Netherlands), Finanstilsynet (Norway), Komisja Nadzoru Finansowego (Poland), Autoridade de Supervisão de Seguros e Fundos de Pensões (Portugal), Financial Supervisory Authority (Romania), Finansinspektionen (Sweden), National Bank of Slovakia (Slovakia), The Prudential Regulation Authority and the Financial Conduct Authority (United Kingdom), Gibraltar Financial Services Commission (UK-Overseas Territory of Gibraltar)

› Follow-up steps for EIOPA

EIOPA will update and clarify, reflecting recent amendments in the Solvency II Directive³ and proposals for the Solvency II 2020 Review also in the Decision. E.g. EIOPA plans to propose a legal requirement for applicants to share information for operating exclusively or almost exclusively in one or more other Member States as well as to require the Home NSA to engage with the Host NSA in order to facilitate its understanding of the situation and the circumstances of the undertaking in this circumstance. Given the number of recommended actions concerning the effective application of the Decision, EIOPA will consider to implement parts of the Decision into the Supervisory Handbook, in particular the articles dealing with specific requirements/procedures to be followed by the NSAs. Suggestions for the questions to be asked by NSAs as part of the authorisation procedure to implement the Articles 2.5.1 and 2.6.1 shall also be considered to be further specified in the Supervisory Handbook as well as suggestions for authorisation forms. EIOPA will also integrate the processes (forms for information exchange) for an improved information exchange into the tool that is under development for the notifications of cross-border business. EIOPA will also regularly update NSAs on the total number and active notifications in its semi-annual cross-border report. Lastly, EIOPA will consider how the particular conditions for portfolio transfers in each Member State can be best shared.

³ New Article 152a Solvency II Directive: "Where the supervisory authority of the home Member State intends to authorise an insurance or reinsurance undertaking whose scheme of operations also indicates that those activities are likely to be of relevance with respect to the host Member State's market, the supervisory authority of the home Member State shall notify EIOPA and the supervisory authority of the relevant host Member State thereof."

› Best practices

In this peer review, best practices were identified, regarding the effective implementation of the Decision, notification processes, supervision on a continuous basis divided into the regular informal information exchange between authorities and supervisory activities that support the ongoing supervision. Detailed process descriptions and checklist for both outward and received notifications ensure a full compliance with the Decision and quality assurance in the work performed by the NSA as well as a level playing field in the manner in which notifications are analysed within the NSA. There is also a best practice recognised whereby a NSA has ensured the implementation of the Decision, through several instruments, in a comprehensive package. The package consists of specific circulars (on licensing, opening of a branch, FoS, portfolio transfer), a notification portal and internal procedures including a process on collaboration. Also, NSAs preparing and sharing amongst Home and Host NSAs specific market or horizontal analysis of sensitive products and inform Home NSAs of specific risks on their market, was found a best practice. Those analyses are used to challenge the local insurance undertakings to enhance their understanding of the markets they are active in. EIOPA will consider to include those best practices in the Supervisory Handbook. The structural bilateral relations between several NSAs with regular meetings going through all FoS and FoE cases are found to be a best practice, as the ongoing assessment is strengthened and information channels are allowing for informal exchanges before a decision on authorisations is taken.

➤ Impact on the creation of a common supervisory culture

The creation of a common supervisory culture is one of EIOPA's key goals. The development of such a culture is vital to ensuring a high, effective and consistent level of supervision throughout the EEA, thus guaranteeing consumers the same level of protection regardless of where they live and promoting the stability of the financial system.

It is recognised that the ongoing development of the internal market and the steady growing internationalisation of business activities require increased collaboration between supervisors. In this context, the Supervisory Authorities shall endeavour to cooperate and use, as effectively as possible, all information available for supervisory purposes in order to achieve the objectives of insurance supervision and, in particular, adequate protection of policyholders and other stakeholders and financial stability. The analysis carried out for this peer review has revealed diverging legal and regulatory frameworks and supervisory practices in the area of collaboration amongst national supervisory authorities. As a result of this, recommended actions have been issued and best practices have been identified to inspire NSAs and to help them benefit from each other's experiences. Thereto, EIOPA will consider to include those best practices in the Supervisory Handbook.

EIOPA believes that the implementation of these actions and practices by NSAs will bring greater supervisory convergence and improve the timeliness and quality of information to be exchanged among NSAs concerned on cross-border business.

➤ Conclusions and next steps

In this peer review, EIOPA has analysed legal and regulatory frameworks and national supervisory practices across 32 NSAs with regard to the application of the Decision. Differences in NSAs' approaches and practices in this area were found, and as a result, EIOPA issued a high number of recommended actions (60 recommended actions to 26 NSAs) with the aim of achieving greater supervisory convergence.

NSAs are expected to implement the recommended actions by Q4 of 2022 at the latest. EIOPA will take the follow-up actions starting in 2021 and 2022.

As regards the follow-up, starting by the end of 2022, EIOPA will, in line with the EIOPA Regulation, assess how NSAs have implemented the recommended actions. EIOPA will in its assessment take into account the way NSAs have implemented improvements after the reference period⁴ as an immediate response to the peer review or to the issued recommended actions.

⁴ Any new material and further proof of application of the Decision that was submitted after the time frames set and the assessment by the ad hoc Peer Review Committee had been finalised, will also be taken up in the follow-up peer review.

1. BACKGROUND, SCOPE, METHODOLOGY AND APPROACH

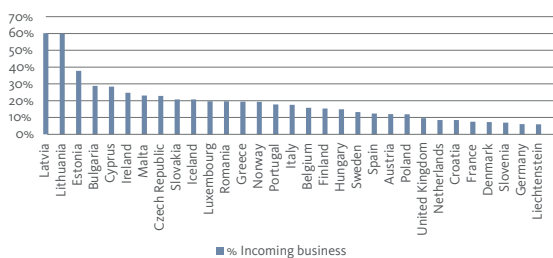
1.1 BACKGROUND

The importance of increased cross-border activities in the EU internal market makes strong, close and timely collaboration between insurance supervisory authorities necessary for effective supervision. In total, 888 insurance companies carried out cross-border business in 2019 with a total of 173 billion Euro written premiums, operating on average in 9 countries, leading to 7100 “connections” in cross-border business. According to EIOPA the number of issued notifications is approximately 15.000 which means that less than 50% of the notifications are active.

The figure 2 above (page 5) shows that for six jurisdictions (Estonia, Ireland, Latvia, Liechtenstein, Luxembourg, Malta) in the EEA the business in terms of total (life and non-life) gross written premium (GWP) the vast majority of the business is carried out outside the home country. Overall, in the European Economic Area (EEA) countries, around 10% of the total business is done on a cross-border basis.

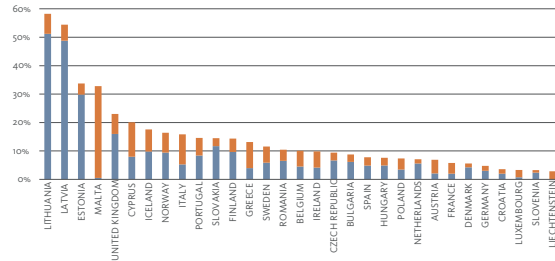
In 12 EEA countries (see figure 3) the share of the incoming business from other EEA countries is more than 20% (between 20% and 60% for Bulgaria, Cyprus, Czech Republic, Estonia, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia) in 2019.

Figure 3: Insurance business in terms of total GWP coming into the Host Member State (2019)



Moreover, in more than half of the EEA countries, when indirect (reinsurance) business is not taken into account, the share of the incoming business from other EEA countries is very relevant, i.e. more than 10% in 2019.

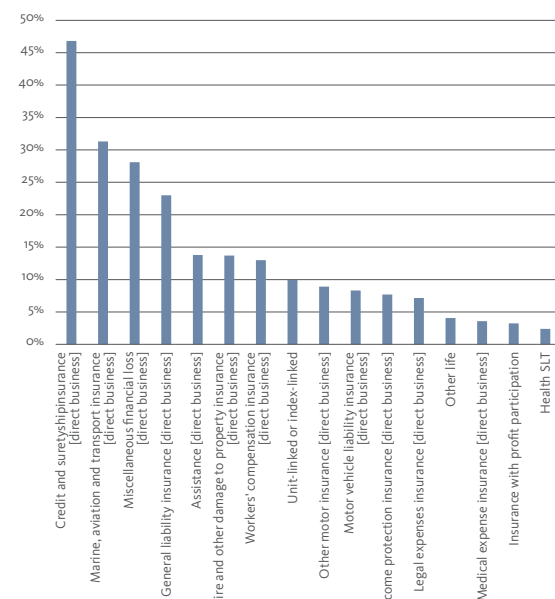
Figure 4: Direct insurance business in terms of GWP coming into the Host Member State (2019)



Source: Written premiums based on Solvency II prudential reporting; EIOPA

From figure 5 it becomes clear that for a high number of lines of business (e.g. credit and surety ship, marine, aviation and transport, miscellaneous financial loss, general liability insurance) more than 20% of the European business is written outside the Home Member State. This shows the integration of the insurance markets in the EEA, but also raises challenges in supervision as it requires the Home NSA to cooperate closely with Host NSAs to understand the risks in other markets. As certain types of lines of business are very specific to the host market (e.g. construction business and motor insurance in specific Member States) for the Home NSA it becomes difficult to properly take responsibility. At the same time the Host NSA should be put in the condition of accessing prudential information in real time to be able to address difficulties incurred by insurers based in another Member State in a timely manner. This situation requires more collaboration efforts from both the Home and Host NSAs.

Figure 5: GWP (direct business) written outside the Home Member State by lines of business (2019)



Source: Written premiums based on Solvency II prudential reporting - EIOPA.

1.2 SCOPE

These increased cross-border activities in the EU internal market make strong, close and timely collaboration between insurance supervisory authorities necessary for effective supervision. EIOPA's Decision on the collaboration of the insurance supervisory authorities (Decision⁵), which was the result of one of the recommended actions towards EIOPA as an outcome of the peer review on Freedom to provide Services (2015), is fundamental in reinforcing this collaboration and in building a common European supervisory culture. After the entry into force of the Decision on 1 May 2017 cooperation among Home and Host NSAs has improved, though it is evident that there is still room for improvement. EIOPA has reached this conclusion in its advice to the Commission in December 2018 on various aspects of Group Supervision of Insurance and Reinsurance Undertakings in a Group as outlined in Article 242(2) of Directive 2009/138/EC ("SII Directive"). Its advice to the Commission states that cross-border supervision is not free from supervisory challenges for freedom to provide services (FoS) and freedom of establishment (FoE).

Critical cases still occur, which makes it necessary to further improve cooperation in all stages of supervision: from the pre-notification phase on the envisaged strategy of the undertaking for doing business in the Host State to sharing information from the on-going supervision, such as relevant outcomes from the supervisory review process, supervisory measures or outcomes of on-site inspections. A continued effective collaboration between Home and Host NSAs to discuss undertakings operating on a FoS and FoE basis is a must. This includes regular exchange and sharing of information that is useful to set effective preventive measures and allows for early identification of potential issues.

As a further element, and in light of the implementation of the SII Directive, run-off and transfers of portfolios of life insurance contracts have recently gained increasing importance. Also cross-border transfers of non-life portfolios are expected to increase and were therefore taken up in the peer review. It is relevant to assess the application of Article 39 of the SII Directive in EEA countries as well as the supervisory practice regarding the consultations and consents in case of a transfer of portfolio of contracts in a cross-border context. A specific procedure concerning the cooperation between Home and Host NSA is foreseen in the Decision concerning portfolio transfers and it is in the scope of the peer review.

⁵ Decision on the collaboration of the insurance supervisory authorities.

EIOPA will continue to monitor the implementation of the Decision, and to use its tools to ensure a consistent application across the European Union.

The authorities in the UK and UK-OTG (Overseas Territory of Gibraltar) participated in this peer review in line with the terms of the Withdrawal Agreement.

1.3 METHODOLOGY AND APPROACH

The peer review started in 2019 on the basis of the Methodology for conducting peer reviews⁶ and was finalised in 2020 under the rules laid down in Article 30 of the amended EIOPA Regulation. The ad-hoc Peer Review Committee was led by a representative from Italy and it included representatives from the NSAs from Austria, Belgium, Croatia (until the finalisation of the fieldwork), France, Germany, Poland, Netherlands, Romania, Slovakia and EIOPA.

This peer review used evidence from the self-assessments provided by NSAs, as well as information and evidence gathered during fieldwork. The self-assessments provided by NSAs were collected via a questionnaire that was sent out via the EU survey tool⁷, with a deadline for responses of mid-August 2019.

The initial analysis of the NSA self-assessments was used to identify the priorities for fieldwork, consisting of key points that needed clarification, and the means by which the fieldwork would be conducted. Overall, the fieldwork consisted of three written procedures, 19 conference calls and 10 visits held between mid-November 2019 and end January 2020 (table 1). NSAs were informed in advance of the questions and were able to prepare and disclose detailed documents regarding their supervisory practices. This allowed the ad-hoc Peer Review Committee to confirm their understanding of the answers provided and to discuss any potential issues identified.

⁶ Under the former Methodology peer reviews were conducted under the oversight of the Review Panel and either led by representatives from competent authorities or EIOPA. In 2020, the ESA review introduced new provisions in the EIOPA founding regulation regarding the governance of peer reviews by which a.o. the EIOPA Chair proposes mandate and composition of the ad-hoc Peer Review Committees responsible for conducting the reviews and preparing follow-up reports for decision by the Board of Supervisors and the ad-hoc Peer Review Committees in charge of conducting the reviews are always led by an EIOPA staff member.

⁷ Some NSAs provided additional information on their practices through means other than the EU survey tool.

Table 1: Communication means during fieldwork

Communication means	Number of NSAs	NSAs
Written procedure	3	EE, IS, LT
Conference call	19	AT, BE, CZ, DE, EL, ES, FI, HR, HU, IT, LI, LV, NL, NO, PT, PL, SI, UK-PRA/FCA, UK-GFSC
Visit	10	BG, CY, DK, FR, LU, IE, MT, RO, SE, SK

Following the completion of the fieldwork, an analysis of the material and evidence was undertaken and the key findings and proposed recommended actions following this analysis were reported to each NSA.

The peer review uses evidence from the self-assessments provided by NSAs. The self-assessments are structured via a questionnaire. The content of the peer review questionnaire is focussed on the following sections of the Decision:

1. information sharing at the moment of a new authorisation;
2. exchange of information between Home and Host regarding the formal notification for cross-border activity (FoE and FoS);
3. continuing cooperation as part of ongoing supervision between Home and Host competent authorities;
4. portfolio transfer;
5. data storage.

An introductory question was posed on the compliance with the Decision.

› Countries assessed

In Annex II of this report the countries and competent authorities participating in the Peer Review are listed, as well as the corresponding acronym which is also used in this report.

1.3.1 REFERENCE PERIOD

For each peer review a reference period is set to provide for an appropriate time period for assessing the application of EU measures and where no EU measures are in place, the assessment of supervisory practices more generally, in addition to the outcomes achieved.

For this peer review the reference period was set from 1 May 2017 (the start of the application of the Decision) till 1 July 2019. Although after the fieldwork further improvements were reported by several NSAs, these could not be taken into account as they were implemented after the reference period and/or would require an additional assessment. These will be taken into account in the foreseen follow-up measures – see section 4.2.

1.3.2 ASSESSMENT CRITERIA

In a peer review, the assessment criteria are set to provide for a common understanding of expected supervisory approaches and outcomes.

According to the Methodology for peer reviews, the assessment criteria refer to provisions in EU measures, which supervisors are required to apply in order to set out the expectations towards the supervised entities in a clear and transparent manner. If the peer review is (also) focused on supervisory practices not described in EU measures, the assessment criteria should be developed in relation to the approach agreed in the BoS and underpinned by hypothesis of a general agreement of common supervisory practices that could be expected in practice.

The key assessment criteria (see annex I) for this peer review were derived from the EIOPA Decision on the collaboration of the insurance supervisory authorities (Decision). Additional assessment criteria were developed based on the five principles and key characteristics of high-quality and effective supervision.⁸ Table 2 groups the assessment criteria by the section of the self-assessment questionnaire in which they appear.

⁸ https://www.eiopa.europa.eu/sites/default/files/publications/pdfs/a_common_supervisory_culture_o.pdf.

Table 2: Assessment criteria in each section of the self-assessment questionnaire

Section of the questionnaire	Assessment criteria to be applied
o. Overall peer review	<p>Principles and key characteristics of high quality and effective supervision</p> <p>Effectiveness</p> <ul style="list-style-type: none"> - Paragraphs 1.1.4, 1.1.5 and 1.2.1 of the Decision. - Recitals 18, 42 and 114 of the SII Directive. <p>Under an effective collaboration between the NSAs, supervisory efforts should focus on timely, proactive interaction and exchange of useful and prospective information. Communication tools need to be appropriate to the aim of the exchange of information. To support the effectiveness of the collaboration between the NSAs the relevant information should be collected and stored. A lack of supervisory records increases the risks that their content is not shared with other NSAs where necessary, or only a part of the information will be shared.</p> <p>Proportionality</p> <ul style="list-style-type: none"> - Paragraphs 1.1.4 and 1.2.3 of the Decision. - Recitals 18 and 114 of the SII Directive. <p>Proportionality means that, when applying the Decision, NSAs adopt a proportionate approach towards the application of certain provisions described in this Decision, taking account of the nature, scale and complexity of the risks inherent in the business of the concerned (re-)insurance undertaking. The application of the proportionality principle does not affect the information exchange as such, but relates to the level of details for the information to be exchanged. The adoption of a proportionate approach should never affect the compliance with the general requirement of the Decision aimed to set up an adequate and effective cooperation between Home and Host NSAs.</p> <p>Prospective and risk-based supervision</p> <ul style="list-style-type: none"> - Paragraphs 1.1.4 and 1.2.4 of the Decision. - Article 29 of the SII Directive. <p>Risk-based approach means that the level of cooperation has to take into account the level of supervision applied towards the concerned undertakings according to the NSA's classification in terms of risk profile. The level of cooperation should therefore be increased if the concerned (re-) insurance undertaking faces or is expected to face difficulties in the Home territory and/or in the Host territory. The assessment made on the basis of the risk-based approach can lead to different outcome for the Home NSA and for the Host NSA; however, this does not mean that it can be used to justify the non-compliance with an exchange of information requirement established by the Decision.</p>
1. Information sharing at the moment of a new authorisation	<p>Paragraphs 2.5.1 - 2.5.2 and 2.6.1 - 2.6.2 of the Decision.</p> <p>Articles 29, 30, 33, 39, 145-149, 155 and 158 of the SII Directive.</p>
1. Exchange of information between Home and Host NSA around the formal notification for cross-border activity (FoE and FoS)	<p>Information to be communicated by the Home NSA to the Host NSA (FoE and FoS)</p> <ul style="list-style-type: none"> - Paragraphs 3.1.1.1 - 3.1.1.3 and 3.2.1.1 - 3.2.1.3 of the Decision. <p>Information requested by the Host NSA upon receipt of notification and informal exchange of information between Home and Host before sending the complete notification (FoE and FoS)</p> <ul style="list-style-type: none"> - Paragraphs 3.1.1.4 - 3.1.1.6, 3.1.2, 3.2.1.4 - 3.2.1.6 and 3.2.2 of Decision.
2. Continuing cooperation as part of the ongoing supervision between Home and Host NSA	<p>Paragraphs 4.1.1 - 4.1.2 of the Decision.</p>
3. Portfolio transfer	<p>Section 4.2.1 of the Decision.</p>
4. Data storage of information linked to notifications	<p>Paragraph 3.3.1.6 of the Decision.</p>

2. MAIN FINDINGS

2.1 EFFECTIVE APPLICATION OF THE DECISION WITHIN NSAs

This peer review aimed at getting insight in how the NSAs ensure that the Decision is implemented as an effective instrument in the national authorities' daily supervisory work and as solid basis for the cooperation with NSAs in other EEA countries.

Although the means for implementing the Decision are not prescribed, its effective implementation is required to ensure consistency with its prescriptions and therefore this aspect was part of the assessment made in this peer review.

Seven NSAs (Belgium, France, Greece, Ireland, Italy, Latvia, Liechtenstein,) answered that they have "written policies" in place to ensure the effective application of the Decision, like internal instructions and forms for authorisation and notification; among them, 5 NSAs (France, Greece, Ireland, Italy, Latvia) also combine with a direct use of the Decision. Most NSAs (28) declared that they apply the Decision through "other internal practice", meaning a direct use (partial or total) of the Decision. Among them, 16 NSAs (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Hungary, Iceland, Lithuania, Norway, Portugal, Romania, Slovenia, Sweden, United Kingdom-PRA) do not have any or in some cases not sufficient concrete steps in place to ensure an effective application. Therefore, it was considered that they did not show the ability to effectively apply the Decision.

To assess if concrete steps were taken by the NSAs to ensure a consistent systematic application of the Decision the following criteria/benchmarks were used:

1. the practical implementation of the Decision in the NSAs' organisation;
2. the transparency towards the undertakings on what is required under the Decision by e.g. the use of templates and/or standardised letters.

Examples of the implementation of the Decision were considered:

- internal handbook referring to/or incorporating the Decision requirements (Austria - for portfolio transfer only), Belgium, Germany, Iceland, Ireland, Italy, France, Liechtenstein, Malta, Netherlands, Spain, Sweden);
- local decrees reflecting the requirements of the Decision (Austria - only limited to the requirements of the SII Directive), Belgium, Latvia, Malta).

Examples of practical implementation of the Decision are:

- letters/decisions presented during the fieldwork to prove how the Decision is applied (Slovakia);
- use of standard letters and authorisation/notification templates which reflect the requirements of the Decision (Belgium, France, Ireland, Luxembourg, Spain), the existence of written policies, internal tools, the translation of the Decision or the use of specific forms.

2.1.1 OVERALL CONCLUSION ON AN EFFECTIVE APPLICATION OF THE DECISION

As more than half of the NSAs (16) did not implement the Decision effectively, it can be concluded that considerable improvements for implementation of the Decision in NSAs' daily routine are necessary to achieve the objective of the effective collaboration foreseen by the Decision.

This is a crucial issue in the framework of the collaboration between NSAs since the Decision is one of the primary sources of good cooperation; it should be noted that procedures and information described in the Decision constitute the minimum requirement, providing consideration on the exchange of additional information and extended collaboration between the NSAs.

2.1.2 RECOMMENDED ACTIONS IN THE AREA OF AN EFFECTIVE APPLICATION OF THE DECISION

In the cases where NSAs used the Decision as a general reference and internal written policies or other practical tools to ensure an effective and consistent application of the Decision were not in place, a recommended action was issued.

INDIVIDUAL RECOMMENDED ACTIONS IDENTIFIED DURING THE REFERENCE PERIOD

Recommended actions were issued to NSAs in 16 countries (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Hungary, Iceland, Lithuania, Norway, Portugal, Romania, Slovenia, Sweden, United Kingdom-PRA) where the Decision was used as a general reference with no adequate written policies or any other practical tools in place to ensure an effective and consistent application of the Decision, as well in the case where written policies or practical tools are in place but only in relation to a limited part of the Decision.

In these NSAs, it was pointed out that some of the information supplement the requirements of national law, therefore it is important that the Decision is fully implemented in the regulatory and/or in the supervisory framework of the supervisory authorities. They were all recommended to take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and to make sure that undertakings are made aware of the information requested under the Decision (through external guidelines, circulars or notification templates).

2.2 AUTHORISATIONS

Cooperation between home and host supervisors and timely and effective information exchange is sometimes hindered during the authorisation process. Especially, information on former rejections by other NSAs is relevant in this context.

Some recent cases indicated that some undertakings had not been authorised by the home supervisor to take up business in a certain Member State or decided to withdraw their application after discussion with the supervisor on the conditions for authorisation. The same undertakings then decided to submit the application to the NSA of another Member State with the intention to operate exclusively (or almost exclusively) in the Member State that originally refused the authorisation.

In order to promote a preventive and effective supervision, the Home NSA needs therefore to receive any relevant information on the starting of any formal or informal request for an authorisation in other EEA countries and/or third countries which has been rejected or withdrawn and, in such case, must inform the Host NSA without delay. In this situation, the business plan to be submitted in the authorisation phase as well as the strategy for carrying out the activity in the Host State are key documents whose content should be shared with the Host State, where relevant.

To support adequate supervision in the authorisation and notification phases, the Decision sets requirements to assure that the Home NSA confronted with the application for authorisation and notification fulfils its gatekeeper

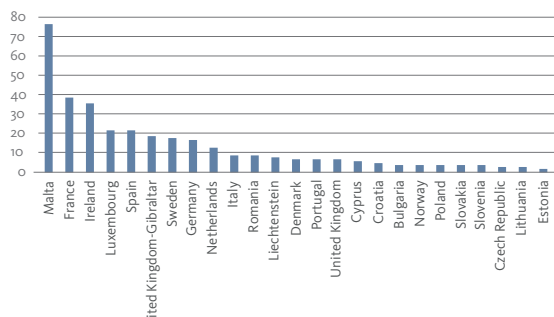
role effectively while taking into account the legitimate interests of the host market where the applicant plans to do business:

- Article 2.5.1 of the Decision requires a Home NSA to request the applicant to declare if there had been formal or informal requests for an authorisation by its shareholders or members with qualifying holdings to establish an insurance or reinsurance undertaking in another Member State or third country which had been rejected or withdrawn and the reasons for the rejection or withdrawal.
- Article 2.5.2 requires the Home supervisor to engage with the NSA in which jurisdiction the authorisation has been sought in order to understand the circumstances of the rejection.
- Article 2.6.1 requests the Home NSA to verify in case the applicant clearly indicates its intention to operate exclusively or almost exclusively in one or more Member States on a FoS basis the reasons for this strategy;
- Article 2.6.2 advises the Home NSA to engage with the Host NSA to facilitate a better understanding of the situation and of the circumstances of the undertaking, before making a decision on the authorisation.

These four elements formed the key part of this peer review regarding the authorisation phase with the aim to get a clear picture of the application of Articles 2.5 and 2.6 and to verify if the cooperation taking place in the context of these two articles is effective.

Most NSAs have received, during the reference period, *requests for new authorisations or extension of activity*. Only 4 NSAs did not (Austria, Greece, Iceland, Latvia). The NSAs that received the highest number of applications were Malta (76), France (38), Ireland (35), Spain (21), Luxembourg (21), United Kingdom-Gibraltar (18), Sweden (17) and Germany (16) (see figure 6).

Figure 6: Number of requests for new authorisation or authorisation to extend the activity to other classes of business per NSA in the reference period (from 1 May 2017 till 1 July 2019).



The number of applications received varies considerably per NSA. For several NSAs, the high number of applications (and notifications) was partly influenced by the Brexit. Finally, when it comes to the NSAs that did not receive any applications it was difficult to gather answers on this part, due to the lack of experience and examples of applications received during the reference period.

a) Application of Article 2.5 of the Decision

As stated above, not all NSAs received requests for authorisation in the reference period.

Twenty-three (23) Home NSAs replied that they ensure to receive information from the applicant regarding authorisations previously sought in other Member States or third countries, as required under the Decision (Article 2.5.1 of the Decision). The Decision prescribes to request a declaration of the applicant on whether it pursued formal and informal requests which has been rejected or withdrawn; of the 23 NSAs (Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Romania, Slovenia, United Kingdom-PRA, United Kingdom-GFSC), 16 NSAs replied they request such a specific declaration. For the 9 NSAs that replied to not request the information on former authorisation requests in the reference period, the explanations vary; four NSAs had no authorisation requests in the reference period (Austria, Greece, Iceland, Latvia). HU

replied that they ask for information via a questionnaire to be submitted with the application. Five of the above mentioned 9 NSAs see no merit to request for former applications for authorisation in other Member States for various reasons. Some examples are provided below:

- During the reference period the authorised undertakings almost exclusively operated in the Home Member State (Denmark, France).
- Some NSAs stated that the information is expected from the applicant; in these cases it has also been assessed how the requirement of the Decision is fulfilled as it was not clear how those NSAs ensure to receive this information. As a result it appeared that this is not always checked as part of the formal procedure (Spain).

For some NSAs conditions for requesting the information are not optimal: some NSAs affirmed that they are not formally empowered to require this information from the applicant as the legal basis is missing (Austria, Portugal, Spain). One NSA stated it is empowered to request the information but the applicant can refuse to provide it (Sweden).

The NSA in Liechtenstein requires the information during the oral discussion with the applicant but the specific request is not included in its internal instruction. The NSAs in France and Spain ask the information on former applications only if the applicant is unknown to them; in Spain, in particular, the NSA does a fit and proper assessment if the applicant is unknown. One application to carry out business in ES during the reference period was rejected, due to such an assessment made.

To ensure a systematic and transparent application of Article 2.5 of the Decision the NSAs should include in their internal instructions and communication to the industry (within the authorisation templates), a request for a declaration from the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.

In four cases during the reference period, it appeared that the applicants for authorisation declared to the NSA that former applications had been withdrawn (Liechtenstein, Luxembourg, Netherlands, Portugal) and the NSA requested the applicant to explain why. In two cases it appeared that issues with the business model were the

reason for the withdrawal of the application in another Member State. Contacts with the NSAs of the Member States where the application was withdrawn resulted in further discussions with the applicant on the business model. As a consequence the new application was also withdrawn. In another case the NSA reported it asked the applicant why they did not set up their business in the country of origin and contacted the NSA of the country of origin where the first application was refused. The applicant subsequently withdrew also its second application. In one case it appeared that an applicant started the same application procedure in several Member States simultaneously. As the NSAs then requested a motivated choice for one jurisdiction, the other applications were withdrawn. All 4 NSAs involved were positive on the cooperation with the NSAs from Member States where the former application had been withdrawn and the timeliness and completeness of their responses.

Overall, 11 recommended actions were issued in the context of the application of Article 2.5 (Austria, Bulgaria, Denmark, Finland, France, Liechtenstein, Portugal, Romania, Slovakia, Spain, United Kingdom-PRA).

b) Application of Article 2.6 of the Decision

During the reference period 7 NSAs (France, Ireland, Liechtenstein, Luxembourg, Malta, Portugal, Slovenia) received requests for authorisation to operate exclusively, or almost exclusively on a freedom of services basis in one or more other Member States (Article 2.6.1. of the Decision). All 7 NSAs asked for the reasons supporting that strategy. All NSAs except Slovenia (as finally the authorisation was withdrawn) consulted the Host NSA about the authorisation request. In Luxembourg the information is requested dependant on the kind and the size of business planned for the FoE and FoS activities. In case of Malta the interpretation of the concept of “exclusively” is referring to one Member State whilst it shall also refer to the situation where most of the activity is planned to be carried out in a number of Member States. Five NSAs do not systematically request information on the business strategy for doing business predominantly in other Member States or could not, because of a lack of clear procedures and cases, provide evidence of the required practice in line with the Decision (Bulgaria, Cyprus, Denmark, Romania, Slovakia).

Three NSAs (France, Ireland, Italy) were contacted as a Host NSA by the Home NSA on an undertaking that intended to do business (almost) exclusively in the Host Member State. In all cases (France, Ireland, Italy) in which the

Home NSA contacted the Host NSA, the Host NSA stated it had provided information in a timely manner. Eight NSAs (Belgium, Cyprus, Denmark, Finland, Hungary, Iceland, Luxembourg, Poland) were not contacted as a Host NSA during the reference period.

2.2.1 OVERALL CONCLUSION ON AUTHORISATIONS

The majority of the NSAs have not properly implemented Articles 2.5 and 2.6 of the Decision (in the reference period) into their supervisory framework considering that in total 18 recommended actions for the application of these Articles have been issued. Furthermore, 6 NSAs (France, Ireland, Liechtenstein, Luxembourg, Malta, Portugal) contacted other NSAs in the context of Article 2.6.2, whilst only 4 of these NSAs reported a systemic approach in case applicants plan to pursue most of their business in other Member States. These NSAs considered the contacts with the Host NSA as satisfactory and an effective tool and reported the advantage for their supervisory work being satisfied. As stated above, they received valuable information on earlier authorisation requests from other NSAs and were better positioned to challenge the proposed business plans provided by the applicants.

2.2.2 RECOMMENDED ACTIONS IN THE AREA OF AUTHORISATIONS

a) Application of Article 2.5

It can be concluded that although 16 NSAs affirmed to have asked the information on former applications which had been rejected or withdrawn, 5 of these 16 NSAs still received a recommended action either for not ensuring in their internal instructions and forms a consistent request for this information to all applicants or because they affirmed that they do not have the legal power to request the information.

Therefore, also in this area, considerable improvements for effective implementation of the Decision need to be made.

INDIVIDUAL RECOMMENDED ACTIONS IDENTIFIED DURING THE REFERENCE PERIOD

Recommended actions were issued to NSAs from 9 countries (Austria, Bulgaria, Denmark, Finland, France, Liechtenstein, Portugal, Slovakia, Spain). Those NSAs should include in their internal instructions and communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. If a withdrawal is reported by the applicant, the Home NSA is required to engage with the Supervisory Authority of the other Member State to understand the circumstances of the rejected or withdrawn application, before making a decision on the authorisation. NSAs in 2 countries (Romania, United Kingdom-PRA) though they request the information in accordance with Article 2.5.1. of the Decision from an applicant, should engage with the other NSAs to understand the circumstance of the rejected or withdrawn applications as required in Article 2.5.2 of the Decision.

This would ensure a consistent assessment of authorisation requests and awareness of the industry in case of applications for new authorisations.

b) Application of Article 2.6

As for the gathering of information on the business strategy when the applicant asks for authorisation in a Member State which will not be the focus of its operations the conclusion is that if the business strategy reveals plans

to focus in FoS business in a Host State, the Home NSA in general contacts the Host NSA concerned (7 NSAs). However, other 7 NSAs did not fully implement Article 2.6.1 of the Decision into their supervisory processes and therefore better results can be expected once the implementation of the Decision has improved.

INDIVIDUAL RECOMMENDED ACTIONS IDENTIFIED DURING THE REFERENCE PERIOD

Recommended actions were issued to NSAs from 7 countries (Bulgaria, Cyprus, Denmark, Luxembourg, Malta, Romania, Slovakia). Those NSAs (except Malta) were recommended (in line with Article 2.6 of the Decision) to add, in their procedure, a specific question regarding the reasons supporting the strategy intending to operate exclusively or almost exclusively in one or more Member States, and, that the Home NSA engages with the Host NSA to understand the situation and the circumstances of the undertaking before making a decision on the authorisation. In case of Malta the recommended action regards the interpretation of the concept of "exclusively" referring to one or more Member States.

2.3 NOTIFICATIONS

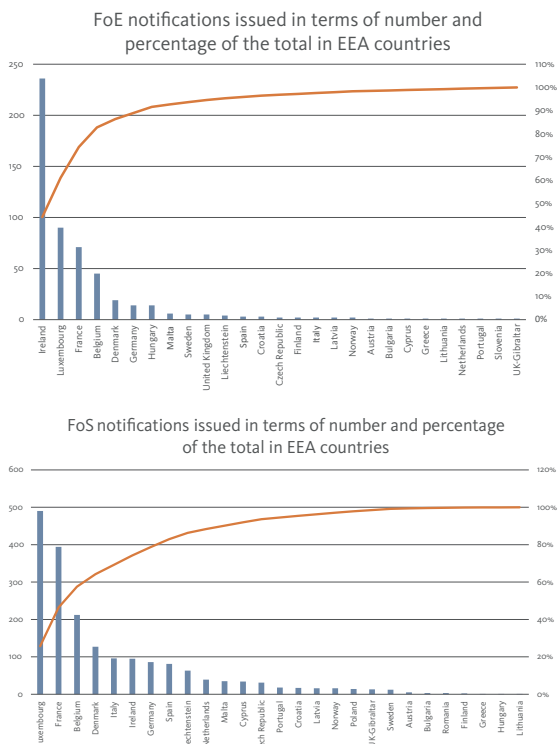
2.3.1 FOE AND FOS NOTIFICATIONS

The FoE and FoS notification process is an important step in the cooperation between NSAs. It generally constitutes the starting point of the cooperation and it is therefore fundamental to ensure that it starts on a good basis.

The Decision foresees several obligations concerning the notification process for FoE and FoS.

The number of notifications issued by each NSA, as Home NSA, during the reference period of this peer review (from 1 May 2017 till 1 July 2019) differs a lot from one NSA to the other. In terms of number of notifications some NSAs are outstanding (Belgium, Denmark, France, Germany (only FoS), Ireland, Italy (only FoS), Liechtenstein (only FoS), Luxembourg).

Figure 7: Notifications (FoE and FoS) from 1 May 2017 till 1 July 2019 per NSA in terms of number* and percentage of the total



*: all NSAs that have reported 1 or more notifications are plotted in this graph. E.g Austria had issued 1 FoE and 5 FoS notifications in the reference period.

Source: Peer review on collaboration – answers of NSAs to self-assessment questionnaire - 2019.

The number of notifications was also taken in consideration when assessing the application of the Decision as these NSAs have many more cases.

High figures in certain NSAs (Belgium, France, Ireland, Liechtenstein, Luxembourg) can be explained by the fact that the reference period of the peer review includes the anticipation period of the Brexit during which some UK undertakings decided to open new subsidiaries in certain countries to keep an access to the European internal market.

The peer review focused on provisions of the Decision linked to the notification process:

- exchange of information before formal commencement of FoE and FoS;
- exchange of information concerning undertakings which intend to operate exclusively or almost exclusively in another NSA;
- information to be provided by the Home NSA to the Host NSA;
- information requested by the Host NSA to the Home NSA in addition to the information already provided by the Home NSA in the notification;
- information to be communicated by the Host NSA to the Home NSA upon receipt of a formal notification.

2.3.2 EXCHANGE OF INFORMATION BEFORE FORMAL COMMENCEMENT OF FOE AND FOS

Articles 3.1.1.6. and 3.2.1.6. of the Decision require that “the Home NSA may, where appropriate, have an informal exchange of information with the Host NSA before sending the complete notification. This may allow an exchange of information before the formal commencement of branch activity / the formal start of the activity by FoS.”

The Decision suggests to have this interaction ‘where appropriate’ depending on the circumstances of the cases before the formal notification process. The aim of these articles is to encourage informal exchange of information between NSAs before sending the complete FoE or FoS notification in order to have as early as possible a transparent exchange of information between NSAs and preventing that unexpected issues arise once the undertaking has already started its business.

The formal notification process takes place under strict time-lines: within two months after the receipt by the Host NSA of the relevant information the undertaking

can start its FoE business, while the undertaking can start business in case of FoS from the date of communication of the notification to the Host NSA.

The peer review investigated if and how often these kind of pre-notification contacts took place. The number of NSAs organising informal exchange of information before sending the final notifications is low:

- 9 NSAs for FoE (Belgium, France, Germany, Greece, Ireland, Liechtenstein, Luxembourg, Malta, Spain);
- 7 NSAs for FoS (Belgium, France, Germany, Ireland, Liechtenstein, Slovakia, Spain).

The reasons for organising informal exchange of information before sending the final notifications usually are:

- request of general background information;
- specific legal or regulatory framework in the Host market regarding a product (e.g. in relation to car insurance in Italy);
- specific relationship between the two NSAs linked to past experience.

In terms of way forward, the use of Articles 3.1.1.6. and 3.2.1.6. of the Decision could be improved by encouraging the supervisors to make use of informal exchange of information, especially in cases where there is a need for the Home NSA to learn more about the host market before sending the notification or in cases the Home NSA is aware of the particular attention paid by the Host on a certain product or line of business.

2.3.3 EXCHANGE OF INFORMATION BEFORE FORMAL COMMENCEMENT OF FOE AND FOS CONCERNING THE FACT THAT AN UNDERTAKING INTENDS TO OPERATE EXCLUSIVELY OR ALMOST EXCLUSIVELY IN ANOTHER NSA

A specific question was included in the self-assessment questionnaire concerning the use of Articles 3.1.1.6. and 3.2.1.6. of the Decision in case the undertaking intends to operate exclusively or almost exclusively in another Member State.

From the replies it is noted that there were not many cases during the reference period.

- Only 4 countries (Ireland, Liechtenstein, Luxembourg, Malta) have used informal exchange of information in the cases of an undertaking which has indicated its intention to operate exclusively or almost exclusively in one or more other Member State(s).

- As Host NSAs only 8 NSAs (Belgium, France, Germany, Ireland, Liechtenstein, Luxembourg, Slovakia, Spain) were contacted on the basis of Articles 3.1.1.6. or 3.2.1.6. of the Decision prior receiving the complete notification.
- For all “No” answers, the explanation usually is that there are no cases.

Similarly to the case of Article 2.6 of the Decision, it would be opportune to encourage and ensure that the Home NSA receiving a request of notification where the intention of the undertaking is to operate exclusively or almost exclusively in (an)other Member State(s) makes use of Articles 3.1.1.6./3.2.1.6 of the Decision by contacting the Host NSA in order to understand the situation and the circumstances of the undertaking before sending the formal notification.

2.3.4 INFORMATION TO BE PROVIDED BY THE HOME NSA TO THE HOST NSA

Section 3.2.1. of the Decision specifies the information to be communicated by the Home NSA to the Host NSA.

The focus of the peer review was put on the completeness of notifications, but also following a risk-based approach, on the communication of the most important information needed. The actual cases described by the NSAs showed globally a good communication between NSAs.

Concerning the process to assess - as Home NSA - whether a notification is sufficiently comprehensive, all NSA explained that they perform a “completeness test”.

Some NSAs have elaborated procedures to ensure that their outward FoE and FoS notifications are complete (Austria, Belgium, Croatia, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, Romania, Slovenia). Some of these procedures are at the basis of the issued best practices in terms of implementation of the Decision (see paragraph 4.2).

However, some NSAs indicated that they had cases of incomplete notifications. Most of those NSAs reported that the main missing data concerns:

- the nature of risks;
- the distribution channels;
- the policyholder guarantee fund;
- the person dealing with complaint handling;
- the address and LEI of the undertaking.

Concerning the process to assess - as Host NSA - whether a notification is sufficiently comprehensive, all NSA (except one: Latvia) explain that the inward notifications are assessed by teams of experts. Several NSAs use checklists to ensure that the inward notifications are complete (Germany, Greece, Ireland, Liechtenstein, Spain).

2.3.5 INFORMATION REQUESTED BY THE HOST NSA TO THE HOME NSA IN ADDITION TO THE INFORMATION ALREADY PROVIDED BY THE HOME NSA IN THE NOTIFICATION

Article 3.1.1.4 of the Decision foresees that “The Host NSA may ask, on an ad-hoc basis, the Home NSA for information in addition to that specified in paragraphs 3.1.1.1 and 3.1.1.2 and provided under 3.1.1.3, before the undertaking establishes the branch, preferably within one month upon receipt of the communication of the notification. Any such request shall be proportionate to the type of business, risks or commitments that the undertaking intends to cover in the Host NSA’s territory. The Host NSA shall indicate the rationale supporting that ad-hoc request. In this case, the Home NSA shall inform the insurance undertaking of the request. The additional information requested, where possible, shall be included in an updated communication. If the insurance undertaking is not in a position to provide the additional information, the Home NSA shall inform the Host NSA”. Article 3.2.1.4. foresees the same for FoS activities.

In practice, only 14 NSAs for FoE and 13 NSAs for FoS requested - as Host NSA - information on an ad-hoc basis.

Concerning the underlying reasons for requesting additional information relating to FoE:

- 7 NSAs mentioned both additional topics and incomplete notification (France, Germany, Italy, Netherlands, Slovenia, Spain, United Kingdom-PRA).
- 3 NSAs mentioned only additional topics (Austria, Belgium, Cyprus).
- 4 NSAs mentioned only incomplete notifications (Greece, Malta, Poland, Sweden).

Concerning the underlying reasons for requesting additional information for FoS:

- 6 NSAs mentioned both additional topics and incomplete notification (France, Greece, Italy, Netherlands, Slovenia, Spain).
- 6 NSAs mentioned only incomplete notifications (Austria, Germany, Hungary, Poland, Sweden, United Kingdom-PRA).
- 1 NSA mentioned only additional topic (Belgium).

The most frequently underlying concerns mentioned by the potential future Host NSA are:

- risk of non-compliance with local general good conditions;
- risk of non-compliance with prudential requirements;
- risk of non-commitment towards policyholders;
- risk of underpricing.

The most frequently information requests mentioned by the potential future Host NSAs are:

- information on products;
- information on financial standing;
- information on organisational structure;
- information on claims handling;
- information on distribution channels;
- information on governance of the branch.

More generally, concerning the complete character of the standard FoE and FoS notifications, it is noted that most Home NSAs stated not having additional information needs. In one case, information concerning consumer protection (Poland) was mentioned as possible additional information desirable to receive. The most frequently requested information is the registration in the National Bureau.

2.3.6 INFORMATION TO BE COMMUNICATED BY THE HOST NSA TO THE HOME NSA UPON RECEIPT OF A FORMAL NOTIFICATION

The information to be communicated by the Host NSA to the Home NSA is explained in details in Articles 3.1.2 (for FoE) and 3.2.2 (for FoS) of the Decision. The general aim is allowing the Home NSA to understand the specificities of the Host market.

The peer review showed that this communication of information does not raise any specific issue.

Concerning the adequacy of the level of information to be communicated, all NSAs, except 4 (Italy, Ireland, Liechtenstein, Malta) do not consider that additional information is necessary from the Host.

Only the following NSAs suggested receiving more information:

- Italy (distribution networks and type of contracts);
- Ireland (GWP for each line of business and planned distribution model);
- Liechtenstein (distribution channels and critical or unsuitable products and specific publishing obligations);
- Malta (anticipated claims in host jurisdiction).

2.3.7 OVERALL CONCLUSION ON NOTIFICATIONS

The peer review showed that the FoE and FoS notification process is quite well organised in the different NSAs. The set of information to be communicated in accordance with the Decision between Home and Host NSAs is globally considered as adequate.

However, in general, the exchange of information before formal commencement of FoE and FoS should be further emphasised and reinforced. The purpose is indeed to insist more for the future on the importance of the informal exchange of information in order to have all NSAs communicating more spontaneously concerning FoE and FoS notification at a very early stage. Especially in the cases mentioned in paragraphs 2.3.2 and 2.3.3, this is useful to prevent that unexpected issues arise once the undertaking has already started its business.

It is also noted that some notifications are sometimes incomplete but the internal use of checklists by certain NSAs allows a quick identification of the missing information which - as it emerges from the replies received - are generally promptly provided by the Home NSA to the Host NSA. The use of such checklists is therefore encouraged and a best practice was found in Ireland.

2.3.8 RECOMMENDED ACTIONS IN THE AREA OF NOTIFICATIONS

INDIVIDUAL RECOMMENDED ACTIONS IDENTIFIED DURING THE REFERENCE PERIOD

Recommended actions have been issued to NSAs from two countries (Bulgaria, United Kingdom-GFSC) that relate to the lack of use of the possibility of informal exchange of information in advance of a notification. Another recommended action stemming from a case study relates to the need of sending again the Host the complete set of information foreseen by Articles 3.1.1.4 and 3.1.1.5 of the Decision in case of a notification already communicated some years before (Romania). Furthermore, recommended actions have been issued to the NSAs in Sweden and United Kingdom-GFSC which are expected to adapt their internal procedures and internal templates in order to comply with Articles 3.1.1.2 and 3.1.1.3 (for FoE) and 3.2.1.1 and 3.2.1.2 (for FoS) of the Decision. Finally, a recommended action was issued to the NSA in Malta which is expected to strengthen its internal processes aimed to assess whether the notification to the Host NSA is complete and sufficiently comprehensive, in order to ensure, on a systematic basis, the accuracy and completeness of the notifications submitted to Host NSAs.

In total 6 recommended actions were issued in this area.

2.4 SUPERVISION ON A CONTINUOUS BASIS (ONGOING SUPERVISION)

Although the Home NSA has exclusive responsibility for the ongoing supervision of the activities of the undertaking, including its cross-border activities, continuing cooperation between Home and Host NSAs can help the Home NSA to make informed decisions and gain information on specific risks arising from cross-border activities.

Article 4.1.1.2 of the Decision has introduced an innovative principle regarding the increased cooperation of the Home NSA with the Host NSA particularly focused on specific risk areas,⁹ and Article 4.1.1.3 prescribes that the Home NSA must inform in a timely manner the Host NSA “about any outcomes from its supervisory review process which relate to risks arising from or impacting the cross-border activity....”

This principle of cooperation requires an active role of the Home NSA in informing the Host NSA in a timely manner.

The aim of the peer review in this area was to investigate on the concrete level of cooperation between the NSAs the application of the relevant articles of the Decision.

2.4.1 MATERIALITY

Most NSAs take material risks in other countries into account in ongoing supervision. The importance of the business of an insurance undertaking can vary from jurisdiction to jurisdiction. E.g. a line of business of an undertaking might be less important for the Home NSA in a large insurance market but very important for the Host NSA in a small insurance market. Under the concept of materiality supervisors should take these differences into account when exchanging information on an ongoing basis. The Decision does not include a definition of materi-

⁹ The risk areas mentioned in Article 4.1.1.2 of the Decision are the following:

System of governance including the ability of the head office management to understand the cross-border market specificities, related risk management tool, and internal control in place. In regards to the risk management system special attention shall be paid to underwriting, pricing and reserving;

- Outsourcing contracts and distribution partners;
- Claims handling;
- Compliance;
- Consumer protection.

ality and there are different ways supervisors take (or do not take) materiality into account.

Examples of how the materiality of foreign business is taken into account include:

- In Italy evaluations have been made case-by-case on market quota share or even incidence on type of products together with the corresponding NSAs to gain a comprehensive picture of the market situation in the Host state.
- Belgium follows a holistic approach which includes all undertakings and branches.
- Slovakia works with the definition that if the majority of the business is underwritten abroad, it is considered material.
- Luxembourg does not consider materiality so important, e.g. in cross-border life business as this business is mainly focused on unit-linked contracts which are considered “not difficult to understand” and according to that NSA “generally do not necessitate a strong cooperation with the Host NSA”.
- In Greece, the BoG takes materiality into account and discusses with supervised entities their intention to carry out cross-border activities – considering factors such as:
 - The nature of risks and the volume of business the undertaking intends to undertake/cover in the host country.
 - The experience the undertaking has in terms of underwriting, pricing and reserving regarding these particular risks.
 - The market search the undertaking has already performed with regard to the cross-border market specificities.
- Malta considers materiality in relation to the type and complexity of products, complexity of distribution channels, knowledge and experience of the Managing General Agent, target clients, significance of the gross written premium over a period of 3 years and concerns stemming from due diligence or internal control systems.

2.4.2 COOPERATION IN ONGOING SUPERVISION

Home NSA perspective

As Home NSA most of the NSAs (21 NSAs - Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Slovakia, Slovenia, Spain, Sweden, United Kingdom-PRA/FCA) stated they cooperate with the Host NSAs in order to form a view on specific risks arising from the cross-border activities in relation to:

- › the system of governance, including the ability of the head office management to understand the cross-border market specificities, related risk management tools and internal controls in place;
- › the risk management area: the underwriting, pricing and reserving areas;
- › outsourcing contracts and distribution partners;
- › claims handling;
- › compliance with the legal provisions applicable in the Host State;
- › consumer protection issue;
- › other reasons.

As Home NSA, 14 NSAs (Denmark, Croatia, Estonia, France, Hungary, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Romania, Slovenia, Spain, Sweden) informed the Host NSA of any specific risks linked to the cross-border activities identified as a result of their ongoing supervision, as foreseen by Article 4.1.1.3 of the Decision and 21 Home NSAs (Belgium, Bulgaria, Croatia, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Romania, Slovakia, Slovenia, Spain, Sweden, UK-PRA/FCA) exchanged information with the Host NSA in case the latter had raised concerns regarding cross-border activity in its jurisdiction.

Thirteen Home NSAs (Austria, Bulgaria, Croatia, Denmark, Germany, Ireland, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain) were informed about an undertaking's failure to take actions to comply with the legal provisions applicable in the Host jurisdiction and took the necessary steps to remedy the irregular situation (Article 4.1.1.5 of the Decision).

Examples of cases of cooperation are:

- › Austria - Finanzmarktaufsicht (FMA) informed the host supervisor about the activity of an EU branch of an Austrian insurer where the business practice in claims handling was not in line with the Austrian standard and legal provisions.
- › Denmark - The Danish Financial Supervisory Authority (DFSA) started sharing information when the solvency situation was deteriorating and there was a risk of breaching the SCR in the near future. The DFSA has shared information about the financial and solvency condition, technical provisions, overview of agents and contracts with agents, annual reports, shareholder structure, business strategy, reinsurance contracts, the DFSA's planned supervisory actions and findings from on-site inspection.
- › France - Autorité de Contrôle Prudentiel et de Résolution (ACPR) reported a case where the audit conclusions made by the insurance undertaking on its local distributor has been exchanged with Host NSA. Home and Host NSA agreed to set-up and share a specific quarterly reporting on premiums production and claims volumes in the Host State.
- › Italy - During 2018, Istituto per la Vigilanza sulle Assicurazioni (IVASS) exchanged information (also during a physical meeting) with the Belgian supervisor authority National Bank of Belgium (NBB) related to a business unit of an undertaking under IVASS supervision located in BE but not pursuing insurance activity.
- › Lithuania - Lietuvos Bankas (Bank of Lithuania; BoL) closely collaborates with supervisors of other Baltic countries. Once per year BoL has a meeting with other Baltics supervisors. BoL as Home NSA presents basic areas (business model, premiums and claims dynamic, SCR structure and ratio, risk assessment analysis and information when an ad-hoc event has occurred).
- › Malta - Malta Financial Services Authority (MFSA) had discussions with the Prudential Regulation Authority (PRA) (United Kingdom) in relation to concerns from supervisory work carried out by the MFSA on a particular insurer.

Host NSA perspective

As Host NSA most NSAs are committed in college work and on-site visits. There were 19 countries with cases in which the Host NSA (Belgium, Bulgaria, Croatia, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Romania, Slovakia, Slovenia, Sweden, United Kingdom-PRA/FCA) exchanged information with the Home NSA with regard to activities in its jurisdiction that might affect the financial soundness of the undertaking in the case of deteriorating financial conditions and supervisory measures taken.

As a Host NSA, 9 NSAs (Bulgaria, Croatia, France, Germany, Hungary, Ireland, Italy, Poland, Slovenia) have been informed by the Home NSA about the actions taken or any deviation from the measures proposed by their supervisory authority following an undertaking's failure to take actions to comply with the legal provisions applicable in the host jurisdiction. Most of them were informed through the cooperation platforms, some of them by letters.

Cases of cooperation that are often mentioned:

- › In case of cessation of the activities (FoE or FoS), details on how the cross-border policies covering risks or commitments situated in the Host jurisdiction are managed (Austria, Belgium, Croatia, Netherlands, Romania).
- › Details of deteriorating financial conditions and instances of non-compliance with technical provisions, SCR and MCR and supervisory measures taken in accordance with Articles 137, 138, 139 and 141 of the SII Directive (Bulgaria, Cyprus, Denmark, Estonia, France, Liechtenstein, Lithuania, Malta, Slovakia).
- › Changes to the assessment of suitability of shareholders and members with qualifying holders, as well as to the assessment of the fitness and propriety of all persons who effectively run the undertaking or hold key functions connected with other Member States (Estonia, Ireland, Liechtenstein, Lithuania, Portugal, Romania).
- › There were 14 countries with cases where the Host NSAs have proposed or taken supervisory measures against an undertaking (Austria, Bulgaria, Croatia, Cyprus, Estonia, Greece, Hungary, Iceland, Italy, Lithuania, Poland, Slovenia, Spain, Sweden). Several cases referred to issues when processing the payments of claims (Liechtenstein, Spain, Sweden) but also complaints handling (Austria), General good provisions (Greece) and other specific cases where mentioned.

2.4.3 OVERALL CONCLUSION ON ONGOING SUPERVISION

In general, from the replies received it emerged that NSAs exchange information during ongoing supervision especially if there is a request from another NSA and that there is no consistent level of quality of the information.

It is not so evident that the principle of cooperation contained in Article 4.1.1.2¹⁰ of the Decision, which foresees a pro-active role of the Home NSA aimed to increase its cooperation with the Host NSA, is concretely put into practice. Improvements in this area are desirable to the aim of developing a closer cooperation at a very early stage between Home and Host NSAs enabling the Home NSA to form a view on specific risks arising from the cross-border activity. As materiality is not defined in the Decision there were no recommended actions on materiality issued to NSAs.

¹⁰ Article 4.1.1.2 of the Decision:

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

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

2.4.4 RECOMMENDED ACTIONS IN THE AREA OF ONGOING SUPERVISION

RECOMMENDED ACTIONS IN THE AREA OF ONGOING SUPERVISION

Individual recommended actions identified during the reference period

Recommended actions concerning ongoing supervision were issued to 3 NSAs.

One recommended action (Spain) concerns the lack of information to the Home NSA both before an on-site visit of a branch and the observations made during the visit.

The second type of recommended action (Liechtenstein) is issued concerning the lack of information to the Host NSA about supervisory measures taken against an undertaking carrying out activity on cross-border basis.

The third one (Romania) concerns the lack of information to the Host NSA in a timely manner on further developments/follow-up after appropriate actions have been taken in relation to the investigation request of the Host NSA under Article 4.1.1.5 of the Decision

2.5 DATA STORAGE

2.5.1 GENERAL

In order to enable the NSAs to exchange the information mentioned in the Decision by electronic means and in an efficient and effective manner, Article 3.3.1.6. foresees that the supervisory authorities should maintain a data storage system that allows the extraction, on an individual and aggregated basis, of a list of information concerning the cross-border activity of the undertakings, both as Home and as Host NSA. Such a data storage system, as foreseen in Article 3.3.1.6 of the Decision, plays an important role in the conduct of a full and proper assessment of the activities carried out by FoE and/or FoS on a timely basis.

The peer review revealed that 14 NSAs maintain, in full, the information provided by the list mentioned in Article 3.3.1.6 of the Decision, either in a single database (Austria, Germany, Greece, Italy, Malta, Spain), or in various locations that are interconnected and form the data storage system foreseen by the Decision (Belgium, Denmark, Estonia, France, Hungary, Ireland, Latvia, Luxembourg).

Four NSAs (Bulgaria, Croatia, Li

echtenstein, Slovenia) do not have a data storage system in the meaning of Article 3.3.1.6 of the Decision, however these NSAs are planning to. The reasons given for not having a data storage system in line with Article 3.3.1.6. of the Decision come mainly from the presence of other tools for recording the information already set before the Decision as Excel or Word files.

In case of 12 NSAs (Cyprus, Czech Republic, Finland, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, United Kingdom-PRA/FCA, United Kingdom-GFSC) the peer review found that they cannot store, extract and provide to the Host/Home NSA (as the case may be) all data required by the Decision in Article 3.3.1.6. In some instances the incompleteness of the data storage system was backed-up by cases of incomplete notifications (as regards specific information of the Decision) that other authorities have mentioned to have received from the respective authorities. In the case of one NSA (Sweden) the database is not fully complete in accordance with Article 3.3.1.6 and has to be updated.

Although the information that these NSAs do not record in their data storage system fall under different categories provided by the Decision, a number of elements that have been identified as most frequently standing up as missing. This needs to be further clarified when the Decision will be updated:

- The declaration that the undertaking has become a member of the national bureau and the national guarantee fund of the Host Member State.
- If the insurance undertaking intends to cover risks relating to legal expenses insurance, the option chosen from those described in Article 200 of the SII Directive.
- Any conditions under which, in the interest of the general good, the activity must be pursued within the territory of the Host Member State or confirm that no conditions have been imposed. This informa-

tion shall include the link to the website where the general good conditions are published.

- Any irregularities known to the Host NSA, about the local third or related parties involved in the underwriting activities in the Host Member State, about key persons as well as any relevant information following the analysis of the notification received from the Home NSA.
- The name and address of the claims representative.
- Description of relevant policyholder guarantee funds in the Host Member State that would be applicable to the FoS.

2.5.2 OTHER ELEMENTS OF INFORMATION TO BE STORED BY HOME NSAS

The peer review identified various practices among the Home NSAs for the storage of the information regarding withdrawn or rejected applications (Article 2.5 of the Decision). The NSAs that stated that they did not have such cases within the reference period declared that, if the case may be, this information would be accommodated within their internal file processing programme (Austria, Denmark, Greece, Hungary, Iceland, Poland), more specifically in the application file (Czech Republic, Romania). The other NSAs store the information regarding withdrawn or rejected applications in their internal

data system. Five NSAs (Germany, Hungary, Netherlands, Lithuania, Slovenia) use a document management system (“DMS”) in which a file is created for each case and incoming documents and corresponding information are stored. SK stores this information on paper.

Most of the NSAs ensure that the information on the discussion with the applicant regarding the reasons supporting the strategy aimed to operate exclusively or almost exclusively in one or more Member States on a freedom of services basis (Article 2.6 of the Decision) is stored and traceable for further reference in the internal file processing system (Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Slovenia, Sweden, United Kingdom-PRA/FCA, United Kingdom-GFSC). Four NSAs (Bulgaria, Czech Republic, Romania, Spain) store this information in the authorisation files specific for each entity. Slovakia stores this information only on paper.

2.5.3 OVERALL CONCLUSION ON DATA STORAGE

Improvements in the data storage systems in more than half of NSAs are needed, so that information can be provided, where necessary, to other authorities in a timely manner.

2.5.4 RECOMMENDED ACTIONS IN THE AREA OF DATA STORAGE

INDIVIDUAL RECOMMENDED ACTIONS IDENTIFIED DURING THE REFERENCE PERIOD

In case of the 4 NSAs (Bulgaria, Croatia, Liechtenstein, Slovenia) that do not have a data storage system to comply with Article 3.3.1.6 of the Decision, a recommended action has been issued for them to develop their data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision and enable the extraction of the information, so that information can be provided, where necessary, to other authorities in a timely manner.

In case of 13 NSAs (Cyprus, Czech Republic, Finland, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Sweden, United Kingdom-PRA/FCA, United Kingdom-GFSC) the peer review found that, although they do have a data storage system, they cannot store, extract and provide to the Host/Home NSA (as the case may be) all the data required by the Decision in Article 3.3.1.6. Therefore a recommended action has been issued to further improve and update their data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.

2.6 PORTFOLIO TRANSFER

2.6.1 GENERAL

The regulations and procedures regarding transferring portfolios from one insurance undertaking to another vary across Member States. The aim of the peer review was to analyse how cooperation works in practice. The following analysis covers some aspects of these different regulations. Thirty-two NSAs were asked to briefly describe their relevant provisions in national law.¹¹

The majority of respondents replied that there is no difference between life and non-life insurance. Only 4 countries indicated explicit distinctions (Cyprus, France, Netherlands, Sweden).

- › In Cyprus the main difference is that for life portfolio transfers the agreement for the transfer must be approved by a court order.
- › In France there are different information requirements: for the transfer of life portfolios additional information is required to ensure that the participation features of policyholders are observed after the transfer.
- › In the Netherlands there is a difference in the way policyholders of life and non-life insurance are involved. An insurer wishing to transfer (part of) its portfolio to another insurer needs prior permission from De Nederlandsche Bank (DNB). In the event of transferring a non-life insurance portfolio, the insurer may also opt to ask every policyholder for their approval. The policyholders of a non-life insurer are given three months during which they can cancel their insurance in writing with effect from the ninetyth day of that period; Life insurance policyholders can object within a specified period set by DNB. In case one quarter or more of policyholders object, the transfer cannot take place.

Generally the transfer of portfolios is possible without the consent of the policyholders. Instead, the NSAs approve the portfolio transfer. Only Lithuania, the Netherlands and Greece require the consent of the policyholder or allow policyholders to object to the transfer.

- › In Lithuania the announcement of intention to transfer insurance contracts should specify a time period of at least two months, within which the policyholder has the right to express his/her objection in writ-

ing to the intention of the insurance undertaking to transfer insurance contracts. If the policyholder objects, he/she has the right to terminate the insurance contract.

- › For the situation in the Netherlands reference is made to the description above in the case of non-life insurance.
- › In Greece, policyholders have the right to object to the intended transfer. The NSA authorises the transfer regarding the contracts of counter parties that do not object to the transfer. The authorisation may also refer to insurance contracts where counter parties have objected to the transfer, as long as they do not exceed 15% of the insurance contracts to be transferred.
- › In Norway, legislation requires that in case of a portfolio transfer of a substantial size, there must be an approval from the Ministry of Finance. The definition of substantial size is made on an individual basis, without definitive thresholds or criteria. In this case, more clarity on the criteria defining the portfolio transfer of a substantial size and clear lines of responsibilities could avoid possible delays in the process of portfolio transfers.

In almost all EEA countries the transfer of portfolios must be authorised by the NSA. In Cyprus, Ireland and United Kingdom the approval of a court is required.

In almost all countries, with one exception (Denmark), policyholders have the right to terminate insurance contracts in cases of portfolio transfer. The cancellation period usually lies between one and three months.

2.6.2 REQUESTS OF PORTFOLIO TRANSFERS

According to Article 4.2.1.1 a) of the Decision "before an insurance undertaking is authorised under the conditions laid down by its national law to transfer all or part of its portfolio of contracts to an accepting insurance undertaking established within the EEA, the Home NSA of the transferring insurance undertaking shall consult the Host NSA of the branch whose portfolio is to be transferred".

The Decision indicates what conditions should be met for a quick and effective portfolio transfer process, also taking into account the rights of the policyholders and beneficiaries.

¹¹ The analysis is made on the basis of information provided by the NSAs.

During the peer review it was found that 22 NSAs had received requests for the authorisation of portfolio transfers in which the accepting insurance undertaking was established in another EEA country. Overall there were 195 requests for authorisation across the EEA countries during the reference period. Spain (77), Luxembourg (33) and United Kingdom (28) received the highest number of requests for such authorisation.

Thirty-seven cases of portfolio transfer involved branches of insurance undertakings. The highest figure involving branches was indicated by the United Kingdom (15). The number of cases in other EEA countries is comparatively low (1 to 3 cases).

All responding NSAs indicated sending relevant information:

- a) to the Home NSA of the accepting insurance undertaking;
- b) to the Host NSA of the branch whose portfolio is to be transferred;
- c) to the Supervisory Authority of the Member State where the risks or commitments are situated.

Of those 22 NSAs which received the request, a total of 8 NSAs acting as the NSAs of the transferring undertaking encountered cases where the situations provided in paragraph 4.2.1.6 of the Decision¹² applied to accepting insurance undertakings.

The 8 NSAs referred to above cooperated to ensure that their respective functions were carried out so as to enable the transfers to take place in the required period by the following means:

- › explanatory actions;
- › authorisation actions;
- › quick settlement of the case and extended activities in new groups under FoS;
- › efficient transmission of information;

¹² Where the accepting insurance undertaking:

a) has not previously taken up the business of direct insurance and therefore requires authorisation from the Home NSA or requires an extension of its authorisation; and/or

b) will cover the risks or commitments through a branch which has yet to be established, or will require an extension of the business which it is entitled to carry on in the State of the Branch; and/or

c) will cover the risks or commitments through the provision of services where it has not previously done so;

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

- › submitting information as needed to allow the portfolio to be transferred in advance of Brexit (United Kingdom-GFSC).

In all indicated cases the goal was achieved, which proves the legitimacy and effectiveness of the actions taken.

2.6.3 CONSULTATION OF THE RESPECTIVE NSAS

Of those 22 NSAs which received requests for authorisation of a portfolio transfer, almost all NSAs asked for the agreement of the NSAs where the contracts were concluded or branches were involved.

The assessment for agreement is usually performed on the basis of the SII framework and the Decision's provisions. The criteria mostly mentioned are:

- › solvency situation of the accepting undertaking;
- › protection of interests of the insured;
- › existing notification of transferee (FoS/FoE) for insurance classes covered by transferred contracts;
- › governance structure.

Some Member States indicated that agreement was sought on a precautionary basis, regardless of whether insurance contracts were affected within the consulted Member State. In these cases no consent or tacit consent was given, or consent was deemed unnecessary. Most of NSAs confirmed agreement in writing, some gave tacit consent. Only one NSA generally provides tacit consent (Finland).

There were only two cases of no consent (Italy, France). In one case it was a proposed intra-group portfolio transfer. After constructive communication with the Host NSA and taking into consideration the concerns expressed by the Host NSA, the Home NSA held further discussions with the insurance undertaking and a new proposal was made to transfer the portfolio to another insurance undertaking within the group. The other case related to a portfolio transfer from an undertaking in the United Kingdom to another undertaking in the United Kingdom in 2018. Since the portfolio included French commitments, and given the Brexit context, France objected, considering the lack of contingency plan of the accepting entity. Later France was informed that a portfolio transfer to a Luxembourg entity was underway.

The majority of Host NSAs replied before the defined deadline of three months. In general the communication and discussions among the NSAs were assessed as constructive and good. Usually there were no cases of negative answers. In very few cases it was mentioned that the acknowledgement of receipt of requests was not submitted.

2.6.4 CERTIFICATES OF SOLVENCY

Of those 22 NSAs that received a request for authorisation, 20 NSAs asked the Home NSA of the accepting undertaking to provide a certificate of solvency.

In the vast majority of cases NSAs experienced no difficulties in obtaining the requested certificate of solvency before the deadline provided for by the Decision. One reason given for not obtaining the certificate of solvency in time was the need for the transferee's authorisation. A delay due to the complexity of the case was also mentioned. Finally, regular telephone calls with the Home NSA of the accepting insurance undertaking encouraged mutual understanding between the involved NSAs.

There were no cases where an NSA received a certificate of solvency from the Home NSA of the accepting insurance undertaking stating that it did not cover the SCR calculated in accordance with Article 100 of the SII Directive. Although, regarding one of the undertakings, there was significant uncertainty about the solvency coverage and therefore the Home NSA of the accepting undertaking could not issue a certificate of solvency at first. The Home NSA of the accepting undertaking informed the Home NSA of the transferring undertaking that it expected more information within the three months period. At the end of the three months period the certificate of solvency was submitted.

In another case the Home NSA of the accepting undertaking (France) had serious concerns about the performance of the accepting insurance undertakings. The concerns related to the incompleteness of the transfer agreement (e.g. lack of details of the transferred liabilities, the number of contracts, premiums, amount of technical provisions) and to the change in pricing conditions for policyholders. The Home NSA of the transferring undertaking was asked to change the agreement and to provide further details about the transferred assets. Finally, the transfer conditions were reviewed, in particular taking into account the Home NSA's concerns with regard to the maintenance of contractual guarantees.

Another NSA (Ireland) had also a case where, as the Home NSA of transferring insurance undertakings, it received information from Home NSAs of accepting insurance undertakings having serious concerns about the transfer, which involved a portfolio transfer outwards to the United Kingdom. In summary, United Kingdom-PRA requested that a capital injection be made into the accepting undertaking under its supervision before the portfolio transfer effective date. United Kingdom advised Ireland in this case that the required capital injection was achieved by means of an updated agreement between the United Kingdom undertaking and its parent.

2.6.5 REQUESTS FOR AGREEMENTS (BY HOME NSA OF TRANSFERRING UNDERTAKING)

Eight NSAs, as the Host NSA of a branch whose portfolio was to be transferred, received requests for consultation from the Home NSA of the transferring insurance undertaking. Those NSAs received between 1 and 16 requests with an average of 3 and a total of 39 cases. Opinions provided by the Host NSA were preceded by an analysis in terms of solvency services and client services rendered, after meeting formal requirements. The following criteria were considered in giving an opinion:

- undertaking must ensure that clients can still get in touch with their "new" counterpart easily (language, telephone number) and get the necessary information (Austria);
- transfer does not affect the solvency position of undertaking (Cyprus, Germany);
- no objections after publishing in Journal Officiel – official journal (France, Poland, Portugal);
- meeting Solvency II/Decision provisions (Hungary);
- the accepting insurance undertaking shall be authorised to exercise an activity in the needed classes;
- ACPR publishes a notice in the JO (Journal Officiel - official journal), for the creditors to submit their observations to the ACPR. If no objection is made, the ACPR can send its approval (France).

All answering authorities provided positive opinions; the three months deadline was not exceeded.

2.6.6 COMMUNICATION OF THE DECISION

All Home NSAs to which it applies have provided ways of communicating their decisions to the NSAs of the country or countries where the contracts were concluded and to any other NSAs that were consulted. The following descriptions show that there are no problems with supervisory communication in this area.

Twenty-six of thirty-two NSAs have cases where the NSAs of the country where the contracts were concluded were informed about the decision on the authorisation by the NSA of the transferring undertaking.

It is noteworthy that although it is the obligation of the Home NSA of the transferring undertaking to inform the NSA where contracts were concluded about its decision on the authorisation, the Host NSA should at least ask if the transfer was actually effected in case of omission of the Home NSA. Otherwise the Host NSA is not aware

whether the portfolio was transferred or not and which undertaking took over the portfolio finally. This is essential to know for the Host NSA in order to fulfil its supervisory tasks and cooperate with the responsible Home NSA that may change after the transfer.

Almost all supervisors assisted Home NSAs of the transferring insurance undertakings or of the accepting insurance undertakings at the time of publication of transfers. 3 NSAs indicated that no assistance had been requested.

2.6.7 OVERALL CONCLUSION ON PORTFOLIO TRANSFER

Despite the many differences in regulations and procedures regarding transferring portfolios, from the replies received collaboration between NSAs seems to function well and no specific issues were reported by NSAs on the cooperation amongst supervisory authorities.

2.6.8 RECOMMENDED ACTIONS IN THE AREA OF PORTFOLIO TRANSFER

No recommended actions have been issued in the context of portfolio transfer.

3. IMPACT ON COMMON SUPERVISORY CULTURE

In this peer review on the Decision, EIOPA has analysed legal and regulatory frameworks and national supervisory practices across 32 NSAs in the context of their cooperation in case of cross-border businesses and portfolio transfers. The reference period for this peer review was from 1 May 2017 till 1 July 2019.

It is recognised that the ongoing development of the internal market and the steadily growing internationalisation of business activities require increased collaboration between supervisors. In this context, the Supervisory Authorities shall endeavour to cooperate and use, as effectively as possible, all information available for supervisory purposes in order to achieve the objectives of insurance supervision and, in particular, adequate protection of policyholders and other stakeholders and financial stability. The analysis carried out for this peer review has revealed diverging legal and regulatory frameworks and foremost supervisory practices in the area of the collaboration amongst national supervisory authorities.

As a result of this, recommended actions have been issued and best practices (see Annex V of this report) identified to inspire NSAs and to help them benefit from each other's experiences. The best practices relate to different topics. Detailed process descriptions and checklists for both outward and received notifications ensure a full compliance with the Decision and quality assurance in the work performed by the NSA as well as a level playing field in the manner in which notifications are analysed within the NSA. There is also a best practice recognised whereby an NSA has ensured through several instruments, in a comprehensive package, implementing the Decision in full. The package consists of specific circulars (on licensing, opening of a branch, FoS, portfolio transfer), a notification portal and internal procedures including a process on collaboration. Also, NSAs preparing and sharing amongst Home and Host NSAs specific market or horizontal analysis of sensitive products and inform Home NSAs of specific risks on their market, was found a best

practice. Those analyses are used to challenge the local insurance undertakings to enhance their understanding of the markets they are active in. EIOPA considers to include those best practices in the Supervisory Handbook. The structural bilateral relations between several NSAs with regular meetings going through all FoS and FoE cases are found to be a best practice as the ongoing assessment is strengthened and information channels are allowing for informal exchanges before a decision on authorisations is taken.

EIOPA believes that the implementation of these recommended actions and best practices by NSAs will bring about greater supervisory convergence and improve the timeliness and quality of information to be exchanged among NSA concerned on cross-border business.

4. CONCLUSIONS

4.1 ACTIONS TO BE TAKEN BY EIOPA

Given the high number of recommended actions concerning the effective application of the Decision, EIOPA will consider to implement parts of the Decision into the Supervisory Handbook, in particular the articles dealing with specific requirements/procedures to be followed by the NSAs. The intention is to share good practices e.g. authorisation and/or notification forms that are in use by NSAs but also examples of market/product reports on cross-border business.

From the information gathered on the application of different parts of the Decision it also emerges that some textual clarifications and improvements should be made to better explain its provisions.

Regarding authorisations, in the context of the SII 2020 Review EIOPA advises the Commission to include a legal requirement for the applicant to provide the information on any formal or informal authorisation requests that had been rejected or withdrawn.

Furthermore, the prescriptions of Article 2.6.2 of the Decision have not been used very frequently, where this peer review concluded that in several cases early contact amongst Home and Host NSA would have been beneficial. Therefore, EIOPA will consider to amend the Decision in the following way: instead of stating that it is “advisable” that the Home NSA engages with the Host NSA in order to facilitate its understanding of the situation and the circumstances of the undertaking, it is proposed to make this requirement mandatory replacing the expression “advisable” with the verb “shall” in Article 2.6.2.

In addition, the text of the same Article 2.6 of the Decision is currently not in line with the text of the new Article 152a of the SII Directive. The text shall be aligned, as the scope of Article 152a of the SII Directive is broader than currently foreseen in the Decision where it states that “Where the supervisory authority of the home Member State intends to authorise an insurance or reinsurance un-

dertaking whose scheme of operations also indicates that those activities are likely to be of relevance with respect to the host Member State’s market, the supervisory authority of the home Member State shall notify EIOPA and the supervisory authority of the relevant host Member State thereof.”

Suggestions for the questions to be asked by NSAs as part of the authorisation procedure to implement the Articles 2.5.1 and 2.6.1 shall be considered to be further specified in the Supervisory Handbook as well as suggestions for authorisation forms.

To prevent cases of law circumvention, NSAs should keep available in their databases the information on rejected or withdrawn authorisation requests, therefore a correspondent obligation to retrieve and store this information in a specific database shall be added to the Decision. As part of the update of the Decision EIOPA intends to clarify a number of elements that most frequently have been identified as missing.

The timeliness, completeness and quality of the information exchanged in the notification process is crucial for effective cooperation in the early stage of starting cross-border business. A convergent approach to the information to be gathered under Articles 18 and 23 of the SII Directive on the scheme of operations, the strategy and business plan of the undertaking is especially relevant. Therefore templates for notification letters to Host NSAs are planned to be developed in the context of cross-border notification project ex Article 152a Directive 2009/138/EC.

A considerable amount of notified FoE and FoS business is in the end never pursued, or pursued only after a long period of time. To keep Host NSAs informed of which notifications are active and which are inactive this information is planned to be included in a new table to the semi-annual cross-border report (“EIOPA report on information exchange between home and host NCA”). The table will contain for each individual country all entries from the register on “FoS”, “Branch” and “FoS by Branches”, where the country is the host country. In addition to the pure extraction from the EIOPA register we will add a flag on “active/inactive” based on SII reporting data. EIOPA plans to add the new table for the first time to the report that includes 2020 data in September 2021.

In relation to the supervision on a continuous basis EIOPA is considering the following actions. To share and enlarge the knowledge of NSAs on the insurance markets where the applicant for authorisation plans to do business via

FoE or FoS it is considered and to include a description based on the practices in place e.g. of a minimum content for the analyses of the host markets required a format for such a 'host country market analyses' in the Supervisory Handbook. Guidance and examples can be provided to NSAs on how to apply the prescriptions under Articles 4.1.1.2 (including how to apply materiality), 4.1.1.3 and 4.1.1.4 of the Decision. Further specific analyses and reports on host markets e.g. for certain products, specific risks regarding specific authorisations and notifications can be implemented in the context of cross-border notification project ex Article 152a Directive 2009/138/EC. The main purpose is to gain insight in the host markets and to be able to challenge the undertakings on their knowledge and preparedness while they are planning to start business in those markets as well as make them aware of what is 'going on' in the host markets.

Article 4.3.1.3 of the Decision states that, in case of a restriction of the free disposal of assets, the supervisory authorities of the Member States concerned shall check the existence or the location of the assets previously identified by the Home NSA as far as it lies within their possibilities. These supervisory authorities concerned shall, under Articles 138(5) and 139(3) of the SII Directive, take the same measure in the context of the free disposal of assets as the home country. EIOPA is of the view that NSAs should be in a position to receive information on frozen assets from the supervisory authorities of the Member State where those assets are located as well as from supervisory authorities of other financial sectors (e.g. the banking sector). Thereto, Article 4.3.1.3 shall be amended.

EIOPA will consider, how particular conditions each Member State sets out for portfolio transfer can be easily shared and retrieved.

An overview of the actions to be taken by EIOPA can be found in Annex IV of this report.

4.2 FOLLOW-UP MEASURES

EIOPA issued 60 recommended actions to 26 NSAs. Notwithstanding the fact that the Decision needs to be clarified, the recommended actions target supervisory shortcomings. NSAs are expected to implement the recommended actions by Q4 of 2022 at the latest. EIOPA will take the follow-up actions in 2021 and 2022.

In addition, EIOPA identified several best practices in relation to four aspects of the collaboration that are currently being applied by NSAs. These practices are related to effective implementation of the Decision, the notification processes and ongoing supervision divided into informal regular information exchange between authorities and supervisory activities to support the ongoing supervision.

As regards the follow-up, starting by the end of 2022, EIOPA will, in line with the EIOPA Regulation, assess how NSAs have implemented the recommended actions and take then also into account the way NSAs have implemented improvements after the reference period (from the application date of the Decision, from 1 May 2017 till 1 July 2019) as an immediate response to the peer review or to the issued recommended actions.

ANNEX I – LEGAL ASSESSMENT CRITERIA

A) Articles 29, 30, 33, 145-149, 155 and 158 of the Solvency II Directive

Chapter III
Supervisory authorities and general rules
Article 29

General principles of supervision

1. Supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
2. Supervision of insurance and reinsurance undertakings shall comprise an appropriate combination of off-site activities and on-site inspections.
3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.
4. The delegated acts and the regulatory and implementing technical standards adopted by the Commission shall take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings.

The draft regulatory technical standards submitted by EIOPA in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010, the draft implementing technical standards submitted in accordance with Article 15 thereof and the guidelines and recommendations issued in accordance with Article 16 thereof, shall take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings.

Article 30

Supervisory authorities and scope of supervision

1. The financial supervision of insurance and reinsurance undertakings, including that of the business they pursue either through branches or under the

freedom to provide services, shall be the sole responsibility of the home Member State.

2. Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Community level.

Where the insurance undertaking concerned is authorised to cover the risks classified in class 18 in Part A of Annex I, supervision shall extend to monitoring of the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.

3. If the supervisory authorities of the Member State in which the risk is situated or the Member State of the commitment or, in case of a reinsurance undertaking, the supervisory authorities of the host Member State, have reason to consider that the activities of an insurance or reinsurance undertaking might affect its financial soundness, they shall inform the supervisory authorities of the home Member State of that undertaking.

The supervisory authorities of the home Member State shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

Article 33

Supervision of branches established in another Member State

Member States shall provide that, where an insurance or reinsurance undertaking authorised in another Member State carries on business through a branch, the supervisory authorities of the home Member State may, after having informed the supervisory authorities of the host Member State concerned, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

The authorities of the host Member State concerned may participate in those verifications.

Where a supervisory authority has informed the supervisory authorities of a host Member State that it intends to carry out on-site verifications in accordance with the first paragraph and where that supervisory authority is prohibited from exercising its right to carry out those on-site verifications or where the supervisory authorities of the host Member State are unable in practice to exercise their right to participate in accordance with the second paragraph, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA may participate in on-site examinations where they are carried out jointly by two or more supervisory authorities.

Chapter VIII

Right of establishment and freedom to provide services Section 1

Establishments by insurance undertakings

Article 145

Conditions for branch establishment

1. Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State
Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.
2. Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:
 - a) the Member State within the territory of which it proposes to establish a branch;
 - b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;

c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent);

d) the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

With regard to Lloyd's, in the event of any litigation in the host Member State arising out of underwritten commitments, the insured persons shall not be treated less favourably than if the litigation had been brought against businesses of a conventional type.

3. Where a non-life insurance undertaking intends its branch to cover risks in class 10 in Part A of Annex I, not including carrier's liability, it shall produce a declaration that it has become a member of the national bureau and the national guarantee fund of the host Member State.

4. In the event of a change in any of the particulars communicated under point (b), (c) or (d) of paragraph 2, an insurance undertaking shall give written notice of the change to the supervisory authorities of the home Member State and of the Member State where that branch is situated at least one month before making the change so that the supervisory authorities of the home Member State and the supervisory authorities of the Member State where that branch is situated may fulfil their respective obligations under Article 146.

Article 146

Communication of information

1. Unless the supervisory authorities of the home Member State have reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with Article 42 of the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in Article 145(2), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

The supervisory authorities of the home Member State shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129.

2. Where the supervisory authorities of the home Member State refuse to communicate the information referred to in Article 145(2) to the supervisory authorities of the host Member State they shall state the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

3. Before the branch of an insurance undertaking starts business, the supervisory authorities of the host Member State shall, where applicable, within two months of receiving the information referred to in paragraph 1, inform the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, that business must be pursued in the host Member State. The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned.

The insurance undertaking may establish the branch and start business as from the date upon which the supervisory authority of the home Member State has received such a communication or, if no communication is received, on expiry of the period provided for in the first sub-paragraph.

Section 2

Freedom to provide services: by insurance undertakings

Subsection 1

General provisions

Article 147

Prior notification to the home Member State

Any insurance undertaking that intends to pursue business for the first time in one or more Member States under the freedom to provide services shall first notify the supervisory authorities of the home Member State, indicating the nature of the risks or commitments it proposes to cover.

Article 148

Notification by the home Member State

1. Within one month of the notification provided for in Article 147, the supervisory authorities of the home Member State shall communicate the following to the Member State or States within the territories of

which an insurance undertaking intends to pursue business under the freedom to provide services:

- (a) a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 100 and 129;
- (b) the classes of insurance which the insurance undertaking has been authorised to offer;
- (c) the nature of the risks or commitments which the insurance undertaking proposes to cover in the host Member State.

At the same time, the supervisory authorities of the home Member State shall inform the insurance undertaking concerned of that communication.

2. Member States within the territory of which a non-life insurance undertaking intends, under the freedom to provide services, to cover risks in class 10 in Part A of Annex I other than carrier's liability may require that insurance undertaking to submit the following:

- (a) the name and address of the representative referred to in Article 18(1)(h);
- (b) a declaration that it has become a member of the national bureau and national guarantee fund of the host Member State.

3. Where the supervisory authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down therein, they shall state the reasons for their refusal to the insurance undertaking within that same period.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4. The insurance undertaking may start business as from the date on which it is informed of the communication provided for in the first sub-paragraph of paragraph 1.

Article 149

Changes in the nature of the risks or commitments

Any change which an insurance undertaking intends to make to the information referred to in Article 147 shall be subject to the procedure provided for in Articles 147 and 148.

Chapter VIII

Right of establishment and freedom to provide services

Section 3

Competences of the supervisory authorities of the host member state

Subsection 1

Insurance

Article 155

Insurance undertakings not complying with the legal provisions

1. Where the supervisory authorities of a host Member State establish that an insurance undertaking with a branch or pursuing business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the insurance undertaking concerned to remedy such irregularity.

2. Where the insurance undertaking concerned fails to take the necessary action, the supervisory authorities of the Member State concerned shall inform the supervisory authorities of the home Member State accordingly.

The supervisory authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the insurance undertaking concerned remedies that irregular situation.

The supervisory authorities of the home Member State shall inform the supervisory authorities of the host Member State of the measures taken.

3. Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions in force in the host Member State, the supervisory authorities of the host Member State may, after informing the supervisory authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within the territory of the host Member State.

In addition, the supervisory authority of the home or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on insurance undertakings.

4. Paragraphs 1, 2 and 3 shall not affect the power of the Member States concerned to take appropriate emergency measures to prevent or penalise irregularities within their territories. That power shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within their territories.
5. Paragraphs 1, 2 and 3 shall not affect the power of the Member States to penalise infringements within their territories.
6. Where an insurance undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the supervisory authorities of that Member State may, in accordance with national law, apply the national administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.
7. Any measure adopted under paragraphs 2 to 6 involving restrictions on the conduct of insurance business must be properly reasoned and communicated to the insurance undertaking concerned.
8. Insurance undertakings shall submit to the supervisory authorities of the host Member State at their request all documents requested of them for the purposes of paragraphs 1 to 7 to the extent that insurance undertakings the head office of which is in that Member State are also obliged to do so.
9. Member States shall inform the Commission and EIOPA of the number and types of cases which led to refusals under Articles 146 and 148 or in which measures have been taken under paragraphs 3 and 4 of this Article.

Subsection 2
Reinsurance

Article 158

Reinsurance undertakings not complying with the legal provisions

1. Where the supervisory authorities of a Member State establish that a reinsurance undertaking with a branch or pursuing business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the supervisory authority of the home Member State.
2. Where, despite the measures taken by the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in violating the legal provisions applicable to it in the host Member State, the supervisory authorities of the host Member State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within the territory of the host Member State.

In addition, the supervisory authority of the home or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on reinsurance undertakings.

3. Any measure adopted under paragraphs 1 and 2 involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the reinsurance undertaking concerned.

B) EIOPA Decision on the collaboration of the insurance supervisory authorities

PART II AUTHORISATION

2.5 Exchange of information on authorisations sought in other Member States

2.5.1 The Home NSA shall request the applicant to declare if there had been a formal or informal request for an authorisation, by its shareholders or members with qualifying holdings, to establish an insurance or reinsurance undertaking in another Member State or third country that had been rejected or withdrawn. The Home NSA shall ask the applicant for the reasons why the application was rejected or withdrawn.

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

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

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

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

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

PART III CROSS-BORDER ACTIVITIES

3 Framework for the collaboration of Supervisory Authorities

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

a) Single market

The authorisation to take-up and pursue the business of insurance or reinsurance is valid for the EEA and covers the right of establishment and the freedom to provide services⁸. Once authorised by the Home NSA, insurance and reinsurance undertakings have the right to establish

a branch within the territory of another Member State or may pursue their business in another Member State under the freedom to provide services. For such activities no further authorisation is needed, neither by the Home NSA nor the Host NSA. The intention to pursue insurance business in another Member State (branch operation or provision of services) has to be notified to the Home NSA. The latter communicates this to the Host NSA.

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

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

b) Policyholder protection

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

c) Supervisory cooperation and exchange of information

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

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

3.1 Establishment of a branch by an insurance undertaking

Articles 145-146 of the Solvency II Directive

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

3.1.1.4 The Host NSA may ask, on an ad-hoc basis, the Home NSA for information in addition to that specified in paragraphs 3.1.1.1 and 3.1.1.2 and provided under 3.1.1.3, before the undertaking establishes the branch preferably within one month upon receipt of the communication of the notification. Any such request shall be proportionate to the type of business, risks or commitments that the undertaking intends to cover in the Host NSA's territory. The Host NSA shall indicate the rationale supporting that ad-hoc request. In this case, the Home NSA shall inform

the insurance undertaking of the request. The additional information requested, where possible, shall be included in an updated communication. If the insurance undertaking is not in a position to provide the additional information, the Home NSA shall inform the Host NSA.

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

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

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

3.1.2.1 The Host NSA shall communicate to the Home NSA:

a) any conditions under which, in the interest of the general good¹², the activity must be pursued within the territory of the Host Member State or confirm that no conditions have been imposed in accordance with Article 146(3) of the Solvency II Directive. This information shall include the link to the website where the general good conditions are published;

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

b) irregularities known to the Host NSA about the planned outsourcing activities, distribution partners, claims representatives, key persons as well as any relevant information following the analysis of the notification received from the Home NSA;

c) if the insurance undertaking or its parent undertaking tried to establish an insurance undertaking in the Host Member State. Where an application for authorisation had been declined, the Host NSA shall provide additional information;

d) if a related insurance undertaking, within the meaning of Article 212 of the Solvency II Directive, of the undertaking or its parent undertaking previously established in the Host NSA had its authorisation revoked or withdrawn and the reasons supporting such a decision;

e) description of relevant policyholder guarantee funds in the Host Member State that would be applicable to the branch.

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

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

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

Articles 147 to 149 of the Solvency II Directive

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

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

Articles 147-148 of the Solvency II Directive

3.2.1.4 The Host NSA may ask for ad-hoc information from the Home NSA in addition to that specified in paragraphs 3.2.1.1 and 3.2.1.2 and provided under 3.2.1.3¹⁶. Any such request shall be proportionate to the type of business, risks or commitments that the undertaking intends to cover in the Host NSA's territory. The Host NSA shall indicate the rationale supporting that ad-hoc request. The Home NSA shall inform the insurance undertaking of the request. If the insurance undertaking is not in a position to provide the additional information, the Home NSA shall inform the Host NSA.

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

3.2.1.5 The information shall be communicated by the Home NSA to the Host NSA, as soon as possible, and in any event within one month from receiving the complete notification from the insurance undertaking which intends to carry on business by way of FoS in the territory

of another Member State. The Home NSA shall ensure that the Host NSA receives the complete notification. Immediately upon receiving the communication of notification from the Home NSA, the Host NSA shall acknowledge its receipt.

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

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

3.2.2.1 The Host NSA shall communicate to the Home NSA:

a) any conditions under which, in the interest of the general good¹⁷, the activity must be pursued within the territory of the Host Member State or confirm that no conditions have been imposed. This information shall include the link to the website where the general good conditions are published;

b) any irregularities known to the Host NSA, about the local third or related parties involved in the underwriting activities in the Host Member State, about key persons as well as any relevant information following the analysis of the notification received from the Home NSA;

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

c) if the insurance undertaking or its parent undertaking tried to establish an insurance undertaking in the Host Member State. Where an application for authorisation had been declined, the Host NSA shall provide additional information;

d) if a related insurance undertaking of the undertaking or its parent, within the meaning of Article 212 of the Solvency II Directive, previously established in the Host NSA had its authorisation revoked or withdrawn and the reasons supporting such a decision;

e) description of relevant policyholder guarantee funds in the Host Member State that would be applicable to the FoS.

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

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

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

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

b) As a Host NSA, the data received from the Home NSAs as per point a) and the data sent pursuant to paragraphs 3.1.2.1 and 3.2.2.1.

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

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

PART IV SUPERVISION ON A CONTINUOUS BASIS

Articles 29, 30, 33, 155 and 158 of the Solvency II Directive

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

4.1.1 Home NSA

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

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

a) system of governance including the ability of the head office management to understand the cross-border market specificities, related risk management tools and internal controls in place. In regards to the risk management system special attention shall be paid to underwriting, pricing and reserving;

b) outsourcing contracts and distributions partners;

c) claims handling;

d) compliance;

e) consumer protection.

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

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

a) changes to the assessment of the suitability of shareholders and members with qualifying holdings, as well as to the assessment of the fitness and propriety of all persons who effectively run the undertaking or hold other key functions, which are connected to other Member States, in line with Section 2.4;

b) details of deteriorating financial conditions and instances of non-compliance with technical provisions, SCR and MCR and supervisory measures taken in accordance with Articles 137 138, 139 and 141 of the Solvency II Directive;

c) any measure against person(s) who effectively run the undertaking or hold other key functions, or against its shareholders and members with qualifying holdings ;

d) action against the shareholders and members with qualifying holdings as well as all persons who effectively run the undertaking or hold other key functions;

e) in case of cessation of the activities (branch or FoS), details as to how the cross-border policies covering risks or commitments situated in the territory of the Host Member State are managed (see 3.1.6, 3.1.7.4 and 3.2.6);

f) follow-up on investigation requests from the Host NSA following paragraph 4.1.2.7 and measures taken following 4.1.1.5 and 4.1.2.13¹⁸.

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

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

4.1.1.6 Where in accordance with Article 33 of the Solvency II Directive, the Home NSA decides to carry out on-site inspections in a branch of an insurance or reinsurance undertaking situated in another Member State, it shall communicate it to the Host NSA in advance, preferably 4 weeks before the on-site inspection date, indicating the:

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

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

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

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

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

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

behalf of the Home NSA, the Home NSA shall place at the disposal of the persons empowered to carry out that investigation any accounts, documents and information which they may need in the performance of their duties.

4.1.2 Host NSA

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

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

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

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

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

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

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

4.1.2.6 The Home NSA may participate in the on-site inspection. If it chooses to do so, the Host NSA shall be informed without delay by the other Supervisory Authority which shall indicate the name and position of the persons who will participate in the inspection. EIOPA may participate in on-site inspections where they are carried out jointly by two or more Supervisory Authorities.

4.1.2.7 When, for the purposes of monitoring compliance with the legal provisions applying to a branch or to operations conducted within its territory by way of FoS, an on-site inspection at the head office of the insurance or reinsurance undertaking is considered necessary, the Host NSA shall inform the Home NSA. The Home NSA may carry out the investigation and the Host NSA can participate.

4.1.2.8 Where the Home NSA would experience difficulties exercising its right to carry out an on-site inspection at the branch in the Host Member State or where the Host NSA would experience difficulties exercising its right to participate in the on-site inspection of such a branch, the Supervisory Authorities may refer the matter to EIOPA for mediation.

4.1.2.9 The Supervisory Authority carrying out the inspection shall inform the other Supervisory Authority of the observations from the investigation.

4.1.2.10 Where the Host NSA ascertains that an insurance or reinsurance undertaking with a branch or pursuing business under FoS is not complying with the legal provisions applicable in the Host State, it shall require the insurance or reinsurance to remedy such irregularity.

4.1.2.11 The Host NSA shall communicate in writing to the head office of the insurance or reinsurance undertaking, stating the type of infringement(s) observed and the measures to be taken. A copy of this communication shall also be sent to the Home NSA. Where the operations are engaged in by a branch, a copy of this communication shall also be sent to the authorised agent of the Branch.

4.1.2.12 If the insurance or reinsurance undertaking concerned fails to take the necessary action, the Host NSA shall inform the Home NSA and submit to the latter all relevant information, including an assessment of the situation and the supervisory measures proposed. The Home NSA shall acknowledge receipt of this information.

4.1.2.13 Where despite the measures taken by the Home NSA or because those measures prove to be inadequate or are lacking in the Home Member State, and the insurance or reinsurance undertaking persists in violating the legal provisions in force in the Host NSA, the Host NSA may:

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

4.1.2.14 Notwithstanding the procedure defined above, in emergency situations, the Host NSA may take appropriate emergency measures to prevent irregularities committed on its territory. In this case, it shall without delay inform the Home NSA. These measures shall be notified in writing simultaneously to the head office of the undertaking and, where appropriate, to the branch concerned. The measures may, in particular, include a prohibition on the undertaking from continuing to conclude new contracts in the territory of the Member State concerned, or any other measure provided for by national legislation. The rationale for the invocation of the measures must be explained in the notification. The notification may be drafted in the language of the Host State.

4.2 Portfolio transfer

4.2.1 Transfer of portfolio of contracts of insurance undertakings

Article 39 of the Solvency II Directive

4.2.1.1 Before an insurance undertaking is authorised under the conditions laid down by its national law to transfer all or part of its portfolio of contracts to an accepting insurance undertaking established within the EEA, the Home NSA of the transferring insurance undertaking shall

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

4.2.1.2 These opinions and consents shall be given as soon as possible and in any event no later than three months after the date of receipt of the request. The Host NSA shall acknowledge receipt if so requested²⁰. Once this period has expired, if no response was received, the opinion shall be considered positive or consent shall be deemed to have been given.

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

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

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

- a) to the Home NSA of the accepting insurance undertaking:
 - i. the draft transfer agreement or the transfer agreement and, if they do not appear in it, the names and addresses of the transferring insurance undertaking and the accepting insurance undertaking, the insurance classes and the details of the nature of the risks or commitments to be transferred;

- ii. the volume of gross and net technical provisions, established on the basis of the contracts to be transferred;
- iii. the volume of gross and net written premiums;
- iv. the volume of the gross and net burden of claims in non-life insurance;
- v. details of assets transferred;
- vi. details of guarantees provided by the transferring insurance undertaking or a third party (for example a reinsurance undertaking) to safeguard against deterioration of the reserves corresponding to the transferred business; and
- vii. name(s) of the country or countries of the risks or commitments.

b) to the Host NSA of the branch whose portfolio is to be transferred:

- i. the draft transfer agreement or the transfer agreement and, if they do not appear in it, the names and addresses of the transferring insurance undertaking and the accepting insurance undertaking, and the scope of the operation (total or partial transfer of the branch's portfolio);
- ii. arrangements for the settlement of claims in the event of the closure of the branch following the transfer.
- c) to the Supervisory Authority of the Member State of the risks or commitments:
 - i. the draft transfer agreement or the transfer agreement and, if they do not appear in it, the names and addresses of the transferring insurance undertaking and the accepting insurance undertaking.

4.2.1.5 If the Home NSA of the accepting insurance undertaking has serious concerns about how that insurance undertaking will perform in the future, it shall inform the Home NSA of the transferring insurance undertaking of those concerns as soon as they arise, but in any event no later than within a period of three months after it has been consulted.

4.2.1.6 Where the accepting insurance undertaking:

- a) has not previously taken up the business of direct insurance and therefore requires authorisation from the Home NSA or requires an extension of its authorisation; and/or
- b) will cover the risks or commitments through a branch which has yet to be established, or will require an extension of the business which it is entitled to carry on in the State of the Branch; and/or
- c) will cover the risks or commitments through the provision of services where it has not previously done so; the relevant Supervisory Authorities shall cooperate to ensure that, as far as possible, their respective functions can

be carried out concurrently, to enable the transfer to take place within a reasonable period.

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

4.2.1.8 The Supervisory Authorities of the Member States of risks or commitments shall assist the Home NSA of the transferring insurance undertaking or of the accepting insurance undertaking, or the transferring insurance undertaking or the accepting insurance undertaking themselves, at the time of publication of the transfer, in accordance with the law applicable in the Member States of risks or commitments. The Supervisory Authorities shall inform each other about the method of publication of the transfer of portfolio provided by their national law.

4.2.1.9 In case of a merger of insurance or reinsurance undertakings, the Supervisory Authorities shall consult each other in accordance with the procedure laid down for portfolio transfers, and inform each other about the legal consequences of the merger, in particular the validity of existing notifications of cross-border business.

4.2.1.10 The authorisation of a transfer under this Section shall not affect the Home and Host NSAs.

C) Material based on the principles and key characteristics of quality and effective supervision¹³

The following assessment criteria regarding the information exchange and collaboration between NSAs following the requirements in the Decision were developed based on the principles and key characteristics of quality and effective supervision:

a) Effectiveness

Paragraphs 1.1.4, 1.1.5 and 1.2.1 of the Decision on Collaboration Recitals 18, 42 and 114 of the SII Directive.

Under an effective collaboration between the NSAs, supervisory efforts should focus on timely, proactive interaction and exchange of useful and prospective information. Communication tools need to be appropriate to the aim of the exchange of information. To support the effectiveness of the collaboration between the NSAs the relevant information should be collected and stored. A lack of supervisory records increases the risks that their

content is not shared with other NSAs where necessary, or only a part of the information will be shared.

b) Proportionality

Paragraphs 1.1.4 and 1.2.3 of the Decision on Collaboration Recitals 18 and 114 of the SII Directive.

Proportionality means that, when applying the EIOPA Decision on Collaboration, NSAs adopt a proportionate approach towards the application of certain provisions described in this Decision, taking account of the nature, scale and complexity of the risks inherent in the business of the concerned (re-)insurance undertaking. The application of the proportionality principle does not affect the information exchange as such, but relates to the level of details for the information to be exchanged. The adoption of a proportionate approach should never affect the compliance with the general requirement of the Decision aimed to set up an adequate and effective cooperation between Home and Host NSAs.

c) Prospective and risk-based supervision

Paragraphs 1.1.4 and 1.2.4 of the Decision on Collaboration Article 29 of the SII Directive.

Risk-based approach means that the level of cooperation has to take into account the level of supervision applied towards the concerned undertakings according to the NSA's classification in terms of risk profile. The level of cooperation should therefore be increased if the concerned (re-)insurance undertaking faces or is expected to face difficulties in the Home territory and/or in the Host territory. The assessment made on the basis of the risk-based approach can lead to different outcome for the Home NSA and for the Host NSA; however, this does not mean that it can be used to justify the non-compliance with an exchange of information requirement established by the Decision.

¹³ <https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/A%20Common%20Supervisory%20Culture.pdf>.

ANNEX II

COUNTRIES AND COMPETENT AUTHORITIES PARTICIPATING IN THIS PEER REVIEW AND THEIR ABBREVIATIONS, AS WELL, AS OTHER ABBREVIATIONS AND ACRONYMS USED

Country	Abbreviation	Name of concerned Competent Authority	Abbreviation used in the report (if any)
Austria	AT	Finanzmarktaufsicht	FMA-AT
Belgium	BE	National Bank of Belgium	NBB
Bulgaria	BG	Financial Supervision Commission	FSC
Cyprus	CY	Cyprus Insurance Companies Control	CICC
Czech Republic	CZ	Czech National Bank	CNB
Germany	DE	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
Denmark	DK	Danish Financial Supervisory Authority	DFSA
Estonia	EE	Finantsinspektsioon	EFSA
Greece	EL	Bank of Greece - Department of Private Insurance Supervision	BoG
Spain	ES	Dirección General de Seguros y Fondos de Pensiones - Ministerio de Asuntos Económicos y Transformación Digital	DGSFP
Finland	FI	Financial Supervision Authority	FIN-FSA
France	FR	Autorité de Contrôle Prudentiel et de Résolution(Prudential Control Authority)	ACPR
Croatia	HR	Hrvatska agencija za nadzor financijskih usluga	HANFA
Hungary	HU	Magyar Nemzeti Bank	MNB
Ireland	IE	Central Bank of Ireland	CBI
Iceland	IS	Fjármálaeftirlitið (Financial Supervisory Authority)	FME
Italy	IT	Istituto per la Vigilanza sulle Assicurazioni	IVASS
Liechtenstein	LI	Finanzmarktaufsicht Liechtenstein	FMA-LI
Lithuania	LT	Lietuvos Bankas (Bank of Lithuania)	BoL
Luxembourg	LU	Commissariat aux Assurances	CAA
Latvia	LV	Financial and Capital Market Commission	FCMC
Malta	MT	Malta Financial Services Authority	MFSA
Netherlands	NL	De Nederlandsche Bank	DNB
Norway	NO	Finanstilsynet	NFSA
Poland	PL	Komisja Nadzoru Finansowego	KNF
Portugal	PT	Autoridade de Supervisão de Seguros e Fundos de Pensões	ASF-PT
Romania	RO	Financial Supervisory Authority	ASF-RO
Sweden	SE	Finansinspektionen (Financial Supervisory Authority)	FI
Slovenia	SI	Insurance Supervision Agency	AZN
Slovakia	SK	National Bank of Slovakia	NBS
United Kingdom	UK	The Prudential Regulation Authority, The Financial Conduct Authority	PRA, FCA (UK)
	UK-Overseas Territory of Gibraltar (UK-OTG or GI)	Gibraltar Financial Services Commission	GFSC (UK-OTG)

Other abbreviations and acronyms used

The table below includes the acronyms used in this report.

Delegated Regulation	Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)
Decision	EIOPA Decision on the collaboration of the insurance supervisory authorities
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
European Commission	Commission
FoE	Freedom of Establishment
FoS	Freedom of providing Services
NCAs	National competent authority(ies)
Home NSA	Home Member State Supervisory Authority[1]
Host NSA	Host Member State Supervisory Authority[2]
NSAs	National supervisory authority(ies) As this term is used in the Decision this abbreviation is used throughout the report.
SII Directive	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

ANNEX III

OVERVIEW RECOMMENDED ACTIONS TO NSAs

In this annex an overview is provided of the recommended actions to NSAs by country by topic and type of recommended actions. The improvements that several NSAs have implemented as an immediate response on the peer review or to the issued recommended actions are not reflected in the table below.

Area: Effective application of the Decision	
MS	Recommended action
AT	Taking into account the fact that the FMA has signed the Decision and thus committed to cooperate as effectively as possible and to exchange all information provided for in the Decision, the FMA should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the FMA, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
BG	Taking into account the fact that the FSC has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the FSC should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the FSC for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
CY	Taking into account the fact that the ICCS has signed the Decision and thus committed to cooperate, as effectively as possible, and exchange all information provided for in the Decision, the ICCS should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the ICCS for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
CZ	Taking into account the fact that the CNB has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the CNB should take all the necessary steps to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and make the industry aware of the information that needs to be provided to the CNB, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
DK	Taking into account the fact that the DFSA has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the DFSA should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the DFSA, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
EE	Taking into account the fact that the EFSA has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the EFSA should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the EFSA, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
HR	Taking into account the fact that the HANFA has signed the Decision and endeavours itself to cooperate, as effectively as possible, and to exchange, for supervisory purposes, all information mentioned in the Decision, the HANFA should develop either external guidelines (e.g. circulars or notification templates) or internal guidelines (e.g. internal handbook or working procedures) to specify in a concrete manner which information needs to be provided to the HANFA in order to ensure an effective and consistent application of the Decision and a good cooperation between NSAs. Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
HU	Taking into account the fact that the MNB has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the MNB should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the MNB, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.

Area: Effective application of the Decision	
IS	Notwithstanding the additional information provided attesting that there are several guidelines and checklists in place, based on the available evidence, EIOPA is still of the view that an effective and consistent application of the Decision is not ensured. The FME has not yet completed the internal procedures concerning branch notifications. Also, the guidelines regarding portfolio transfer do not fully reflect the Decision. Based on the provided translated checklists, in relation to some parts, the Decision is only used as a general reference. Therefore, the recommended action is confirmed. EIOPA takes note and welcomes the fact that the FME will implement improvements to better reflect the Decision.
LT	Taking into account the fact that the BoL has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the BoL should take all the necessary steps to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and make the industry aware of the information that needs to be provided to the BoL, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
NO	Taking into account the fact that the NFSA signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the NFSA should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and make the industry aware of the information that needs to be provided to the NFSA, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
PT	Taking into account the fact that the ASF has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the ASF should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the ASF, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
RO	Taking into account the fact that the ASF has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the ASF should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the ASF, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
SE	Taking into account the fact that the Finansinspektionen has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the Finansinspektionen should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the Finansinspektionen, for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
SI	Taking into account the fact that the AZN has signed the Decision and thus committed to cooperate, as effectively as possible, and to exchange all information provided for in the Decision, the AZN should take all the necessary steps in order to ensure a systematic and consistent internal application of the Decision (through internal guidelines, internal handbook or procedures) and also to make the industry aware of the information that needs to be provided to the AZN for the implementation of the Decision (through external guidelines, circulars or notification templates). Only the full implementation of the Decision can ensure the effective and consistent application of the Decision and a smooth and efficient cooperation between the supervisory authorities.
UK-PRA	Taking into account the fact that the UK-PRA has signed the Decision and the PRA/FCA run dual regulation and oversight working closely together to assess applications and share information thus committed to cooperate as effectively as possible and to exchange all information provided for in the Decision, its procedures in order to ensure a systematic and consistent internal application of all provisions of the Decision should be completed.

Area: Authorisation	
MS	Recommended action
AT	The FMA should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.
BG	<p>a. The FSC should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.</p> <p>b. In order to ensure a consistent application of Article 2.6 of the Decision, the FSC should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has clearly indicated in the scheme of operations that its intention is to operate exclusively, or almost exclusively, in one or more Member States on FoS basis, a question should be asked regarding the reasons supporting that strategy and the Host NSA(s) should be contacted for facilitating a better understanding of the situation and the circumstances of the undertaking.</p>
CY	In order to ensure a consistent application of Article 2.6 of the Decision, the ICCS should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has clearly indicated in the scheme of operations that its intention is to operate exclusively, or almost exclusively, in one or more Member States on FoS basis, the undertaking is required to outline the reasons supporting that strategy and the Host NSA(s) should be contacted for facilitating a better understanding of the situation and the circumstances of the undertaking.
DK	<p>a. The DFSA should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.</p> <p>b. The DFSA should include in its internal instructions for the authorisation procedure the content of Article 2.6 of the Decision and, in particular Article 2.6.2 according to which the DFSA is recommended to also consult with the Host NSA in all relevant cases where it is clear from the authorisation request that the insurance undertakings plan to operate (almost) exclusively in one or more Member States.</p>
ES	The DGSFP should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.
FI	The FIN-FSA should include in its internal instructions and its communication to the industry (within the authorisation templates) a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.
FR	The ACPR should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration of the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.
LI	The FMA should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration from the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.
LU	In order to ensure a consistent application of Article 2.6 of the Decision, the CAA should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has clearly indicated in the scheme of operations that its intention is to operate exclusively or almost exclusively in one or more Member States on FoS basis, a question should be asked regarding the reasons supporting that strategy and the Host NSA(s) should be contacted for facilitating a better understanding of the situation and the circumstances of the undertaking.
MT	The MFSA should also engage with the relevant Host NSAs in all cases where most of the activity is planned to be carried out in more Member States and adapt its internal policies and forms accordingly.
PT	The ASF should include in its internal instructions and its communication to the industry (within the authorisation templates) a request for a declaration from the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.
RO	<p>a. In order to ensure a consistent application of Article 2.5.2 of the Decision, the ASF should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has previously requested in another Member State or third country an authorisation that had been rejected or withdrawn, the NSA from whom the application had been sought should be contacted in order to understand the circumstances of the rejected or withdrawn application.</p> <p>b. In order to ensure a consistent application of Article 2.6 of the Decision, the ASF should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has clearly indicated in the scheme of operations that its intention is to operate exclusively, or almost exclusively, in one or more Member State on FoS basis, a question should be asked regarding the reasons supporting that strategy and the Host NSA(s) should be contacted for facilitating a better understanding of the situation and the circumstances of the undertaking.</p>
SK	<p>a. The NBS should include in its internal instructions and its communication to the industry (within the authorisation templates), a request for a declaration from the applicant regarding previous formal or informal requests for authorisation in other Member States or in third countries, which had been rejected or withdrawn. This would ensure a consistent application of Article 2.5 of the Decision and awareness of the industry with regard to this request in case of applications for new authorisations.</p> <p>b. In order to ensure a consistent application of Article 2.6 of the Decision, NBS should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has clearly indicated in the scheme of operations its intention to operate exclusively, or almost exclusively, in one or more Member States on FoS basis, a question should be asked regarding the reasons supporting that strategy and the Host NSA(s) should be contacted for facilitating a better understanding of the situation and the circumstances of the undertaking.</p>

Area: Authorisation

UK-PRA	In order to ensure a consistent application of Article 2.5.2 of the Decision, PRA should foresee in its internal authorisation procedures that, in case an insurance undertaking applying for an authorisation has previously requested in another Member state or third country an authorisation that had been rejected or withdrawn, the NSA from whom the application had been sought should be contacted in order to understand the circumstances of the rejected or withdrawn application.
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Area: Notification

MS	Recommended action
BG	The FSC should, as a Home NSA, make use of the provisions of the Articles 3.1.1.6 and 3.2.1.6 of the Decision and share information on an informal basis with the Host NSA before the submission of the complete notification, where appropriate, especially in instances of deteriorating financial conditions of the undertaking for which the notification is being submitted. Such informal contacts are particularly desirable in order to improve the cooperation between Home and Host NSA and in some cases also to prevent the occurrence of possible critical situations for the consumers.
MT	The MFSA should strengthen its internal processes aimed to assess whether the notification to the Host NSA is complete and sufficiently comprehensive, in order to ensure, on a systematic basis, the accuracy and completeness of the notifications submitted to Host NSAs.
RO	As a Home NSA, the ASF should improve communication and quality of exchange of information with Host NSAs when the latter ask for information during the notification phase according to Articles 3.1.1.4 and 3.1.1.5 of the Decision. In addition, the ASF should ensure that the Host NSA receives the complete notification information.
SE	Finansinspektionen should further adapt its internal procedures and internal templates in order to comply with Articles 3.1.1.2 and 3.1.1.3 (for FoE) and 3.2.1.1 and 3.2.1.2 (for FoS) of the Decision.
UK-GFSC	a. The GFSC should, as a Home NSA, make use of the provisions of the Articles 3.1.1.6 and 3.2.1.6 of the Decision and share information on an informal basis with the Host NSA before the submission of the complete notification, where appropriate. Such informal contacts are particularly desirable in order to improve the cooperation between Home and Host NSAs, helping to improve the comprehension of the local risks and in some cases also to prevent the occurrence of possible critical situations for the consumers. b. The GFSC should adapt its internal procedures and internal templates in order to comply with Articles 3.1.1.2 and 3.1.1.3 (for FoE) and 3.2.1.1 and 3.2.1.2 (for FoS) of the Decision.

Area: Supervision on a continuous basis

MS	Recommended action
ES	The DGSFP as a Host NSA, is recommended to inform the Home NSA of its decision to conduct an on-site inspection in a branch on its territory on the basis of Article 4.1.2.5 of the Decision, and to inform them about the outcome of the on-site inspection on the basis of Article 4.1.2.9 of the Decision, also in those cases where there is no college in place.
LI	The FMA should apply Article 4.1.1.4 b) of the Decision in all cases of deteriorating financial conditions and instances of non-compliance with technical provisions, SCR and MCR and supervisory measures taken in accordance with Articles 137, 138, 139 and 141 of the Solvency II Directive and it should provide in a timely manner the affected Host NSA(s) with the relevant information.
RO	The ASF should, in line with Article 4.1.1.3 and Article 4.1.1.4. f) of the Decision, inform the Host NSA in a timely manner on further developments/follow-up after appropriate actions have been taken in relation to the investigation request of the Host NSA under Article 4.1.1.5 of the Decision.

Area: Data Storage	
MS	Recommended action
BG	The FSC should considerably improve and develop its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision and enable the extraction of the information, also on an aggregated basis, so that information can be provided, where necessary, to other authorities in a timely manner.
CY	The ICCS should considerably improve and develop its data storage system to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
CZ	The CNB should continue its efforts in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
FI	The FIN-FSA should considerably improve and develop its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision and enable the extraction of the information also on an aggregated basis, so that information can be provided, where necessary, to other authorities in a timely manner.
HR	The HANFA should considerably improve and develop its data storage system to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
LI	The FMA should considerably improve and develop its data storage system to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
LT	The BoL should further improve and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
NL	The DNB should further improve and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
NO	The NFSA should further improve and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
PL	Though almost all data is available in KNF's data storage system, KNF should continue to improve its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
PT	The ASF should further develop and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
RO	The ASF should further develop and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
SE	Finansinspektionen should improve and further develop and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
SI	The AZN should considerably improve and further develop and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.
SK	The NBS should continue to further develop and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision and enable the extraction of the information also on an aggregated basis, so that information can be provided, where necessary, to other authorities in a timely manner.
UK-PRA/ FCA	The PRA/FCA should further develop and update their data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision and enable the extraction of the information also on an aggregated basis, so that information can be provided to other authorities in a timely manner.
UK-GFSC	The GFSC should further improve and update its data storage system in order to achieve a complete storage of all the data required in Article 3.3.1.6 of the Decision, so that information can be provided, where necessary, to other authorities in a timely manner.

ANNEX IV – OVERVIEW ACTIONS FOR EIOPA

As a result of the peer review EIOPA will take actions in 5 domains and overall on the effective application of the Decision.

Actions for EIOPA				
Peer Review on Collaboration				
Action point 1	Action point 2	Action point 3	Action point 4	Action point 5
Effective application of the Decision	Authorisations	Notification	Supervision on a continuous basis	Portfolio transfer
High number of recommended actions on the application of the Decision	Article 2.6 of the Decision has not been used very frequently however the peer review concludes that use of this Article would have been beneficial in several cases	Avoid incomplete notification and improve the quality and timeliness of the information exchange between Home and Host NSA before and in the notification phase as well as be informed about the active and not-active notifications	The Home authority to gain insight in the host markets and to be able to increase awareness and challenge the undertakings on their knowledge and preparedness for doing business in host markets	Clarity on the conditions in each Member State
Consider implementing parts of the practical implementation of the Decision in the Supervisory Handbook i) Examples of standard authorisation and notification forms for firms including questions in relation to Articles 2.5.1. and 2.6.1 of the Decision (gathered from good practices) – see also action point 2 ii) Supporting NSAs to make - as part of the authorisation phase - an analysis of the way products and risks in host markets are described and assessed by sharing good examples as well as examples from SRPs reviewing the risks of cross-border activities - see also action point 4	a. Already part of the Solvency II 2020 Review package: To include a legal requirement for applicants to share information on applications for operating exclusive or almost exclusively in one or more other Member State(s) b. Amend the Decision to reflect recent (e.g. the new Article 152a and foreseen changes in the SII Directive: i) 'Shall' in Article 2.6.2. instead of an advisable to bring the text of the Article 2.6 of the Decision in line with Article 152a of the SII Directive ii) Include an explicit obligation to include rejected and withdrawn authorisation requests in the databases[1] c. Implementation in Supervisory Handbook by questionnaire to the undertakings and standard authorisation form for the undertakings to complete (see under Action Point 1)	a. Amend the Decision[2]: Make the 'may' informal exchange of information in Article 3.2.1.6 of the Decision strongly recommended/mandatory by specifying under which conditions there is a need for the Home NSA to learn more about the Host market before sending the notification b. Add a new table to the semi-annual cross-border report ("EIOPA report on information exchange between home and host NCA"). The table will contain for each country individual all entries from the register on "FoS", "Branch" and "FoS by Branches", where the country is the host country. In addition to the pure extraction from the EIOPA Register we will add a flag on "active/inactive" based on SII reporting data. c. Implementation in the cross-border notification tool of standard notification forms and letters (already planned for the cross-border notification project ex Article 152a Directive 2009/138/EC)	a. Amend the Decision: Article 4.3.1.3. to ensure that NSAs are in a position to share and receive information from the NSA of another Member State as well as another financial sector on assets of a (re) insurance undertaking whose disposal is prohibited or limited as currently there is a dis-alignment with Article 138(5) of the SII Directive, therefore the sentence 'Insofar as it lies within their possibilities' should be removed. b. Consider implementation in the SRP Handbook/cross-border notification tool by: i) A description of the type of regular analyses of the host markets ii) Guidance and examples on Articles 4.1.1.2. till 4.1.1.4 of the Decision (risks in host countries, SRP in relation to risks arising from or impacting the cross-border activity) or integrate this matter as part of the process description of the cross-border notification project ex Article 152a Directive 2009/138/EC as it is already foreseen that emerging risks that follow from the SRP are notified from the Home to the Host NSA), examples of information to be provided to the Host NSA on the basis of Article 4.1.1.4 of the Decision) – see also action point 1 c. Sharing of specific risks and products via the notification cross-border tool (proposal to include this into cross-border notification project ex Article 152a Directive 2009/138/EC))	a. Consider how to best share particular conditions for portfolio transfers in each Member State

- Add a new table to the semi-annual EIOPA report on information exchange between Home and Host NSA: September 2021.
- Update of the Decision: link to the timeline of the tool of notification and the changes following the ESAs review.
- Supervisory Handbook:Q4 2021-Q2 2022 and start with the involvement of one of the existing networks.
- The actions following the Solvency II 2020 Review and cross-border notification project follow the timelines for those projects.
- Consider how to share the particular national conditions for portfolio transfers amongst NSAs.

ANNEX V – BEST PRACTICES IDENTIFIED DURING THE REFERENCE PERIOD

No.	Topic of the best practice	Country	Best practice identified during the reference period
1	Effective application of the Decision	BE	EIOPA considers it a best practice where NCAs implements the provisions of the Decision, either in their internal procedures, and by extracting the relevant information required in the Decision (for authorisations or notifications) and including it in their communication (letters or application files) with the companies. This best practice is taken from a supervisory practice in Belgium. In Belgium, the compliance with the Decision has been ensured through several instruments as one comprehensive package implementing the Decision in full: Public circulars (on licensing, opening of a branch, FoS, portfolio transfer) addressed by NBB to all insurance and reinsurance undertakings; The NBB portal of notifications, containing the NBB notification templates including the information required from the undertakings for the exchange of information between NSAs; NBB internal procedures on collaboration between NSAs, licensing, opening of a branch, activity through FoS, portfolio transfers.
2	Notification	FR, LU, IE	EIOPA considers it a best practice where NSAs make use of detailed process descriptions and checklists for both outward and received notifications to ensure a full compliance with the Decision. This best practice is taken from supervisory practices by the French, Luxembourg, and Irish NSAs. The purpose of having a detailed process description and checklists would be to support supervisors when reviewing applications by local undertakings requesting to perform outward activities and when reviewing a received notification from a NSA from another Member State for an undertaking under Solvency II wishing to perform activities under jurisdiction of the local NSA. The forms used in Ireland clearly state what is the information received, what is not applicable and what is still to be confirmed. Checklists used in Ireland and France support and structure the way supervisors have to assess in- and outward notifications for FoE and FoS. The use of these checklists and internal procedures ensures consistency in the information exchanged between NSAs as well as completeness of notifications and is transparent. In Luxembourg, the notification letters to other authorities include a document with all relevant information required under Article 3.2.1 of the Decision and used by the Luxembourg also as their internal check list for gathering information of the applicant, including for example the information required to be shared under Article 3.2.1.2 of the Decision which request to share information about a clear indication of the intention of the applicant to operate exclusively or almost exclusively in the host Member State(s). These processes fulfill the supervisory objectives as they ensure a completeness of the information required. The tools provided (standard letters or list of requirements) are simple and useful for gathering the information in the Home Member State as well as for sharing the info with the Host NSA. It is also very helpful in terms of cooperation. It is also a good example of a robust methodology which ensures quality insurance in the work performed by the NSA and a level playing field in the manner in which notifications are analysed within the NSA. NSAs are advised to take into account the following items in their internal process documents: The legislation requirements that are applicable under Solvency II; An outline of the process for notification of both in- and outward FoE and FoS establishments for both insurance and reinsurance undertakings. NSAs are advised to analyse the opportunity to develop checklists and internal procedures to structure better their assessment process of in- and outward notification for FoE and FoS and ensure more consistency in the exchange of information between NSAs.
3	Informal information exchange on ongoing supervision	IE, IT, MT, UK, LT, LV, EE	EIOPA considers it a best practice where NCAs as Home and Host NSAs set up a continuous cooperation. This best practice is taken from supervisory practices in different countries. The bilateral relations between NCAs in Ireland, Italy, Malta and United Kingdom with regular meetings going through all FoS and FoE cases so that the ongoing assessment is strengthened and information channels are there allowing for informal exchanges before a decision on authorisations are taken. The continuous cooperation between the Baltic countries (Lithuania, Latvia, Estonia) is a good example of cooperation of geographically connected NSAs with a common economic interest. Their yearly meetings form a platform for discussing current problems the insurance undertakings experienced in these 3 countries. The information exchange between those NSAs is proportionate to the nature, scale and complexity of the risks of the cross-border business, risk-based and includes an ongoing verification of the proper operation of the (re-)insurance undertaking and compliance with the requirements. It allows the supervisory authorities to look forward to potential supervisory issues. Finally, it is adding value to the supervisory cooperation and exchange.
4	Ongoing supervision	FR	EIOPA considers it a best practice where NCAs in their role as Host NSA perform horizontal analysis of sensitive products and inform Home NSAs of specific risks on their market. This best practice is taken from a supervisory practice by the French NSA. The French NSA conducts horizontal analysis for sensitive products requiring specific attention from a prudential point of view (products linked to construction and medical liabilities). For these products, the French NSA is performing this horizontal or transversal analysis in order to ensure that the specific local prudential expectations (concerning inter alia solvency and pricing) are correctly taken into account by the undertakings. Also, the French NSA informs the Home NSA (in its acknowledgment of receipt standard letter) that certain risks require specific attention. When needed, they directly exchange with the Home NSA. The organisation of such transversal analysis can be considered as a best practice as it reflects a dynamic and risk-based supervision of cross-border activities. NSAs are advised to assess whether there is a need or not to develop horizontal analysis to go deeper in the ongoing assessment of specific cross-border products which have been declared "sensitive" from a local point of view and inform accordingly the Home NSAs.
		IE	EIOPA considers it a best practice where NSAs make use of in-depth analyses of (key) risks and (key) insurance market trends of other member states where your local insurance undertakings conduct business. This best practice is taken from a supervisory practice by the Irish NSA. The analyses can be used to strengthen the supervisors' understanding of the risks their undertaking is facing. It also supports the relationship building / direct engagement with the NSA of each target market. The analyses can - for instance - be performed using publicly available data or using direct engagement with the relevant Host NSA. The analyses are used to challenge the local insurance undertakings to enhance their understanding of the markets they are active in.

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