

CEIOPS

Committee of European Insurance and Occupational Pensions Supervisors

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COMMITTEE OF EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS SUPERVISORS (CEIOPS)

EU ENLARGEMENT: PASSPORTING AND TRANSITIONAL ARRANGEMENTS

On 1 May the EU will be complemented by ten new Member States, and the insurance and occupational pensions supervisory authorities from the Acceding Countries will automatically become full members of CEIOPS from that date. CEIOPS welcomes the fact that senior representatives from these authorities have already been participating in the Committee's work as observers.

The enlargement of the European Union will provide new opportunities for insurers established in both the existing EEA Member States and in Acceding Countries to open up new branches and provide insurance services across borders on the basis of their home State authorisation (the European "passport"). CEIOPS has been discussing the application of the passporting provisions in the Insurance Directives in respect of the Acceding Countries, and the transitional provisions that should apply to existing branches. In view of the industry's direct interest in the process, and the broader relevance of passporting and changing supervisory responsibilities to consumers, CEIOPS has decided to set out the general principles its members will follow in handling passport applications in which an Acceding Country is involved.

Passport provisions and the Sienna Protocol

The Insurance Directives¹ set out the operation of the passport provisions. Insurers with a head office within a Member State must notify their home State supervisor if they propose to

¹ Council Directive 73/239/EEC as amended by Council Directive 92/49/EEC for Non-Life Insurers

establish a branch within the territory of another Member State, or if they intend to provide insurance services into the territory of another Member State under the freedom to provide services. If the home State supervisor approves the proposal, then it communicates the information provided by the insurer to the supervisory authority in the Member State in which the branch is to be established or in which insurance services are to be provided (the "host State"). Until this process is completed, and subject to the timescales set out in the Insurance Directives, the insurer may not commence its proposed activity.

Under the passport provisions, the financial supervision of the insurer, including that of the business it carries on either through branches or the freedom to provide services, is the sole responsibility of the supervisory authority in the home Member State. However, the insurer must comply with any stipulated conditions under which, in the interests of the general good, the business must be carried on in the host State.

In order to facilitate the operation of the passport provisions, the Conference of the Insurance Supervisory Authorities of the European Union – the predecessor body to CEIOPS - agreed a Protocol, known as the "Sienna Protocol",² providing additional detail on how the supervisory authorities would operate the passporting provisions in practice. The Protocol can be viewed on the CEIOPS website (www.ceiops.org). The Protocol incorporates clauses that extend their provisions to the supervisory authorities of non-European Union States that are parties to the EEA Agreement. Although it is not legally binding, the Protocol reflects the desire of the supervisory authorities to adhere to the principle of permanent co-operation and collaboration.

The CEIOPS Charter specifically provides for understandings, standards, commitments and work agreed within the Conference to be taken over by the Committee with the same consequences for present and future members of the Committee. The Sienna Protocol will therefore continue to apply, and supervisory authorities in the Acceding Countries will be covered by its provisions from 1 May 2004.

Arrangements for new branch and services notifications

Insurers interested in passporting into, or from, the Acceding Countries will need to submit a notification to their home State supervisory authority in compliance with the Insurance Directive requirements. The home State supervisory authority may begin to process any notifications received before 1 May, but insurers should be aware that the dispatch of the notification to the supervisory authority in the Member State of the branch or in which insurance services are to be provided will not occur before 1 May 2004. The supervisory authorities in the new Member States will not be "competent authorities", in respect of insurance undertakings headquartered in their territory, under the terms of the relevant directives until accession actually takes place.

The ability of insurers to conduct business under the terms of a notification involving an Acceding Country in a home or host State capacity will commence from the date of accession, or from the date provided for in the directives and Sienna Protocol – whichever is

Directive 2002/83/EC of the European Parliament and the Council for Life Insurers

² DT/F/182/97. Protocol relating to the collaboration of the supervisory authorities of the Member States of the European Community in particular in the application of the directives on life insurance and non-life insurance. . 30 October 1997. (The Sienna Protocol)

the later. In practical terms, a notification in respect of the freedom to provide services can take effect immediately after 1 May assuming the insurer has been informed by the home State supervisory authority that its file has been forwarded to the host State supervisor. In respect of branch notifications, the branch may begin its activity either after receipt of the conditions under which, in the interests of the general good, the activity must be pursued within the territory of the host State, or on the expiry of two months after the authority of the host State acknowledges receipt of the file forwarded under the notification procedure.

Transitional arrangements for existing branches

This concerns:

- branches in Acceding Countries of insurers with a head office in an existing EU or EEA Member State;
- branches in existing EU or EEA Member States of insurers with a head office in an Acceding Country; and
- branches in Acceding Countries of insurers with a head office in another Acceding Country.

CEIOPS has considered the supervisory arrangements in respect of such pre-existing branches where, under the principle of home State control, the responsibility for financial supervision should transfer on accession from the host State supervisor to the home State competent authority. This will affect both active branches and branches in run-off.

To ensure that the transition from host State to home State supervision is managed in an orderly fashion, CEIOPS has conducted a survey amongst its members and the supervisory authorities in Acceding Countries to identify the existing branches involved, and the business being conducted through those branches. In each case, the home and host State supervisors concerned will collaborate in ensuring a smooth transfer of supervisory responsibility immediately after 1 May, securing that the prudential requirements in the Insurance Directives are met and that there are no unintended "gaps" in supervision.

Insurers with branches affected by the transfer of supervisory authority should contact their home State supervisory authority regarding the supervisory requirements applying after 1 May 2004.