

**ANNEX II TO THE EIOPA
DECISION ON COLLABORATION
REGARDING THE TRANSFER OF
REGISTERED OFFICE OF
INSURANCE AND REINSURANCE
UNDERTAKINGS**

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PART I GENERAL CONSIDERATIONS

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PART I GENERAL CONSIDERATIONS

1.1 General aims and scope

- 1.1.1 The Mobility Directive (Directive (EU) 2019/2121) amending the Consolidated Company Law Directive (Directive (EU) 2017/1132) aims to strengthen the right of limited liability companies to convert, merge or divide across borders within the European Union, with an emphasis on the protection of interests of their employees, creditors and shareholders. It harmonises cross-border conversions¹ and amends the regime applicable to cross-border mergers and divisions.
- 1.1.2 The Mobility Directive applies to conversions, mergers and divisions of limited liabilities companies which are not subject to liquidation and addresses specifically cross-border conversions. Partnerships are generally excluded from the scope.
- 1.1.3 This framework of collaboration should ensure a smooth implementation of the Mobility Directive by the departure and destination Supervisory Authorities with regard to insurance and reinsurance undertakings under Directive 2009/138/EC (“Solvency II Directive”). Concerning the specific scope, while the Mobility Directive deals with cross-border conversions, mergers and divisions, this document is applicable to cross-border conversions only, in the event that regulated entities under the scope of the Solvency II Directive² avail of the procedures provided for.³

1.2 Principles of cooperation

1.2.1 General

- 1.2.1.1 By working closely together, the departure and destination Supervisory Authorities should safeguard the interests of both the undertaking to be relocated and the policyholders and beneficiaries⁴, promoting public confidence in the relocating undertaking. Through effective cooperation, departure and destination Supervisory Authorities should facilitate a smooth transition from one jurisdiction to another. Information exchange, coordination of supervisory activities, alignment of supervisory expectations and mutual contributions to assess compliance with requirements should ensure that the relocating undertaking is in a position to operate effectively in the destination jurisdiction, maintaining regulatory compliance, without undermining the business continuity of the undertaking.

¹ The term “cross-border conversion” is defined as an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State and transfers at least its registered office to the destination Member State, while retaining its legal personality.

² Undertakings not under the scope of the Solvency II Directive, in view of their small size, are not expected to have an interest in cross-border conversions.

³ Paragraph 4.4.1.9 of Annex I of this Decision provides that “*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 Article 27 of the Solvency II Directive states that “Member States shall ensure that the supervisory authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.”

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1.2.1.2 The ongoing collaboration between departure, destination and host Supervisory Authorities is crucial to ensure the proper functioning of the single market by maintaining a level playing field for (relocating) undertakings and ensuring the same level of protection for policyholders.

1.2.2 Active and early engagement and collaboration

1.2.2.1 Active engagement between departure and destination Supervisory Authorities is crucial as it protects the interests of policyholders and beneficiaries and ensures that the relocating undertaking would be able to continue the provision of its services without interruption. By working hand in hand, they should ensure sound supervision on an ongoing basis. However, supervisory cooperation should enable the exchange of critical information related to policyholders and beneficiaries' protection, compliance with prudential requirements, both quantitative and qualitative and it should contribute to financial stability.

1.2.2.2 Early engagement and collaboration between the departure and destination Supervisory Authorities is expected and important to understand the rationale for the intended relocation by the undertaking. In particular, due consideration shall be given by the destination Supervisory Authority to understand, where relevant, the extent of any existing supervisory issues that the departure Supervisory Authority is currently managing and the proposed plan for their handover, if they are not to be concluded prior to the planned departure date. There shall also be transparency and engagement between the departure and destination Supervisory Authorities in terms of any potential issues or changes that may arise as a result of the relocation.

1.2.2.3 The departure and destination Supervisory Authorities shall establish regular communication at an early stage and at least as soon as the departure or destination Supervisory Authorities are informed of the relocation (possibly even earlier by engaging in an informal exchange). The communication of information between departure and destination Supervisory Authorities at this early stage, but also later on, shall:

- Be a two-way process, allowing any Supervisory Authority to take the initiative and provide/request information on a timely basis;
- be balanced to reflect the needs of the supervisors involved;
- Be proportionate and risk focused, to avoid unnecessary information flow; and,
- Contribute to the identification of joint work that may assist in the optimal use of resources and timely identification of any potential issues or risks that need to be addressed prior to the relocation.

1.2.2.4 Supervisory information such as relevant information on areas subject to notification or supervisory approval and outcomes of the regular supervisory review process shall be exchanged between Supervisory Authorities to ensure a smooth transition and effective supervision since day one of the relocation. From conduct of business perspective, Supervisory Authorities shall collaborate to assess the impact of the conversion on policyholders and beneficiaries, verify the continuity of coverage, and implement measures to safeguard policyholders and beneficiaries' rights and interests.

1.2.3 Transfer of supervisory information and knowledge

1.2.3.1 Departure and destination Supervisory Authorities shall facilitate the transfer of supervisory knowledge on the relocating (re)insurance undertaking to the destination Supervisory Authority.

1.2.4 Language

1.2.4.1 All information exchanged between Supervisory Authorities in respect of the relocation, shall take place in a language which is acceptable to all the Supervisory Authorities concerned.

1.2.5 The role of EIOPA in facilitating the process

1.2.6 EIOPA should act as a facilitator, promoting effective information exchange, cooperation and coordination between departure and destination Supervisory Authorities. Its role is instrumental in ensuring a smooth and efficient relocation process.

1.2.7 In case of divergent views between the departure and destination Supervisory Authorities on any of the permissions or other specifications made under the Solvency II Directive, EIOPA shall be informed. If the divergent views derive from differences in the implementation of the Solvency II Directive, EIOPA may consider developing supervisory convergence tools⁵ to address the issue, if the issue is considered material and impacting the level playing field. If the divergent views derive from different technical opinions, the departure and destination Supervisory Authorities, with EIOPA's support, should strive to reach a common understanding.

1.2.8 EIOPA may provide, on its own initiative or upon request, technical assistance and expertise to the departure and destination Supervisory Authorities, particularly in complex cases or where specific guidance is needed.

⁵ [Supervisory Convergence tools \(europa.eu\)](http://europa.eu).

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2.1. Cooperation and active engagement between involved authorities during the relocation approval process

- 2.1.1 Given that the relocating undertaking has been previously authorised under the Solvency II regime by the departure Supervisory Authority, and provided that no material change in the business model of the relocating undertaking is envisaged, it is expected that the relocating (re)insurance undertaking will operate on the basis of the previous authorisation granted by the departure Supervisory Authority.
- 2.1.2 Where an authorisation from the destination Supervisory Authority is needed to comply with the national administrative laws, the relevant Supervisory Authorities shall cooperate to ensure that, as far as possible, the performance of respective assessments and authorisations can be organised concurrently, to enable the authorisation and relocation to take place within a reasonable period. In such case it is expected that the new application for authorisation is assessed by the destination Supervisory Authority in a proportionate manner, for instance relying on the information provided previously in accordance with Articles 18 and 23 of the Solvency II Directive insofar still considered relevant.
- 2.1.3 Furthermore, the departure Supervisory Authority, shall share with the destination Supervisory Authority information considered relevant, containing as a minimum the following:
- a) The latest conclusions drawn by the Supervisory Review Process (SRP) carried out at the level of the undertaking (both off-site analysis and on-site inspections) and open supervisory issues;
 - b) Latest ORSA Report;
 - c) Concerns, if any, identified during the ongoing assessment of propriety of qualifying shareholders and AMSB members, in particular for members maintaining their roles once the relocation is finalised. Depending on the outcome of this mutual exchange, a re-assessment of the qualifying shareholders and administrative, management or supervisory board (“AMSB”) members might be needed from the destination Supervisory Authority (e.g. national specific requirements on fitness and propriety);
 - d) Assessment of the system of governance of the relocating undertaking;
 - e) Information on open focus areas and authorities’ supervisory plans while in the process of assessing the relocation/authorisation (details under [Section 2.3](#));
 - f) Already granted permissions or other specifications under the Solvency II Directive (details under [Section 2.4](#));
 - g) Information on the undertaking’s cross-border presence, if any (details under [Section 2.5 and 2.6](#));

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- h) Timelines and any particularities based on the national legislation / regime that may affect the approval of relocation and / or the authorisation process.

2.1.4 Such arrangements shall not prevent the destination and departure Supervisory Authorities from holding direct exchanges with the relocating undertaking and initiating new assessments when there are material changes in the undertaking's business model or new AMSB members are appointed.

2.2. Transfer of supervisory information and knowledge

2.2.1 To ensure that supervisory information and knowledge is transferred, taking into account the relocation of an (re)insurance undertaking, the departure and destination Supervisory Authorities shall cooperate on the following aspects:

- a) Coordination of on-site visits which may involve:
 - i. Organising joint on-site inspections; or,
 - ii. Departure Supervisory Authority inviting the destination Supervisory Authority to participate in the on-site inspections that are ongoing during the relocation process;
- b) Capacity building which may involve workshops and staff exchanges.

2.3. Treatment of open supervisory issues

2.3.1 General

2.3.1.1 When issues are still under resolution during the relocation of a (re)insurance undertaking, departure and destination Supervisory Authorities shall adopt a cooperative and coordinated approach to address these issues and to ensure sound supervision on an ongoing basis. Thereto:

- a) The relevant Supervisory Authorities shall maintain open lines of communication and ensure transparency and adequate exchange of information regarding the status and progress of the ongoing issue at least for 6 months after the relocation;
- b) The information exchange shall cover details of the issue, any action plan agreed, supporting documentation, and any other relevant information;
- c) In case the destination Supervisory Authority disagrees with the actions under implementation regarding open issues both authorities shall try to reach a joint decision;
- d) Supervisory Authorities shall maintain records of the decisions and actions agreed between departure and destination Supervisory Authorities during the handover of open issues.

2.3.2 Handover of issues

2.3.2.1 The departure Supervisory Authority shall make every effort to finalise the outstanding supervisory issues under discussion and, when this is not possible considering the timing of the relocation process, the departure Supervisory Authority shall hand over to the destination Supervisory Authority any unresolved supervisory issues affecting the (re)insurance undertaking, including as regards:

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- a) Capital add-ons set, which are under discussion or in the process of being set or removed under Article 37 of the Solvency II Directive;
- b) Request of material increase of the amount of technical provisions under Article 85 of the Solvency II Directive;
- c) Approval of acquisition or further increase of a qualifying holding in an insurance or reinsurance undertaking under Article 57 of the Solvency II Directive if recent or deemed relevant;
- d) Recovery plans approved or in the process of being approved by the supervisory authority under Article 138 of the Solvency II Directive (in case of both non-compliance with SCR and the risk of non-compliance in the following three months);
- e) Cases of near breach with the MCR;
- f) Assessment of non-traditional reinsurance to be recognised as risk mitigation techniques, which can have a material impact (reduction) of the SCR⁶; and,
- g) Material change of the business model triggered by the relocation to the new market (e.g. new risks/products, new investment strategy, new reinsurance strategy, new system of governance, including outsourcing arrangements).

2.3.3 Supervisory plan

2.3.3.1 If either Supervisory Authority identifies potential problematic supervisory issues, in particular with regard to the protection of the interests of policyholders or beneficiaries, both Supervisory Authorities shall cooperate and jointly develop a supervisory plan to address the issues identified.

2.4. Treatment of already granted permissions or other approvals under the Solvency II Directive

2.4.1 General

2.4.1.1. A consistent approach towards existing permissions or other approvals under the Solvency II Directive, granted by the departure Supervisory Authority (e.g. internal models, ancillary own funds etc.) is crucial, moreover if from an administrative perspective a formal approval may be needed by the destination Supervisory Authority, depending on how the Solvency II Directive has been transposed.

2.4.1.2. Although a consistent approach towards existing permissions or other approvals under the Solvency II Directive is to be expected, given the single license principle, divergent views may be justified by national-specific provisions or new facts and circumstances; where such divergent views occur, they shall be addressed in a cooperative manner and with the support of EIOPA's facilitation role, when needed.

2.4.2 Approval processes

2.4.2.1 In case of existing permissions or other approvals granted by the departure Supervisory Authority under the Solvency II Directive, where a formal approval process is required by the

⁶ See also [Supervisory Statement on the use of risk mitigation techniques \(europa.eu\)](#).

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applicable national laws of the destination Supervisory Authority, the departure and destination Supervisory Authorities shall cooperate in the process by providing relevant information and sharing of supervisory knowledge, including on:

- a) Matching adjustment to the relevant risk-free interest rate term structure (Article 77b of the Solvency II Directive);
- b) Volatility adjustment to the relevant risk-free interest rate term structure, if applicable (Article 77d of the Solvency II Directive);
- c) The amount of ancillary own-fund items to be taken into account when determining own funds (Article 90 of the Solvency II Directive);
- d) Classification of own funds not covered by the list referred to in Articles 95 and 97 of the Solvency II Directive but set out in Article 79 of the 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);
- e) Use of undertakings specific parameters (Article 104 of the Solvency II Directive);
- f) Partial or full Internal model (Article 112 of the Solvency II Directive) or any major changes thereafter (Article 115 of the Solvency II Directive);
- g) Transitional measure to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations (Article 308c of the Solvency II Directive); and,
- h) Transitional measure on technical provisions (Article 308d of the Solvency II Directive).

2.5. Freedom of Establishment (FOE) and Freedom of Services (FOS) Notifications

2.5.1 General

2.5.1.1. Supervisory Authorities in the jurisdiction of which the relocating undertaking operates through FoE and/or FoS shall be promptly and timely informed by the destination authority once the relocation process is initiated and when it is concluded. The destination Supervisory Authority shall be involved in advance in the home/host cooperation process in order to facilitate the continuity of the supervision.

2.5.2 Changes in existing notifications on FoE/FoS

2.5.2.1 Existing notifications shall continue to be valid. To register the changes in existing notifications triggered by the cross-border conversion, the destination Supervisory Authority shall carry out the FoE and/or FoS notifications about the relevant changes to the already existing notification⁷ via EIOPA's Cross-Border Notification tool to the concerned host Supervisory Authorities. The solvency certificate may be replaced by a document explaining that the current notification is the result of a cross-border conversion of the legal form and as such, the new certificate of solvency is not needed.

⁷ Especially change of the domicile of the registered office.

2.6. Additional considerations in case of a cross-border group

2.6.1 Review of the mapping of the group

- 2.6.1.1. In case of a group with cross-border presence where the parent undertaking is to be relocated, the departure and destination Supervisory Authorities, or where relevant, the group supervisors, shall review the mapping of the group to identify all the related undertakings and branches of the group *post* relocation to determine any changes in the members and participants of the college. The review of the mapping will also need to confirm whether another supervisory authority shall be designated as group supervisor in accordance with Article 247(2) of the Solvency II Directive. If the criteria of Article 247(2) of the Solvency II Directive would result in a change of group supervisor, Supervisory Authorities may also consider applying Article 247(3) of the Solvency II Directive to preserve the existing group supervisor, in particular cases, where such authority remains the supervisor of a related undertaking, including a participation, within the scope of the group supervision.
- 2.6.1.2. The relevant Supervisory Authorities shall request the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company of the relocating undertakings to perform and submit an initial analysis of its group structure, including an assessment of any dominant or significant influence effectively exercised over an undertaking by another undertaking that is part of the group, as well as to provide information on branches in the group.

2.6.2 New group supervisor is designated

- 2.6.2.1 If, as a result of the relocation, a new group supervisor is designated, any decision of the previous group supervisor shall remain applicable, including the granted permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group (group internal model), on the basis of an internal model, or, the use of group specific parameters. This is without prejudice to the responsibility of the destination Supervisory Authority to issue a new decision, confirming the previous decision, to comply with the national administrative laws.
- 2.6.2.2 The group supervisor, as referred to in paragraph 2.6.2.1, shall, in cooperation with the supervisory authorities concerned, reassess the group internal model and issue a new decision, if justified by a major model change or new application of the group internal model (e.g. to take into account any material change in the group structure or in the group business model).
- 2.6.2.3 Without prejudice to the previous decision of the departure Supervisory Authority, the destination Supervisory Authority may exceptionally, if it was not one of the supervisory authorities concerned in the college of supervisors in accordance with Article 231(1) of the Solvency II Directive, issue a new decision in cooperation with the other supervisory authorities concerned regarding the approval of the group internal model.

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- 2.6.2.4 The decision of the group supervisor, as referred to in paragraph 2.6.2.2 and 2.6.2.3, on the group internal model shall state the reasons on which it is based, and shall be communicated to the relocated undertaking, to the college of supervisors and to EIOPA.
- 2.6.2.5 Without prejudice to their respective responsibilities, the departure and destination Supervisory Authorities, as group supervisors, shall cooperate closely to facilitate the supervision and assessment of the group internal models, especially in cases where the new group supervisor has neither experience nor knowledge thereof.

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3.1. Information from the undertaking to policyholders and beneficiaries and the role of Supervisory Authorities

- 3.1.1. The departure Supervisory Authority shall, where needed, assist the destination Supervisory Authority in order to ensure that essential information about the plans of the relocating (re)insurance undertaking are accessible to both Supervisory Authorities to ensure that its operations remain uninterrupted and there is no adverse impact on existing policyholders and beneficiaries in terms of contractual or service continuity during and after the relocation process.
- 3.1.2. The destination Supervisory Authority in cooperation with the departure Supervisory Authority shall ensure that the relocating undertaking is aware about the information disclosure requirements in the national legislation of the departure and destination Member States, including those going beyond the requirements in Solvency II, and fulfills the obligations to inform the policyholders and beneficiaries of the changes in administrative information (for example, change in legal form or address of the head office, switch to a new guarantee scheme, new Supervisory Authorities for complaints or Alternative Dispute Resolution) resulting from the relocation.
- 3.1.3. Where the departure or destination Supervisory Authority considers that further information is necessary from the analysis of the impact of the relocation on protection of policyholders and beneficiaries, namely arising from different coverages of the national Insurance Guarantee Schemes in the interest of the policyholders concerned (e.g. concerning the possible impact of the relocation on policyholders' protection arising from different coverages of the national Insurance Guarantee Schemes), the destination Supervisory Authority shall engage⁸ with the undertaking in order to achieve the best outcome for the affected policyholders and beneficiaries in the individual case.

3.2. Material change in the terms and conditions affecting the rights of policyholders and beneficiaries

- 3.2.1 When a material change in the terms and conditions affecting the rights of policyholders and beneficiaries has been identified as a result of, for example, a change in the level of compensation to policyholders under a national Insurance Guarantee Scheme, the authorisation of the cross-border conversion shall not affect the right of Member States to give policyholders the option of cancelling contracts, with no penalty, within a fixed period⁹. In those cases, the relevant Supervisory Authorities shall ensure that adequate communication between the relocating undertaking and the relevant policyholders is performed. Relevant Supervisory Authorities shall inform each other,

⁸ For example, if an impact is identified, the relocating undertaking may be required to provide details to the impacted policyholders individually on the planned relocation, including information on the consequences on their level of protection.

⁹ Such option would be in line with Article 86j of the Mobility Directive which requires Member States to provide for an adequate system of protection of the interests of creditors of the converted entity.

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in particular the departure and destination Supervisory Authorities, of the circumstances and the period within which contracts may be cancelled according to the provisions of their national law.