



Bundesamt für Privatversicherungen BPV
Office fédéral des assurances privées OFAP
Ufficio federale delle assicurazioni private UFAP
Swiss Federal Office of Private Insurance FOPI



FOPI-052-03

CEIOPS-SEC-17/06

10 February 2006

The Members and Observers of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) on the one hand,

and

the Swiss Federal Office of Private Insurance (FOPI) on the other hand,

hereinafter referred to as Authorities, being the authorities competent to supervise insurance undertakings, insurance groups, and, where appropriate, financial conglomerates including an insurance undertaking, which operate on the territory comprising their jurisdiction,

have reached the following understanding:

A. Principles and Scope

1. The purpose of this Memorandum of Understanding (MoU) is to establish a formal basis for co-operation, including the exchange of information and assistance.
2. The purpose of this MoU is also to involve the Authorities in the supplementary supervision of Insurance Groups and Financial Conglomerates that are under supplementary supervision of FOPI or where a Swiss insurance undertaking is concerned.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the country of each Authority. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

B. Co-operation for the Supplementary Supervision of Insurance Groups and Conglomerates

5. The Authorities agree that the aim of co-operation is to ensure optimal supplementary supervision. The supplementary supervision should be carried out efficiently and effectively, and should impose no unnecessary burden for the

insurance undertakings subject to supplementary supervision, or for the Authorities involved.

6. The Authorities share the ultimate aim of ensuring optimal, effective and efficient supervision, and will make all reasonable efforts to exercise the co-operation and co-ordination in a spirit of mutual trust.
7. The Authorities should strive for forms of co-operation in the exercise of the supplementary supervision which are sufficiently flexible, and which are based on a genuine wish to work together.
8. The FOPI participates in the meetings of the Coordination Committees formed by the EU/EEA Authorities when a Swiss insurance undertaking is concerned. Participation means the attendance of the meetings of the Coordination Committees and the possibility to co-operate actively in the meetings.
9. When Swiss based Insurance Groups or Financial Conglomerates are submitted to supplementary supervision by FOPI, the latter will coordinate the supplementary supervision with the competent Authorities within the EU/EEA.

C. Procedure for Requests for Information and Assistance

Provision of unsolicited information

10. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

Requests for information and assistance

11. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and overall policy.
12. Requests for the provision of information or other assistance should be made in writing, or made orally to the usual contact persons. In urgent cases, requests may be made in summary form to be followed as soon as possible by a full request.
13. Requests should specify:
 - a. the information or other assistance requested;
 - b. a description of the conduct or suspected conduct which gives rise to the request;
 - c. the purpose for which the information is sought (including details of the laws and regulatory requirements pertaining to the matter which is the subject of the request);
 - d. the persons believed by the requesting Authority to possess the information sought, or the place where such information may be obtained, if known;
 - e. to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure;
 - f. the desired time period for the reply.

Assessment of requests

14. Each request for assistance should be assessed on a case-by-case basis by the recipient Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the recipient Authority may consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
15. In deciding whether and to what extent to fulfil a request, the recipient Authority may take into account:
 - a. whether the request conforms with this MoU;
 - b. whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
 - c. whether the provision of assistance would be so burdensome as to disrupt the proper performance of the recipient Authority's functions;
 - d. whether it would be otherwise contrary to the public interest or the essential national interest of the recipient Authority's jurisdiction to give the assistance sought;
 - e. any other matters specified by the laws, regulations and requirements of the recipient Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
 - f. whether complying with the request may otherwise be prejudicial to the performance by the recipient Authority of its functions.
16. The Authorities recognise that assistance may be denied in whole or in part for any of the above reasons in the discretion of the recipient Authority.

Contact Points

17. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed.

Costs

18. If the cost of fulfilling a request is likely to be substantial, the recipient Authority may, as a condition of agreeing to give assistance under this MoU, require the requesting Authority to make a contribution to costs.

D. Permissible Use and Confidentiality

19. An Authority that receives non-public information under this MoU agrees to treat such information as confidential in accordance with the provisions of this MoU and to the extent permitted by law.

20. An Authority that receives non-public information under this MoU may use that information for the purposes set forth in the request for assistance, and for its supervisory functions.
21. If the requesting Authority intends to use information provided under this MoU for any purposes other than those contemplated in paragraph 20, it will seek prior consent of the Authority providing the information.
22. The requesting Authority confirms that it will seek consent from the requested Authority before disclosing non-public information it receives under this MoU.
23. While disclosing the information obtained pursuant to this MoU to third parties, the requesting Authority will seek from them a commitment to keep the information confidential.
24. The requesting Authority will endeavour to comply with any restrictions on the use or disclosure of information that are agreed when the information is provided.
25. If the requesting Authority is subject to a mandatory disclosure requirement or receives a legally enforceable demand for information under applicable laws, regulations and requirements, the requesting Authority will notify the requested Authority of its obligation to disclose and will endeavour to seek consent from the requested Authority before making a disclosure. If the requested Authority withholds its consent, the requesting Authority will use its best efforts to protect the confidentiality of non-public information obtained and, if necessary, to resist disclosure, including by asserting such appropriate legal exemptions or privileges with respect to that information as may be available, for example by advising the concerned court or requesting party of the possible negative consequences of a disclosure on future co-operation between the Authorities.
26. The Authorities agree to treat the non-public information received under this MoU as confidential to the extent permitted by law even after withdrawal from this MoU under paragraph 28 below.

E. Consultation

27. The Authorities will keep the operation of this MoU under review and will consult:
 - a. in the event of a dispute over the meaning of any term used in the MoU,
 - b. in the event of a substantial change in the laws, regulations or practices affecting the operation of the MoU,
 - c. in the event of any Authority proposing to withdraw from the MoU and
 - d. whenever necessary, with a view to improving its operation and resolving any matters.

F. Commencement, Withdrawal and Amendment

28. This MoU will take effect when signed. Any Authority may withdraw from the MoU by giving 30 days advance written notice to the other Authorities. The MoU may be amended by agreement in writing.

