



EIOPA-BoS-12/087
21-September 2012



Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

**Memorandum of Understanding (MoU)
between
the European Insurance and Occupational Pensions
Authority (EIOPA)
and the Swiss Financial Market Supervisory
Authority (FINMA)**

(hereinafter referred to as "Authorities")

whereas,

EIOPA is, under Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Insurance and Occupational Pensions Authority ("The Regulation"), expected to ensure the orderly functioning and integrity of financial markets and the stability of the financial system in the European Union. With regard to EIOPA's role under this MoU, Articles 8 (f) and (i), 17, 18, 21, 23, 33, 35 and 70 of The Regulation are particularly relevant.

EIOPA has under The Regulation the task to pursue a constructive dialogue and effective cooperation with supervisory authorities outside the European Union. EIOPA has also the task to contribute as a competent authority to colleges of supervisors ("EEA Colleges"). EEA Colleges may also include third country subsidiaries and branches or financial groups having their headquarters in third countries and their subsidiaries or branches in the European Union.

EIOPA facilitates and updates the so-called Helsinki plus list which provides information on EEA insurance groups and their supervision.

EIOPA will in its contacts with FINMA fully respect the existing roles and respective competences of the EU Member States, Liechtenstein, Iceland, Norway and the European Union institutions. This arrangement will not create legal obligations in respect of the European Union, its Member States, Liechtenstein, Iceland and Norway nor shall it prevent Member States and Liechtenstein, Iceland and Norway and their competent authorities from concluding bilateral or multilateral arrangements with FINMA. Since the tasks of EIOPA as a European Supervisory Authority are of a specific nature, a separate MoU between EIOPA and FINMA is needed.

FINMA has under the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA) of 22 June 2007, notably Article 6 (2), the remit to fulfil the international tasks that are related to its supervisory activity.

FINMA may, in particular, according to Article 42 FINMASA, cooperate with foreign authorities responsible for financial market supervision including the sharing of confidential information and documents.

FINMA sets up and chairs supervisory colleges ("FINMA Colleges") pursuant to its Policy on Insurance Supervisory Colleges where FINMA is the responsible group supervisor of an insurance group with international activities. In this context, FINMA is to liaise with the foreign authorities responsible for the supervision of relevant group entities. FINMA also participates where appropriate in insurance supervisory colleges organised by foreign supervisory authorities.

A. Principles and Scope

1. The purpose of this Memorandum of Understanding (MoU) is to establish a formal basis for co-operation with a view to further strengthening the dialogue and co-operation between EIOPA and FINMA within their respective statutory remits pertaining to insurance regulation and supervision, and more in particular regarding:
 - the exchange of information and assistance relating to insurance groups under group supervision of FINMA or of a supervisory authority considered a Voting Member or Observer in EIOPA's Board of Supervisors¹ and have business activities in the respective jurisdiction of the other authority, in particular exchange of information and assistance relating to the work of EEA and FINMA Colleges, and action required in emergency situations.
 - the exchange of information for macro-prudential (financial stability) purposes, such as monitoring and assessment of risks, interconnectedness, and stress testing.
2. This MoU does not modify or supersede any laws or regulatory requirements in force with regard to, or applying to, FINMA or in force with regard to, or applying to, EIOPA. 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.
3. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.
4. For EIOPA, all confidential information exchanged under this MoU will be subject to EIOPA's obligation of professional secrecy (Article 70 of The Regulation and EIOPA's confidentiality policy²).
5. For FINMA, all confidential information exchanged under this MoU will be subject to FINMA's obligation of professional secrecy (Article 14 FINMASA).

¹ According to article 1 of EIOPA's BoS Rules (EIOPA-11-002-002-Rev1)

² (https://eiopa.europa.eu/fileadmin/tx_dam/files/Legal_Framework/Management-Board-Decision-Professional-Secrecy.pdf).

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

6. The Authorities agree that the aim of co-operation is to ensure optimal supervision in particular for insurance groups with international activities in the EEA and Switzerland. The co-operation should be carried out efficiently and effectively, and should not impose unnecessary burden for the insurance undertakings subject to supervision, or for the Authorities involved.
7. The Authorities will make all reasonable efforts to exercise the co-operation and co-ordination in a spirit of mutual trust.
8. FINMA may participate in the activities of the EEA Colleges formed by the EEA Authorities when a Swiss insurance undertaking is concerned. In this case EIOPA Guidelines on EEA Colleges shall apply.
9. When Swiss based insurance groups with activities in the EEA are subject to group supervision by FINMA, EIOPA may participate in the activities of the FINMA colleges. In this case, the FINMA Policy on Insurance Supervisory Colleges shall apply.
10. EIOPA will facilitate information exchange between FINMA and the Supervisory Authority considered a Voting Member or Observer in EIOPA's Board of Supervisors, in particular by making the Helsinki plus list³ accessible to FINMA.
11. FINMA will provide information to complete the Helsinki plus list⁴ to enable EIOPA to keep the list up to date.
12. EIOPA will in its oversight function also use information received from FINMA to prepare for the EEA College work. Only in the cases of Articles 17 and 18 of The Regulation, EIOPA may use such information for supervisory purposes.

C. Macro-prudential tasks

13. FINMA and EIOPA will share relevant information to fulfil their macro-prudential tasks.

D. Procedure for Requests for Information and Assistance

14. If a request for information and assistance is made, each Authority will make reasonable efforts to provide assistance to the other, subject to its laws and overall policy.
15. Requests for the provision of information or assistance should be made in writing. In urgent cases, requests may be made orally to the usual contact persons, in summary form to be followed as soon as possible by a full request.
16. Requests for information and assistance should specify:
 - a. the individual or aggregated information or assistance requested;
 - b. a description of the matter which gives rise to the request;

³ (<https://eiopa.europa.eu/restricted-area/working-groups/helsinki-lists/index.html>)

⁴ Ibid.

- 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

- 17. Each request for information and 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.
- 18. 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 organisation in its jurisdiction.
- 19. 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.
 - g. whether the request would lead to the prosecution or taking of disciplinary action or other enforcement action against a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach in the subject matter of the request.
- 20. 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

21. The Authorities will provide a list of contact points (departments or teams in the organisation) to which information or requests for information and/or assistance under this MoU should be directed.

Costs

22. 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 any costs incurred.

E. Permissible Use and Confidentiality

23. If the Authorities receive confidential information under this MoU, they agree to treat such information as confidential in accordance with the provisions of this MoU.

24. An Authority that receives confidential information under this MoU may use that information for the purposes set forth in the request for information and/or assistance.

25. If the recipient Authority intends to use information provided under this MoU for any purposes other than those contemplated in paragraph 24, it will seek prior consent of the Authority providing the information.

26. The requesting Authority confirms that it will seek consent from the requested Authority before disclosing any confidential information it receives under this MoU.

27. Before disclosing the information obtained pursuant to this MoU to third parties, the requesting Authority will seek a commitment from them to keep the information confidential.

28. The recipient Authority will undertake every effort to comply with any restrictions on the use or disclosure of information that are agreed when the information is provided.

29. 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 make its best efforts to protect the confidentiality of confidential information obtained according to its confidentiality obligations stated under paragraphs 4 and 5 and, if necessary, to resist disclosure, including 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.

30. The Authorities agree to treat the confidential information received under this MoU as confidential to the extent permitted by law even after withdrawal from this MoU under paragraph 32 below.

F. Consultation

31. The Authorities will keep the operation of this MoU under review and will consult when necessary:
- 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.

G. Commencement, Withdrawal and Amendment

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

Signed in Berne on 21 September 2012:

For EIOPA

For FINMA

(Gabriel Bernardino, Chair)

(Patrick Raaflaub, CEO)

(Urs Zulauf, Head Strategic Services)