

Siena Protocol Update

How insurance supervisory authorities collaborate

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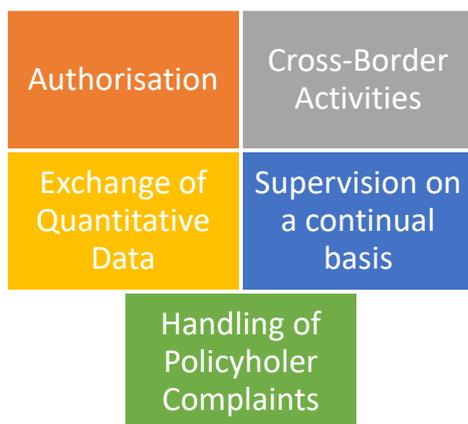


The rules describing how regulators within Europe should co-operate and divide responsibilities have been updated in light of Solvency II regulations.

New rules have been published within [EIOPA-BoS-17/014](#) (“Decision on the collaboration of the insurance supervisory authorities”) setting out how Supervisory Authorities should work together. This updated Protocol applies to EEA Member State Home and Host¹ Authorities who supervise insurance and reinsurance undertakings. It reflects the Solvency II Directive and is the latest version of what was originally referred to as the “Siena Protocol”. These new rules came into force on 1st May 2017.

This briefing note summarises the main components of the Protocol including the areas of authorisation, cross-border activities, continuous supervision, exchange of qualitative data and handling of policyholder complaints. The main changes to the Protocol are also highlighted. This will be of interest to any company considering establishing a new insurance company, establishing a new branch or operating on a cross border basis. It should be noted that these are minimum requirements and don't diminish the responsibilities of Home NSAs or the ability of Supervisory Authorities to communicate additional information.

MAIN COMPONENTS COVERED IN THIS NOTE



Authorisation

The Home National Supervisory Authority (NSA) is solely responsible for issuing authorisation to take up insurance or reinsurance business, which is valid throughout the EEA. It is critical that Supervisory Authorities carry out a rigorous examination of authorisation information, ensuring the uniform application of criteria relating to the supervision of insurance and reinsurance activity.

Exchange of authorisation information with other insurance Supervisory Authorities is applicable when the undertaking seeking authorisation is:

1. a subsidiary of an insurance/reinsurance undertaking authorised in another Member State
2. a subsidiary of the parent undertaking of an insurance/reinsurance undertaking authorised in another Member State
3. an undertaking controlled by the same person who controls an insurance/reinsurance undertaking authorised in another Member State

The Supervisory Authority responsible for granting authorisation shall ask for information from either the Supervisory Authority of the direct parent, ultimate parent, subsidiary or undertaking controlled by the same person as applicable.

Supervisory Authorities should also exchange information with other financial supervisory authorities (e.g. of credit institutions) where relevant.

The Protocol also provides details for Supervisory Authorities on the exchange of information on people who effectively run an undertaking or hold key functions, shareholders and members of undertakings with qualifying holdings.

Changes from the old Protocol

- If information requests are sent to other Supervisory Authorities they should provide any relevant information as soon as possible and preferably within 2 weeks.

¹ 'home Member State' means the Member State where the head office is situated whereas 'host Member State' means the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services

- When granting authorisation, the updated Protocol outlines the further information on the following items that Supervisory Authorities can request:
 - o Fitness and probity assessments of all persons who effectively run the undertaking or hold key functions.
 - o Information relating to deteriorating financial conditions and instances of non-compliance with TPs, SCR and MCR.
 - o Information on significant concerns regarding governance systems
 - o Information on supervisory measures taken in accordance with Solvency II to address governance deficiencies.
 - o Information on applications for authorisations rejected or withdrawn in other Member States.
- Where an insurance undertaking has clearly indicated its intention to operate exclusively or almost exclusively in one or more Member State(s) on a Freedom of Services (FoS) basis, the Home NSA shall ask for the reasons supporting that strategy. The Home NSA should also engage with the Host NSA to better understand the circumstances.
- In relation to acquisitions and increases of shareholdings in undertakings, a decision by the Supervisory Authority that has authorised the insurance or reinsurance undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the Supervisory Authority responsible for the proposed acquirer, in accordance with Article 60(2) of the Solvency II Directive.

Cross Border Activities

The framework for cross border activities is based on the existence of the single market, consistency of policyholder protection and supervisory cooperation.

Once authorisation is obtained from the Home NSA, insurance and reinsurance undertakings have the right to establish a branch within the territory of another Member State or can 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 must be notified to the Home NSA. The latter communicates this to the Host NSA. A detailed list of information to be communicated between the Home NSA and Host NSA (in both directions) is included in the Protocol.

The Home NSA can make use of the Host NSA's information about the markets and business conduct in their territory.

Regarding the cessation of activities, the Home NSA shall notify the Host NSA, if business activities will no longer be provided (through branch closure or under the freedom to provide services) in the Host Member State, as soon as possible and before the discontinuation of the insurance activities.

Branch applications

For branch applications the timelines for authorisation are as follows:

- Within three months of notification of the intention to establish a branch the Home NSA must inform the insurance entity that it has communicated the information to the Host NSA.
- Following this, the Host NSA has two months to send communications to the Home NSA. Branch activity can commence at the end of this two month period if no earlier communication is received.

This means that branch applications could take up to five months for approval.

Freedom to provide services (FoS)

The structure of the requirements for FoS activities is similar to that for branch applications. 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 it is informed of the communication of the notification to the Host NSA by the Home NSA. This should occur within a month of receipt of the information from the insurance undertaking.

Changes from the old Protocol

The general principles of this section of the Protocol are consistent with the previous version.

Some further details and alignment with the Solvency II texts have been added such as some extra items on the list of information to be provided between supervisory authorities.

Much of the detail regarding supervision of third country branches has been removed from the Protocol, except for information on the transfer of portfolio of contracts of insurance branches of Third Countries.

Supervision on a Continuous Basis

The financial supervision of the activities of insurance and reinsurance undertakings shall be the sole responsibility of the Home NSA.

Co-operation between the Supervisory Authorities is encouraged and the framework for this is set out in the Protocol including;

- Onsite inspections by the Home NSA should be notified as soon as possible and preferably 4 weeks in advance to the Host NSA (and vice versa).
- Where appropriate, the Home NSA shall inform the Host NSA in a timely manner about any of outcomes from its supervisory review process which relate to risks arising from or impacting the cross-border activity.

There are also specific requirements around the supervision of Portfolio Transfers. For example, if the Home NSA of the accepting undertaking has serious concerns about how that accepting undertaking will perform in the future, it shall inform the Home NSA of the transferring undertaking of those concerns within three months.

Guidance on supervisory measures, recovery plans, reorganization measures and winding-up proceedings are detailed in the Protocol.

Changes from the old Protocol

The updated Protocol includes further information on cooperation and interaction between supervisors.

Some updates included in the new Protocol include;

- The Home NSA shall consider increasing its cooperation with the Host NSAs to understand;
 - o If the insurance/reinsurance undertaking has a clear understanding of the risks that it faces, or may face, in the Host territories
 - o What specific related risk management tools and internal controls are in place, having regard to the proportionality principle and the risk-based approach to supervision
- Specifics on how the relationship between Supervisory Authorities operates if there is a college of supervisors established and conversely if there is no college of supervisors established.
- Regarding Portfolio Transfers, when the head office of the accepting undertaking and that of the transferring undertaking are not in the same Member State, a certificate of solvency is needed showing that the accepting undertaking covers the SCR. A template is included in the appendix.

Regular Exchange of Quantitative Data

Specified information regarding premiums and claims shall be made available by the undertaking to each concerned Host NSA through the technical file transfer system (known as 'EIOPA HUB').

Supervisory Authorities may however exchange more granular data on a more regular basis or upon request.

Changes from the old Protocol

There are some updates to the requirements for information exchanged mainly around the source of the information and the granularity.

Under the Solvency II regime, quantitative information to be exchanged should be taken from the QRTs.

Handling of Policyholder Complaints

It is important that all complaints received by Supervisory Authorities from policyholders are dealt with by the relevant complaints handling body, irrespective of whether the complaint involves policyholders and insurers in different Member States. There are Protocols to follow where disputes over responsibilities arise and also regarding the information that must be provided to the public.

Changes from the old Protocol

The information on handling of policyholder complaints is broadly in line with the previous Protocol.

How Milliman can help

Our consultants have been involved in advising our clients on Solvency II issues since its conception. We have undertaken a range of work for clients across all three pillars of Solvency II.

EXPERTISE AND EXPERIENCE – AUTHORISATIONS AND PORTFOLIO TRANSFERS

We have unrivalled experience of licence applications for greenfield start-ups as well as the associated work required to make a new insurer operational.

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EUROPEAN MILLIMAN LOCATIONS



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