

For Official Use

C(2002)134



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

12-Jun-2002

English - Or. English

COUNCIL

**C(2002)134
For Official Use**

Council

DRAFT DECISION OF THE COUNCIL ON THE EXCHANGE OF INFORMATION ON REINSURERS

(Note by the Secretary-General)

JT00128059

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English - Or. English

1. This note submits to the Council a draft Decision on the exchange of information on reinsurers.
2. The work on this draft Decision started in 1999, shortly after the 1998 Council's approval of the Recommendation on Assessment of Reinsurance Companies [C(98)40/FINAL]. The Working Party of governmental experts on insurance solvency as well as a special drafting task force have spent three years on this project, discussing it at their plenary meetings as well as through written procedure. The draft Decision was eventually endorsed by the Insurance Committee at its December 2001 session. The current version of the text reflects the final version of the Draft including the latest amendments proposed by the Delegations to the Insurance Committee.
3. The 1998 Recommendation focused on information to be collected by insurance companies themselves on their reinsurers. This draft Decision promotes the exchange of prudential information between relevant governmental authorities. It is based inter alia on the necessity for insurance supervisory authorities to check that the insurance companies subject to their supervision are able to fulfil their commitments towards their policyholders, and consequently that the claims held by such insurance companies on their reinsurers are recoverable.
4. The objective of this draft Decision is to promote -- when necessary and upon several specific conditions, including confidentiality requirements -- the provision of information between national coordinators identified by the participants to the Decision. This provision will be made on request as well as on the own initiative of the country concerned.
5. Further information will also be made available systematically through an electronic restricted network on the OECD Internet website. Such information will concern specific limited cases such as fraud, insolvency and the administrative limitation of reinsurers activities. This network should contribute to ensuring further integrity and transparency in reinsurance markets, whose importance for the insurance industry and the economy as a whole was highlighted by the impact of the events of 11 September 2001.
6. The practical administrative modalities necessary to the implementation of the Decision will be defined separately by the Insurance Committee.
7. Accordingly, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted document C(2002)134;
- b) adopted the draft Decision on the Exchange of Information on Reinsurers set out in Annex to document C(2002)134 and agreed to its declassification.

ANNEX

**DRAFT DECISION OF THE COUNCIL ON EXCHANGE OF INFORMATION ON
REINSURERS**

THE COUNCIL

Having regard to Articles 3 and 5 (a) of the Convention on the Organisation for Economic Co-operation and Development;

Having regard to the Recommendation of the Council concerning Institutional Co-operation between Authorities of Member Countries Responsible for Supervision of Private Insurance [C(79)195/FINAL];

Having regard to the Recommendation of the Council on Assessment of Reinsurance Companies [C(98)40/FINAL];

Considering the acknowledgement already expressed in the early 1990s by the Group of Governmental Experts on Insurance Solvency of the importance of implementing a system for exchanging reinsurance information between supervisory authorities;

Considering the recognition that the relative homogeneity of the OECD Member countries, the reliability of their regulatory systems and the degree of co-operation already attained between the Member countries should make it possible to reach an agreement on such system;

Considering the necessity for insurance supervisory authorities to check that the insurance companies subject to their supervision are able to fulfil their commitments towards their policyholders, and consequently that the claims held by such insurance companies on their reinsurers are recoverable;

Considering that the methods used by insurance supervisory authorities to check this recoverability may vary from one Participant to another, and consequently that the recoverability of claims on reinsurers may be subject to different regulatory and supervisory rules (including accounting rules), either through supervision of both insurers and reinsurers or through supervision of insurers only;

Considering that a great deal of information may already be publicly available;

Considering that it may however be desirable for insurance supervisory authorities to be able to gather information about the reinsurers of the insurance companies they supervise, -- in particular in cases of fraud, insolvency and limitation of activities,-- some of which information may not be publicly available;

Considering that the insurance supervisory authorities of some Participants may not be allowed to provide some information to other supervisory authorities, or may be allowed to do so only under restrictive conditions;

Considering that requests for exchange of information should not place excessive burdens on countries providing the information and should be made after unsuccessful search by other means, such as the ceding company;

Considering that this exchange of information may require the Participant providing the information to apply its own confidentiality requirements, as this Participant would do in case of any other exchange of information;

C(2002)134

Considering that in case of any doubt on the nature of the confidentiality requirements of the providing Participant, the country receiving the information should consult the Participant providing the information;

Considering the fact that this decision does not prevent any additional exchange of information on reinsurance issues;

Considering that this Decision provides a framework for the promotion of exchange of prudential information on reinsurers between the Participants, in particular on issues related to fraud, insolvency and limitation of activity;

Considering that this Decision provides the possibility for the Insurance Committee to transmit any recommendation to the Council in case a recipient would not respect the confidentiality rules which are set as conditions for the provision of information;

Considering the credibility that the international governmental commitments of the Participants to this OECD Decision will provide to this Decision, compared to any informal agreements and thus the expectation that the confidentiality requirements will be fully respected;

Considering the restricted access which will be provided to the OECD reinsurance network;

Considering that in any case a providing Participant has always the right to withdraw the information he provides (and the duty to do it when the information is no longer relevant);

Considering that the decision will have to be consistent with existing international agreements;

Considering that exchange of information will be completed within the limits of domestic laws and regulations;

Considering that selected non-member economies may be invited to join the Decision, upon approval of the OECD Council on the basis of a recommendation from the Insurance Committee, which would examine any relevant request expressed by such economy to join the Decision;

Considering that when implementing this Decision, the authorities of the Participants are invited to follow, when relevant, international standards and principles relevant to exchange of information between insurance supervisors;

On the proposal of the Insurance Committee,

I. **DECIDES** that Member countries will exchange information on reinsurers in accordance with the provisions set out hereunder;

Article 1: Scope of the Decision

a) Participation in the Decision is open to all OECD Member countries. Selected non-member economies may also be invited by the OECD Council on the basis of a recommendation from the Insurance Committee to adhere to the Decision.

For the purpose of this Decision a Member country or non-member economy participating to the Decision will be referred to as a Participant.

This Decision applies to the fullest possible extent to sub-national level.

Participation in this Decision shall not prevent the Participants from exchanging any information on a bilateral basis with Participants or non-Participants to the Decision, having regard to the general principles set out in Article 3 of this Decision.

b) Each Participant shall identify an official national co-ordinator responsible for the implementation of the Decision.

Article 2: Definitions

For the purpose of this Decision:

a) Reinsurance entity means a legal entity other than an insurance company, whose main activity consists in accepting risks ceded by insurance or other reinsurance legal entities,

b) Reinsurers means reinsurance entity and insurance companies designated by the Participants, whose main activity includes significant issuance of reinsurance coverage. In that latter case each Participant will decide which entity in its territory it considers relevant to be covered by the Decision.

c) Establishment means the head office, subsidiary or branch of an entity.

d) The reinsurers covered by the Decision are:

- reinsurers established in the territory of a Participant;
- reinsurers not established in the territory of a Participant but on which a Participant would have relevant information through the supervision of other insurance or reinsurance entities or through other reliable means.

Article 3: General principles

a) Participants agree to exchange information in accordance with the requirements set out in their domestic laws and regulations. In particular, they may apply their own confidentiality requirements to decide upon the appropriateness of the confidentiality requirements followed by the Participant receiving the information.

b) Neither the OECD nor any Participant could be held legally responsible for the accuracy of the information provided. While such information cannot be considered as certified by the providing Participant it shall be exchanged in good faith and, as far as information not publicly available is concerned, on a confidential basis.

c) When the reinsurer has its head office in the territory of a Participant, the other Participants in the territories of which this reinsurer operates should, before providing non-public information to any Participant, endeavour to consult the Participant in the territory in which the head office is located. Any subsequent relevant comment from the Participant in the territory of which the head office is located should be attached to this information. If the reinsurer has its head office in the territory of a non-Participant, the authorities of that non-Participant may also be consulted in a similar procedure.

d) The practical administrative modalities necessary to the implementation of this Decision will be defined separately by the Insurance Committee. This concerns in particular the modalities related to the disclosure and updating of supporting background information¹ and to the assessment process.

Article 4: Self-limitation

Participants pledge to limit their requests for information and to make use of other available channels, such as requesting information to the ceding insurance entities, prior to contacting the other Participant. Requests for information should be reasonable, be motivated by prudential purposes, and not unnecessarily burden the official national co-ordinator.

Article 5: Provision of information on request

Upon request, each Participant shall provide, without delay, other Participants with the following information:

- a) Publicly available information on reinsurers established in its territory.
- b) Information not publicly available on reinsurers established in its territory, having regard to the general principles set up in Article 3.

Article 6: Provision of information on own initiative basis

Having regard to the general principles set up in Article 3, Participants endeavour to provide, on their own initiative, to concerned other Participants any information which they find relevant to communicate for prudential reasons.

Article 7: Provision of information systematically transmitted, through OECD internet network

a) Participants agree to transmit systematically and without delay, under conditions set up in Article 7 b) and using an OECD internet reinsurance network to which the official national co-ordinator will have exclusive access, information on reinsurers related to the following categories:

- fraud related to the conduct of the reinsurance business such as fraudulent activities stated by public prosecutors and the competent courts, or relevant states of proceedings;
- insolvency: i.e. cases in which a reinsurer is determined by a relevant supervisor or administrative body to be insolvent under the laws of the jurisdiction concerned, including receivership and administrative supervision;
- limitations of activities: such as run off, limitation of free disposal of assets.

b) This transmission will systematically apply for information publicly available in the territory of the concerned Participant (but which would need to be made known to another Participant). For information not publicly available, the transmission should also be done systematically, whenever possible, but the Participant providing the information may decide under which conditions and modalities such information

1. e.g.: the list of official national co-ordinators (and other authorised officials designated by the co-ordinators), an illustrative list of types of information not publicly available which may be provided under Articles 5 and 6, and a compilation of information on national and local confidential requirements applied by the participants

will be circulated -- including the legal authority of the recipient Participant to protect the confidential nature of the information -- having regard to the general principles set up in Article 3.

c) The information will be deleted automatically after six months unless the relevant Participant(s) confirm(s) the need to maintain it, upon justification. Each Participant endeavours to amend any entries as soon as these are no longer applicable.

Article 8: Failure to respect confidentiality requirements

Failure to respect the confidentiality requirements which are set by the providing Participant as conditions for the provision of information may be raised within the Insurance Committee which shall then transmit any recommendation in this respect to Council for final decision.

Article 9: Use of information provided

The use of the information provided in application of Articles 5, 6 and 7 is limited to prudential purposes.

Article 10: Other international agreements

Implementation of the Decision shall be consistent with existing international agreements or regulations.

II. **INSTRUCTS** the Insurance Committee to define the practical modalities necessary to the implementation of this Decision, in accordance with its Article 3 d);

III. **INSTRUCTS** the Insurance Committee to assess the implementation of this Decision as appropriate and not later than three years after its adoption.