

**MEMORANDUM
OF
UNDERSTANDING**

REGARDING MUTUAL CO-OPERATION AND EXCHANGE OF
INFORMATION IN THE FIELD OF INSURANCE SUPERVISION

**BETWEEN THE
INSURANCE SUPERVISION AGENCY,
MONTENEGRO**

**AND THE
FINANCIAL MARKET AUTHORITY,
AUSTRIA**

**AND THE
FEDERAL MINISTRY OF FINANCE,
AUSTRIA**

The Financial Market Authority of Austria (hereinafter: FMA) and the Austrian Federal Ministry of Finance, on one side and the Insurance Supervision Agency of Montenegro (hereinafter: ISA), on the other side, express their willingness to co-operate on the basis of mutual trust and understanding and intend to base their co-operation in the field of supervision of insurance undertakings on the principles and procedures outlined in this Memorandum of Understanding (hereinafter: Memorandum). This Memorandum of Understanding is signed by the Austrian Federal Ministry of Finance according to Section 298 Insurance Supervision Act 2016.

In the following text of the Memorandum, FMA and ISA will be called “Authorities” or “Supervisors”.

I. OBJECTIVE OF MEMORANDUM OF UNDERSTANDING

1. The objective of this Memorandum of Understanding (hereinafter referred to as "MoU") is to provide a formal basis for cooperation and exchange of information between the Authorities to the extent permitted by laws and regulations.
2. This MoU does not create any binding international or domestic legal obligations. It does not affect any arrangements under other MoUs.
3. The performance of the provisions of this MoU shall be consistent with the domestic laws, regulations and conventions of the respective countries of the Authorities and within the availability of respective resources of the Authorities, and shall not be contrary to the public interests of the countries of the Authorities concerned.
4. To the extent permitted by the applicable laws and regulations, each Authority will use reasonable efforts to provide the other Authority with any information, giving rise to a suspicion of a breach, or anticipated breach, of the regulatory requirements or laws in the insurance market administered by the other Authority.

II. COMPETENT AUTHORITIES

The FMA is responsible for insurance supervision in accordance with Article 1 para. 1 in connection with Article 2 para 2 of the Finanzmarktaufsichtsbehördengesetz (FMABG; Financial Market Authority Act, BGBl 2001/97 as amended) and the Versicherungsaufsichtsgesetz 2016 (VAG, Insurance Supervision Act 2016, BGBl I 2015/ 34 as amended) and other special laws.

The ISA is responsible for insurance supervision in accordance with Article 115 para 1 in connection with Article 177 of the Insurance Law (Official Gazette of the Republic of Montenegro, No 78/06 of 22 December 2006, 19/07 of 2 April 2007: Official Gazette of Montenegro, No 53/09 of 7 August 2009, 73/10 of 10 December 2010, 40/11 of 8 August 2011, 45/12 of 17 August 2012, 06/13 of 31 January 2013, 55/16 of 17 August 2016, 146/21 of 31 December 2021).

III. SCOPE OF MEMORANDUM OF UNDERSTANDING

The Authorities agree to promote mutual assistance and the exchange of information to assist them to perform their respective functions, subject to its laws and overall policy, in relation to the following areas of insurance supervision:

- a) Establishment, qualified holdings, licensing procedure for board members, take-over and winding up process of insurance companies
- b) The ongoing supervision of insurance undertakings for compliance with prudential, financial reporting and other supervisory requirements including governance practices in insurance companies
- c) The conduct of joint off-site and on-site inspections of insurance undertakings with its headquarters located in the jurisdiction of the relevant other authority
- d) The conduct of specific inquiries into the activities of individual insurance undertakings
- e) Check of respecting the requirement of disclosure of information and of marketing of insurance products
- f) Practices in relation to product oversight and governance, as well as distribution channels and practices
- g) Technical cooperation particularly in the supervision of IT systems and research and data analysis of insurance market
- h) Exchange of information in the area of financial innovation and digitalization for a better understanding of the respective regulatory regimes of each jurisdiction through FinTech dialogue and digitalization in financial service
- i) Co-operation in the area of anti-money laundering and counter terrorist financing. Since the main competencies in this field rest with other authorities and penal courts, cooperation in these matters is limited to their respective competencies and responsibilities. To that end, the Authorities will exchange, at their own initiative or upon request, information that may be relevant for their supervisory activities.
- j) Other issues agreed upon by the Authorities.

IV. DEFINITIONS

For the purposes of this Memorandum, the following expressions shall have the following meaning:

Authority: The ISA and the FMA

Directive 2009/138/EU: Directive 2009/138/EC of 25 November 2009 on the

taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

General Data Protection Regulation: Regulation (EU) Nr 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data-

V. REQUESTS AND EXECUTION

Requests will be made in writing in English language to the contact persons listed in Annex A.

1. Any requests should specify:
 - a. request for co-ordination or information;
 - b. 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);
 - c. the link between the specific laws or regulatory requirements and the regulatory functions of the requesting Authority;
 - d. the persons believed by the requesting Authority to possess the information sought, or the place where such information may be obtained, if the requesting Authority is knowledgeable thereof;
 - 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.
 - g. that broadly equivalent assistance is available from the requesting authority
2. The requested Authority will deal with the request in a reasonable time.
3. Each request will be assessed by the requested Authority to determine whether the information requested can be provided under the terms of this MoU. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be any relevant or partial information, which can be given.
4. In deciding whether to accept or decline a request, the requested Authority will consider:
 - a. whether the request relates to the breach of laws or regulations which has no close parallel in the country of the requested Authority;
 - b. whether broadly equivalent assistance would be available from the requesting Authority;

- c. whether it would be contrary to the public interests of the requested Authority;
 - d. that any information received from another EEA competent authority may only be passed on with the express consent of the competent authority that provided this information and only for purposes to which this authority has consented.
5. Any document or other materials provided in response to a request under this MoU and any copies thereof must be returned to the requested Authority on request as far as they have not already been deleted.

VI. UNSOLICITED INFORMATION

Where one Authority has information, which will assist the other Authority in the performance of its regulatory functions, the former may provide such information, or arrange such information to be provided, to the extent permitted by law, on a voluntary basis even though no request has been made by the other Authority.

VII. PERMISSIBLE USE AND CONFIDENTIALITY

1. The Authorities confirm that their employees are bound, even after termination of their employment, to the professional secrecy rules applicable to them. The Authorities confirm that professional secrecy requirements applicable to them and to their staff are at least equivalent to the professional secrecy standards as defined by Art 64 et seq of EU Directive 2009/138/EU.
2. It is a valid purpose under this MoU for a Requesting Authority to seek information relevant to its lawful supervision of a Regulated Entity, which is subject to the supervision and responsibilities of the Requested Authority.
3. It is not a valid purpose under this MoU for a Requesting Authority to seek information on individuals unless the request is related to the fulfilment of supervisory functions.
4. The existence and content of any request for information made under this MoU will be treated as confidential by both the Requested and the Requesting Authorities unless both Authorities agree otherwise.
5. The Requested Authority will decide according to its domestic Applicable Law whether or not information requested and provided under this MoU qualifies as confidential.
6. The Requesting Authority will use confidential information received under this MoU only for the purposes specified in the request.
7. The Requesting Authority will take all actions necessary to preserve, protect and maintain the confidentiality of information received from a Requested Authority.

8. The Requesting Authority will restrict access to confidential information received from a Requested Authority to those persons working for the Requesting Authority or acting on its behalf who:
 - a. are subject to the Requesting Authority's professional secrecy requirements
 - b. are under its direct supervision and control, and
 - c. have a need for such information that is consistent with, and directly related to, the purposes for which the information was requested.
9. Where it becomes necessary for a Requesting Authority to share confidential information provided under this MoU with other local, regional, state, federal or international law enforcement or regulatory officials who have authority over the Regulated Entity, the Requesting Authority shall:
 - a. notify the Requested Authority promptly
 - b. obtain prior consent of the Requested Authority, and
 - c. prior to passing on the information, ensure that each recipient agrees to maintain the confidential status of the information provided and has the legal authority to do so.
10. Where confidential information provided under this MoU is subject to a legally enforceable request in the jurisdiction of the Requesting Authority, the Requesting Authority will notify the Requested Authority prior to complying with such demand. Where consent from point 9. b) of this Article to passing on is not given, the Requesting Authority will use all reasonable legal means to resist such a demand or protect the confidentiality of the information.
11. Such legal means include asserting such appropriate legal exemptions or legal privileges with respect to that information as may be available and affording the Requested Authority the opportunity to take whatever action it deems appropriate to preserve, protect and maintain the confidential nature of the information provided. This includes consenting to any application by the Requested Authority to intervene in any action to preserve the confidentiality of Requested Authority confidential information.
12. The Authorities acknowledge on the one hand, that the FMA processes personal data, including that contained in the information received from the ISA, in accordance with the applicable EU legal framework, notably with Regulation (EU) 2016/679, and on the other hand, that the ISA processes personal data, including that contained in information received from the FMA, in accordance with Law on Personal Data Protection. The authorities acknowledge that absent an adequacy decision of the European Commission or an Administrative Arrangement on protection of personal data pursuant to Art 45 et seq. Regulation (EU) 2016/679 a transfer of personal data from the Supervisor of Austria to the Supervisor of Montenegro is limited to exceptional cases only.

VIII. TECHNICAL COOPERATION

The respective Authorities intend to work together to identify and address, subject to the availability of personnel and resources, the internship programs, study visits, trainings and technical assistance required to facilitate the development of the insurance supervision practices and the regulatory framework for the insurance market both in Montenegro and Austria.

IX. CONSULTATION

1. The Authorities will consult, in the event of a dispute, the meaning of any term used in this MoU.
2. The Authorities may consult, at any time, about a request or proposed request.
3. The Authorities may consult and revise the terms of the MoU in the event of a substantial change in the laws, regulations or practices affecting the operation of the MoU. Any such changes will be done after both sides agreement in written form.
4. To improve the co-operation under this MoU, the Authorities will conduct consultations and discussions on the implementation of the MoU periodically or when necessary.

X. CONTACT PERSONS

All communications between the Authorities should be made between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may be amended by written notice from either Authority.

XI. ENTRY INTO EFFECT

This MoU will be effective from the date of its signature by all contractual parties.

XII. TERMINATION

This MoU may be terminated by either Authority upon that Authority giving thirty days' written notice to the other Authority. This Memorandum of Understanding will continue to have effect with respect to all requests for assistance that have been made before the effective date of termination.

SIGNED on 1st June 2022 in Podgorica, in triplicate in English, all three versions being equally authentic.

On behalf of the
**Insurance Supervision Agency,
Montenegro**



Uroš Andrijašević
President of the Council

SIGNED on 23 May 2022 in Vienna, in triplicate in English, all three versions being equally authentic.

On behalf of the
**Financial Market Authority,
Austria**

A handwritten signature in black ink, appearing to be 'H. Ettl', written in a cursive style.

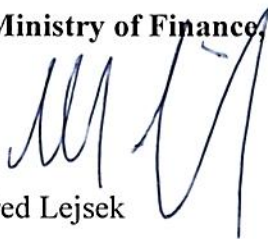
Mag. Helmut Ettl
Executive Director

A handwritten signature in black ink, appearing to be 'E. Müller', written in a cursive style.

Dipl.Kfm. Eduard Müller
Executive Director

On behalf of the

**Federal Ministry of Finance,
Austria**

A handwritten signature in black ink, appearing to be 'A. Lejsek', written in a cursive style.

Mag. Alfred Lejsek
Director

Annex A

CONTACT PERSONS

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