

Proposal for a Directive of the European Parliament and of the Council on insurance mediation

(2001/C 531 E/10)

(Text with EEA relevance)

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(Submitted by the Commission on 20 September 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

appropriate to replace Directive 77/92/EEC and Recommendation 92/48/EEC with a new directive.

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

(6) Insurance and reinsurance intermediaries should be able to avail themselves of the freedom of establishment and the freedom to provide services which are enshrined in the Treaty.

Having regard to the proposal from the Commission,

(7) The inability of insurance intermediaries to operate freely throughout the Community hinders the proper functioning of the single market in insurance.

Having regard to the opinion of the Economic and Social Committee,

(8) The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance mediation can therefore contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(9) Various types of persons or institutions, such as agents, brokers and 'bancassurance' operators, can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.

(1) Insurance and reinsurance intermediaries play a central role in the distribution of insurance and reinsurance products in the Community.

(10) This Directive should cover persons whose normal business is to provide third parties with insurance mediation services on a professional basis. Its scope should not therefore cover any person with a different professional activity, such as a tax expert or an accountant, who provides advice on insurance cover on an incidental basis in the course of that other professional activity.

(2) A first step was made with Council Directive 77/92/EEC⁽¹⁾ to facilitate the exercise of freedom of establishment and freedom to provide services for insurance agents and brokers.

(11) Member States should have the option of not applying this Directive to persons practising insurance mediation as an ancillary activity. However, in the interests of customer protection, this option should be strictly limited.

(3) Directive 77/92/EEC was to remain applicable until the entry into force of provisions coordinating national rules concerning the taking-up and pursuit of the activities of insurance agents and brokers.

(12) Insurance and reinsurance intermediaries should be registered by the competent authority of the Member State where they have their head office, provided that they meet strict professional requirements in relation to their competence, good repute, professional indemnity cover and financial capacity.

(4) Commission Recommendation 92/48/EEC of 18 December 1991 on insurance intermediaries⁽²⁾ was largely followed by Member States and helped to bring closer together national provisions on the professional requirements and registration of insurance intermediaries.

(13) Such registration should allow insurance and reinsurance intermediaries to operate in other Member States under freedom of establishment and freedom to provide services, provided that an appropriate notification procedure has been followed between the competent authorities.

(5) However, there are still substantial differences between national provisions that create barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market. It is therefore

⁽¹⁾ OJ L 26, 31.1.1977, p. 14; Directive as last amended by the Act of Accession of Austria, Finland and Sweden.

⁽²⁾ OJ L 19, 28.1.1992, p. 32.

- (14) Appropriate sanctions are needed against persons exercising the activity of insurance or reinsurance mediation without being registered against insurance or reinsurance undertakings using the services of unregistered intermediaries, and against intermediaries not complying with national provisions adopted pursuant to this Directive.
- (15) Cooperation and exchange of information between competent authorities are essential in order to protect customers and ensure the soundness of insurance and reinsurance business in the single market.
- (16) It is essential for the customer to know whether he is dealing with an intermediary who is advising him on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings.
- (17) If the intermediary declares that he is giving advice on products from a broad range of insurance undertakings, he should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all intermediaries should explain the reasons underpinning their advice.
- (18) There is less of a need to require that such information be disclosed when the customer is a company seeking reinsurance or insurance cover for commercial and industrial risks.
- (19) There is a need for suitable and effective complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries and customers, using, where appropriate, existing procedures.
- (20) Without prejudice to the right of customers to bring their action before the courts, Member States should encourage public or private bodies established with a view to settling out-of-court disputes to cooperate in resolving cross-border disputes. Such cooperation could for example allow customers to contact extra-judicial bodies in their country of residence about complaints concerning insurance intermediaries established in other Member States,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Directive lays down rules for the taking-up and pursuit of the activities of insurance and reinsurance mediation.

2. Member States need not apply the provisions of this Directive to persons providing insurance contracts if all the following conditions are met:

- (a) the contracts do not require general or specific knowledge of insurance;
- (b) the contracts are not life insurance contracts;
- (c) the insurance does not cover any liability risks;
- (d) the principal professional activity of the person is other than insurance mediation;
- (e) the insurance is ancillary to the good or service supplied, in particular where such insurance covers either the risk of breakdown, loss of or damage to goods supplied by that person or an indemnification of goods linked to the travel booked with that person;
- (f) the amount of the premium does not exceed EUR 1 000 and the duration of the insurance contract is less than a year.

Article 2

Definitions

For the purposes of this Directive:

- (1) 'insurance undertaking' means an undertaking which has received official authorisation in accordance with Article 6 of Council Directive 73/239/EEC ⁽¹⁾ or Article 6 of Council Directive 79/267/EEC ⁽²⁾;
- (2) 'reinsurance undertaking' shall be as defined by Article 1(c) of Directive 98/78/EC of the European Parliament and the Council ⁽³⁾;
- (3) 'insurance mediation' means the activities of introducing, giving information, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or assisting in the administration and performance of such contracts, in particular in the event of a claim;
- (4) 'reinsurance mediation' means the activities of introducing, giving information, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts of reinsurance, or assisting in the administration and performance of such contracts, in particular in the event of a claim;

⁽¹⁾ OJ L 228, 16.8.1973, p. 3.

⁽²⁾ OJ L 63, 13.3.1979, p. 1.

⁽³⁾ OJ L 330, 5.12.1998, p. 1.

- (5) 'insurance intermediary' means any person who, for remuneration, takes up or pursues insurance mediation and associated advisory services, except an insurance undertaking or an employee of an insurance undertaking when the employee is acting under the responsibility of that insurance undertaking;
- (6) 'reinsurance intermediary' means any person who, for remuneration, takes up or pursues reinsurance mediation and associated advisory services, except a reinsurance undertaking or an employee of a reinsurance undertaking when the employee is acting under the responsibility of that reinsurance undertaking;
- (7) 'large risks' shall be as defined by Article 5(d) of Directive 73/239/EEC;
- (8) 'home Member State' means:
- (a) where the intermediary is a natural person, the Member State in which his residence is situated and in which he carries on business;
- (b) where the intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (9) 'competent authorities' means the authorities which each Member State designates under Article 6;
- (10) 'durable medium' means any instrument which enables the customer to store information addressed personally to him in a manner accessible for future reference for a period of time appropriate to the purposes of the information and which allows the unchanged reproduction of the information stored.

CHAPTER II

REGISTRATION REQUIREMENTS

Article 3

Registration

1. Insurance and reinsurance intermediaries shall be registered by a competent authority as defined in Article 6(2), in their home Member State.
2. Without prejudice to the third subparagraph of Article 4(1), Member States shall ensure that registration of insurance and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4.

3. Registered insurance and reinsurance intermediaries shall be allowed to take up and pursue the activity of insurance and reinsurance mediation in the Community by means of both freedom of establishment and freedom to provide services.

4. Member States shall ensure that there is easy public access to the register or registers referred to in paragraph 1.

5. Insurance undertakings shall use the insurance and reinsurance mediation services only of registered insurance intermediaries and reinsurance intermediaries and of the persons referred to in Article 1(2).

Article 4

Professional requirements

1. Insurance and reinsurance intermediaries shall possess appropriate general, commercial and professional knowledge and ability.

Member States need not apply the requirement referred to in the first subparagraph to all the persons working either in an undertaking or for a natural person exercising the activity of insurance or reinsurance mediation. Member States shall ensure that the management of such undertakings or natural person and any staff directly involved in insurance or reinsurance mediation possess such knowledge and ability.

Member States need not apply the requirement referred to in the first subparagraph to natural persons taking up and pursuing the activity of insurance mediation whose principal professional activity is other than insurance mediation and whose income does not predominantly depend on it. Such a person shall be permitted to mediate only if an insurance intermediary fulfilling the provisions of this Article or an insurance undertaking has taken on full responsibility for his actions and provided him with appropriate and relevant basic training.

2. Insurance and reinsurance intermediaries shall be of good repute. In particular, they shall have a clean police record or any other national equivalent in relation to insurance and reinsurance business and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

Member States need not apply the requirement referred to in the first subparagraph to all the persons working either in an undertaking or for a natural person exercising the activity of insurance or reinsurance mediation. They shall ensure that the management of such undertakings or natural persons fulfil that requirement. They shall ensure that any staff directly involved in insurance or reinsurance mediation fulfil that requirement.

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 000 000 per claim, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act.

4. Member States shall take all necessary action to protect customers against the inability of the insurance or reinsurance intermediary to transfer the premium to the insurance or reinsurance undertaking or to transfer the amount of claim to the insured.

Such action may take any one of the following forms:

- (a) provisions laid down by law whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;
- (b) a requirement for insurance and reinsurance intermediaries to have financial capacity amounting, on a permanent basis, to 8 % of the annual net retained revenue of intermediaries, subject to a minimum of EUR 15 000;
- (c) a requirement that customer's monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy;
- (d) a requirement that a guarantee fund be set up.

5. Exercising the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on a permanent basis.

6. Member States shall in particular ensure that the requirements laid down in paragraphs (3) and (4) are fulfilled.

7. Member States may reinforce the requirements set out in this Article or add other requirements for the insurance and reinsurance intermediaries registered within their jurisdiction.

Article 5

Notification of establishment and services in other Member States

1. Any insurance or reinsurance intermediary intending to carry on business for the first time in one or more Member

States under the freedom to provide services or the freedom of establishment shall first inform the competent authorities of the home Member State. Within one month of this notification, those competent authorities shall communicate to the competent authorities of the Member State or the Member States within the territories of which the insurance or reinsurance intermediary intends to carry on business under the freedom to provide services or the freedom of establishment the insurance or reinsurance intermediary's intention and the fact that he is properly registered.

2. The insurance or reinsurance intermediary may start business one month after the date on which he was informed by the competent authority of the home Member State of the communication referred to in paragraph 1.

3. The authorities of the Member State in which the intermediary wishes to operate under the freedom to provide services or the freedom of establishment shall, within one month of receiving the information referred to in paragraph 1, inform the competent authorities of the home Member State, if appropriate, of the specific conditions under which, in the interest of the general good, the business must be carried on in their territories.

Article 6

Competent authorities

1. Member States shall designate the competent authorities empowered to ensure implementation of this Directive. They shall inform the Commission thereof, indicating any division of those duties.

2. The authorities referred to in paragraph 1 shall be either public authorities, bodies recognised by national law or bodies recognised by public authorities expressly empowered for that purpose by national law.

3. The authorities concerned shall possess all the powers necessary for the performance of their functions.

Article 7

Sanctions

1. Subject to Article 1(2), Member States shall provide appropriate sanctions in the event that a person exercising the activity of insurance or reinsurance mediation is not registered in a Member State.

2. Subject to Article 1(2), Member States shall provide appropriate sanctions against insurance undertakings that use the insurance or reinsurance mediation services of persons not registered in a Member State.

3. Member States shall provide appropriate sanctions in the event of an insurance or reinsurance intermediary's failure to comply with national provisions adopted pursuant to this Directive.

4. Competent authorities shall cooperate and share information on:

- (a) insurance and reinsurance intermediaries who have been subject to a sanction referred to in paragraph 3;
- (b) any negligence, misconduct or inappropriate advice for which insurance and reinsurance intermediaries have been held liable;
- (c) any redress proceedings instigated against insurance and reinsurance intermediaries.

5. All persons required to receive or divulge information in connection with paragraphs 1 to 4 shall be bound by professional secrecy, in the same manner as is laid down in Article 16 of Council Directive 92/49/EEC ⁽¹⁾ and Article 15 of Council Directive 92/96/EEC ⁽²⁾.

Article 8

Complaints

Member States shall ensure the setting-up of a facility allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries.

Article 9

Out-of-court redress

1. Member States shall encourage the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, using existing bodies where appropriate.

2. Member States shall encourage these bodies to cooperate in the resolution of cross-border disputes.

CHAPTER III

INFORMATION REQUIREMENTS FOR INTERMEDIARIES

Article 10

Information provided by the insurance intermediary

1. Prior to any initial contract, an insurance intermediary shall provide the customer with at least the following information:

- (a) his identity and address;

⁽¹⁾ OJ L 228, 11.8.1992, p. 1.

⁽²⁾ OJ L 360, 9.12.1992, p. 1.

(b) whether he advises the customer on insurance cover from a broad range of insurance undertakings or not. In the latter case, the insurance intermediary shall also inform the customer of the number and identity of the insurance undertakings with which he may and does conduct business for each class of risk;

(c) any holding, direct or indirect, by the insurance intermediary representing more than 10 % of the voting rights and of the capital in an insurance or reinsurance undertaking and of any holding, direct or indirect, by an insurance undertaking, reinsurance undertaking or parent undertaking of an insurance or reinsurance undertaking representing more than 10 % of the voting rights and of the capital in the insurance intermediary;

(d) any contractual obligation to conduct the respective business with one or more insurance undertakings as well as the names of those undertakings;

(e) the party to be held liable for any negligence, misconduct or inappropriate advice by the intermediary in relation to the insurance mediation;

(f) the facility referred to in Article 8 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and, if appropriate, about the out-of-court complaint and redress procedures referred to in Article 9;

(g) the register in which they have been included and the means for verifying that they have been registered.

2. If the insurance intermediary declares that he gives advice on insurance from a broad range of insurance undertakings referred to in point (b) of paragraph 1, he shall at least give advice based on a fair analysis of insurance contracts available on the market that is sufficient to enable him to recommend the insurance contract appropriate to meet the customer's needs.

3. Prior to the conclusion of any specific contract, insurance intermediaries shall at least specify the demands and the needs of the customer and clarify the underlying reasons for their advice.

4. The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks, nor in the case of mediation by reinsurance intermediaries.

Article 11

Information conditions

1. All information to be provided to customers in accordance with Article 10 shall be communicated:

- (a) on paper or on other durable medium available and accessible to the customer;

(b) in a clear and accurate manner, comprehensible to the customer;

(c) in an official language of the Member State of the commitment, or any other language agreed upon by the contracting parties.

2. By way of derogation from point (a) of paragraph 1, the information referred to in Article 10 may be provided orally only where immediate cover is necessary or requested by the customer.

CHAPTER IV

FINAL PROVISIONS

Article 12

Repeal of Directive

Directive 77/92/EEC is hereby repealed.

Article 13

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 14

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 15

Addresses

This Directive is addressed to the Member States.
