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Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation

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Directive 2002/92/EC of the European Parliament and of the Council

of 9 December 2002

on insurance mediation

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Acting in accordance with the procedure laid down in Article 251 of the Treaty(3),

Whereas:

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

(2) A first step to facilitate the exercise of freedom of establishment and freedom to provide services for insurance agents and brokers was made by Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities(4).

(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.

(4) Commission Recommendation 92/48/EEC of 18 December 1991 on insurance intermediaries(5) was largely followed by Member States and helped to bring closer together national provisions on the professional requirements and registration of insurance intermediaries.

(5) However, there are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market. It is therefore appropriate to replace Directive 77/92/EEC with a new directive.

(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.

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

(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.

(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.

(10) This Directive contains a definition of "tied insurance intermediary" which takes into account the characteristics of certain Member States' markets and whose purpose is to establish the conditions for registration applicable to such intermediaries. This definition is not intended to preclude Member States from having similar concepts in respect of insurance intermediaries who, while acting for and on behalf of an insurance undertaking and under the full responsibility of that undertaking, are entitled to collect premiums or amounts intended for the customer in accordance with the financial guarantees laid down by this Directive.

(11) This Directive should apply to persons whose activity consists in providing insurance mediation services to third parties for remuneration, which may be pecuniary or take some other form of agreed economic benefit tied to performance.

(12) This Directive should not apply to persons with another professional activity, such as tax experts or accountants, who provide advice on insurance cover on an incidental basis in the course of that other professional activity, neither should it apply to the mere provision of information of a general nature on insurance products, provided that the purpose of that activity is not to help the customer conclude or fulfil an insurance or reinsurance contract, nor the professional management of claims for an insurance or reinsurance undertaking, nor the loss adjusting and expert appraisal of claims.

(13) This Directive should not apply to persons practising insurance mediation as an ancillary activity under certain strict conditions.

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

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

(16) 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.

(17) 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.

(18) 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.

(19) This Directive should specify the obligations which insurance intermediaries should have in providing information to customers. A Member State may in this area maintain or adopt more stringent provisions which may be imposed on insurance intermediaries independently of their place of residence where they are pursuing mediation activities on its territory provided that any such more stringent provisions comply with Community law, including Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)(6).

(20) 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.

(21) 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.

(22) 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.

(23) 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 disputes out-of-court, to cooperate in resolving cross-border disputes. Such cooperation could for example be aimed at enabling customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning insurance intermediaries established in other Member States. The setting up of the FIN-NET network provides increased assistance to consumers when they use cross-border services. The provisions on procedures should take into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes(7).

(24) Directive 77/92/EEC should accordingly be repealed,

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 by natural and legal persons which are established in a Member State or which wish to become established there.

2. This Directive shall not apply to persons providing mediation services for insurance contracts if all

the following conditions are met:

(a) the insurance contract only requires knowledge of the insurance cover that is provided;

(b) the insurance contract is not a life assurance contract;

(c) the insurance contract does not cover any liability risks;

(d) the principal professional activity of the person is other than insurance mediation;

(e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:

(i) the risk of breakdown, loss of or damage to goods supplied by that provider, or

(ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;

(f) the amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewals, does not exceed five years.

3. This Directive shall not apply to insurance and reinsurance mediation services provided in relation to risks and commitments located outside the Community.

This Directive shall not affect a Member State's law in respect of insurance mediation business pursued by insurance and reinsurance intermediaries established in a third country and operating on its territory under the principle of freedom to provide services, provided that equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance mediation activities on that market.

This Directive shall not regulate insurance mediation activities carried out in third countries nor activities of Community insurance or reinsurance undertakings, as defined in First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance(8) and First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance(9), carried out through insurance intermediaries in third countries.

Article 2

Definitions

For the purpose of this Directive:

1. "insurance undertaking" means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;

2. "reinsurance undertaking" means an undertaking, other than an insurance undertaking or a non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-member-country insurance undertaking or other reinsurance undertakings;

3. "insurance mediation" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation;

4. "reinsurance mediation" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation;

5. "insurance intermediary" means any natural or legal person who, for remuneration, takes up or pursues insurance mediation;

6. "reinsurance intermediary" means any natural or legal person who, for remuneration, takes up or pursues reinsurance mediation;

7. "tied insurance intermediary" means any person who carries on the activity of insurance mediation for and on behalf of one or more insurance undertakings in the case of insurance products which are not in competition but does not collect premiums or amounts intended for the customer and who acts under the full responsibility of those insurance undertakings for the products which concern them respectively.

Any person who carries on the activity of insurance mediation in addition to his principal professional activity is also considered as a tied insurance intermediary acting under the responsibility of one or several insurance undertakings for the products which concern them respectively if the insurance is complementary to the goods or services supplied in the framework of this principal professional activity and the person does not collect premiums or amounts intended for the customer;

8. "large risks" shall be as defined by Article 5(d) of Directive 73/239/EEC;

9. "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;

10. "host Member State" means the Member State in which an insurance or reinsurance intermediary has a branch or provides services;

11. "competent authorities" means the authorities which each Member State designates under Article 7;

12. "durable medium" means any instrument which enables the customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored.

In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in the first paragraph.

CHAPTER II

REGISTRATION REQUIREMENTS

Article 3

Registration

1. Insurance and reinsurance intermediaries shall be registered with a competent authority as defined in Article 7(2), in their home Member State.

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and other bodies may collaborate with the competent authorities in registering insurance and reinsurance intermediaries and in the application of the requirements of Article 4 to such intermediaries. In particular, in the case of tied insurance intermediaries, they may be registered by an insurance undertaking or by an association of insurance undertakings under the supervision of a competent authority.

Member States need not apply the requirement referred to in the first and second subparagraphs to all the natural persons who work in an undertaking and pursue the activity of insurance or reinsurance mediation.

As regards legal persons, Member States shall register such persons and shall also specify in the register the names of the natural persons within the management who are responsible for the mediation business.

2. Member States may establish more than one register for insurance and reinsurance intermediaries provided that they lay down the criteria according to which intermediaries are to be registered.

Member States shall see to it that a single information point is established allowing quick and easy access to information from these various registers, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in paragraph 1, first subparagraph. The register shall indicate further the country or countries in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.

3. Member States shall ensure that registration of insurance intermediaries - including tied ones - and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4.

Member States shall also ensure that insurance intermediaries - including tied ones - and reinsurance intermediaries who cease to fulfil these requirements are removed from the register. The validity of the registration shall be subject to a regular review by the competent authority. If necessary, the home Member State shall inform the host Member State of such removal, by any appropriate means.

4. The competent authorities may provide the insurance and reinsurance intermediaries with a document enabling any interested party by consultation of the register(s) referred to in paragraph 2 to verify that they are duly registered.

That document shall at least provide the information specified in Article 12(1)(a) and (b), and, in the case of a legal person, the name(s) of the natural person(s) referred to in the fourth subparagraph of paragraph 1 of this Article.

The Member State shall require the return of the document to the competent authority which issued it when the insurance or reinsurance intermediary concerned ceases to be registered.

5. 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.

6. Member States shall ensure that insurance undertakings use the insurance and reinsurance mediation services only of registered insurance 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 knowledge and ability, as determined by the home Member State of the intermediary.

Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for his actions.

Member States may provide that for the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons working in an undertaking who pursue the activity of insurance or reinsurance mediation. Member States shall ensure that a reasonable proportion of the persons within the management structure of such undertakings who are responsible for mediation in respect of insurance products and all other persons directly involved in insurance or reinsurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.

2. Insurance and reinsurance intermediaries shall be of good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

Member States may, in accordance with the provisions of the second subparagraph of Article 3(1), allow the insurance undertaking to check the good repute of insurance intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons who work in an undertaking and who pursue the activity of insurance and reinsurance mediation. Member States shall ensure that the management structure of such undertakings and any staff directly involved in insurance or reinsurance mediation fulfil that requirement.

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1000000 applying to each claim and in aggregate EUR 1500000 per year for all claims, 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 or such undertaking has taken on full responsibility for the intermediary's actions.

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

Such measures shall take any one or more of the following forms:

(a) provisions laid down by law or contract 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 intermediaries to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 15000;

(c) a requirement that customers' 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. Pursuit of the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on permanent basis.

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

7. The amounts referred to in paragraphs 3 and 4 shall be reviewed regularly in order to take account of changes in the European Index of Consumer Prices as published by Eurostat. The first review shall take place five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.

The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that Index over the period between the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest euro.

Article 5

Retention of acquired rights

Member States may provide that those persons who exercised a mediation activity before 1 September 2000, who were entered in a register and who had a level of training and experience similar to that required by this Directive, shall be automatically entered in the register to be created, once the requirements set down in Article 4(3) and (4) are complied with.

Article 6

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 inform the competent authorities of the home Member State.

Within a period of one month after such notification, those competent authorities shall inform the competent authorities of any host Member States wishing to know, of the intention of the insurance or reinsurance intermediary and shall at the same time inform the intermediary concerned.

The insurance or reinsurance intermediary may start business one month after the date on which he was informed by the competent authorities of the home Member State of the notification referred to in the second subparagraph. However, that intermediary may start business immediately if the host Member State does not wish to be informed of the fact.

2. Member States shall notify the Commission of their wish to be informed in accordance with paragraph 1. The Commission shall in turn notify all the Member States of this.

3. The competent authorities of the host Member State may take the necessary steps to ensure appropriate publication of the conditions under which, in the interest of the general good, the business concerned must be carried on in their territories.

Article 7

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 or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be insurance or reinsurance undertakings.

3. The competent authorities shall possess all the powers necessary for the performance of their duties. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

Article 8

Sanctions

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

2. Member States shall provide for appropriate sanctions against insurance or reinsurance undertakings which use the insurance or reinsurance mediation services of persons who are not registered in a Member State and who are not referred to in Article 1(2).

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

4. This Directive shall not affect the power of the host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending insurance or reinsurance intermediaries from initiating any further activities within their territories.

5. Any measure adopted involving sanctions or restrictions on the activities of an insurance or reinsurance intermediary must be properly justified and communicated to the intermediary concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

Article 9

Exchange of information between Member States

1. The competent authorities of the various Member States shall cooperate in order to ensure the proper application of the provisions of this Directive.

2. The competent authorities shall exchange information on insurance and reinsurance intermediaries if they have been subject to a sanction referred to in Article 8(3) or a measure referred to in Article 8 (4) and such information is likely to lead to removal from the register of such intermediaries. The competent authorities may also exchange any relevant information at the request of an authority.

3. All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner as is laid down in Article 16 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)(10) and Article 15 of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive)(11).

Article 10

Complaints

Member States shall ensure that procedures are set up which allow customers and other interested parties, especially consumer associations, to register complaints about insurance and reinsurance intermediaries. In all cases complaints shall receive replies.

Article 11

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 12

Information provided by the insurance intermediary

1. Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:

(a) his identity and address;

(b) the register in which he has been included and the means for verifying that he has been registered;

(c) whether he has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in a given insurance undertaking;

(d) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in the insurance intermediary;

(e) the procedures referred to in Article 10 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 11.

In addition, an insurance intermediary shall inform the customer, concerning the contract that is provided, whether:

(i) he gives advice based on the obligation in paragraph 2 to provide a fair analysis, or

(ii) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request provide the names of those insurance undertakings, or

(iii) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 2 to provide a fair analysis. In that case, he shall, at the customer's request provide the names of the insurance undertakings with which he may and does conduct business.

In those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information.

2. When the insurance intermediary informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

3. Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.

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.

5. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in paragraph 1, provided that such provisions comply with Community law.

Member States shall communicate to the Commission the national provisions set out in the first subparagraph.

In order to establish a high level of transparency by all appropriate means, the Commission shall ensure that the information it receives relating to national provisions is also communicated to consumers and insurance intermediaries.

Article 13

Information conditions

1. All information to be provided to customers in accordance with Article 12 shall be communicated:

(a) on paper or on any 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 in any other language agreed by the parties.

2. By way of derogation from paragraph 1(a), the information referred to in Article 12 may be provided orally where the customer requests it, or where immediate cover is necessary. In those cases, the information shall be provided to the customer in accordance with paragraph 1 immediately after the conclusion of the insurance contract.

3. In the case of telephone selling, the prior information given to the customer shall be in accordance with Community rules applicable to the distance marketing of consumer financial services. Moreover, information shall be provided to the customer in accordance with paragraph 1 immediately after the conclusion of the insurance contract.

CHAPTER IV

FINAL PROVISIONS

Article 14

Right to apply to the courts

Member States shall ensure that decisions taken in respect of an insurance intermediary, reinsurance intermediary or an insurance undertaking under the laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts.

Article 15

Repeal

Directive 77/92/EEC is hereby repealed with effect from the date referred to in Article 16(1).

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 15 January 2005. They shall forthwith inform the Commission thereof.

These measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in the field governed by this Directive. In that communication they shall provide a table indicating the national provisions corresponding to this Directive.

Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 9 December 2002.

For the European Parliament

The President

P. Cox

For the Council

The President

H. C. Schmidt

(1) OJ C 29 E, 30.1.2001, p. 245.

(2) OJ C 221, 7.8.2001, p. 121.

(3) Opinion of the European Parliament of 14 November 2001 (OJ C 140 E, 13.6.2002, p. 167), Council Common Position of 18 March 2002 (OJ C 145 E, 18.6.2002, p. 1) and Decision of the European Parliament of 13 June 2002 (not yet published in the Official Journal). Council Decision of 28 June 2002.

(4) OJ L 26, 31.1.1977, p. 14. Directive as last amended by the Act of Accession of 1994.

(5) OJ L 19, 28.1.1992, p. 32.

(6) OJ L 178, 17.7.2000, p. 1.

(7) OJ L 115, 17.4.1998, p. 31.

(8) OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 17).

(9) OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 11).

(10) OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

(11) OJ L 360, 9.12.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council.

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