

Directive 2002/83/EC of the European Parliament and of  
the Council of 5 November 2002 concerning life assurance

TITLE III

**CONDITIONS GOVERNING THE BUSINESS OF ASSURANCE**

CHAPTER 1

**PRINCIPLES AND METHODS OF FINANCIAL SUPERVISION**

*Article 10*

**Competent authorities and object of supervision**

1 The financial supervision of an assurance undertaking, including that of the business it carries on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State. If the competent authorities of the Member State of the commitment have reason to consider that the activities of an assurance undertaking might affect its financial soundness, they shall inform the competent authorities of the undertaking's home Member State. The latter authorities shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

2 That financial supervision shall include verification, with respect to the assurance undertaking's entire business, of its state of solvency, the establishment of technical provisions, including mathematical provisions, and of the assets covering them, in accordance with the rules laid down or practices followed in the home Member State pursuant to the provisions adopted at Community level.

3 The competent authorities of the home Member State shall require every assurance undertaking to have sound administrative and accounting procedures and adequate internal control mechanisms.

*Article 11*

**Supervision of branches established in another Member State**

The Member State of the branch shall provide that, where an assurance undertaking authorised in another Member State carries on business through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the Member State of the branch, carry out themselves, or through the intermediary of persons they appoint for that purpose, on-the-spot verification of the information necessary to ensure the financial supervision of the undertaking. The authorities of the Member State of the branch may participate in that verification.

## Article 12

### **Prohibition on compulsory ceding of part of underwriting**

Member States may not require assurance undertakings to cede part of their underwriting of activities listed in Article 2 to an organisation or organisations designated by national regulations.

## Article 13

### **Accounting, prudential and statistical information: supervisory powers**

1 Each Member State shall require every assurance undertaking whose head office is situated in its territory to produce an annual account, covering all types of operation, of its financial situation and solvency.

2 Member States shall require assurance undertakings with head offices within their territories to render periodically the returns, together with statistical documents, which are necessary for the purposes of supervision. The competent authorities shall provide each other with any documents and information that are useful for the purposes of supervision.

3 Every Member State shall take all steps necessary to ensure that the competent authorities have the powers and means necessary for the supervision of the business of assurance undertakings with head offices within their territories, including business carried on outside those territories, in accordance with the Council directives governing those activities and for the purpose of seeing that they are implemented.

These powers and means must, in particular, enable the competent authorities to:

- a make detailed enquiries regarding the assurance undertaking's situation and the whole of its business, *inter alia*, by:
  - gathering information or requiring the submission of documents concerning its assurance business,
  - carrying out on-the-spot investigations at the assurance undertaking's premises;
- b take any measures, with regard to the assurance undertaking, its directors or managers or the persons who control it, that are appropriate and necessary to ensure that the undertaking's business continues to comply with the laws, regulations and administrative provisions with which the undertaking must comply in each Member State and in particular with the scheme of operations in so far as it remains mandatory, and to prevent or remedy any irregularities prejudicial to the interests of the assured persons;
- c ensure that those measures are carried out, if need be by enforcement, where appropriate through judicial channels.

Member States may also make provision for the competent authorities to obtain any information regarding contracts which are held by intermediaries.

## Article 14

### **Transfer of portfolio**

1 Under the conditions laid down by national law, each Member State shall authorise assurance undertakings with head offices within its territory to transfer all or part of their portfolios of contracts, concluded under either the right of establishment or the freedom to provide services, to an accepting office established within the Community, if the competent authorities of the home Member State of the accepting office certify that after taking the transfer into account, the latter possesses the necessary solvency margin.

2 Where a branch proposes to transfer all or part of its portfolio of contracts, concluded under either the right of establishment or the freedom to provide services, the Member State of the branch shall be consulted.

3 In the circumstances referred to in paragraphs 1 and 2, the authorities of the home Member State of the transferring assurance undertaking shall authorise the transfer after obtaining the agreement of the competent authorities of the Member States of the commitment.

4 The competent authorities of the Member States consulted shall give their opinion or consent to the competent authorities of the home Member State of the transferring assurance undertaking within three months of receiving a request; the absence of any response within that period from the authorities consulted shall be considered equivalent to a favourable opinion or tacit consent.

5 A transfer authorised in accordance with this Article shall be published as laid down by national law in the Member State of the commitment. Such transfers shall automatically be valid against policy holders, the assured persons and any other person having rights or obligations arising out of the contracts transferred.

This provision shall not affect the Member States' rights to give policy holders the option of cancelling contracts within a fixed period after a transfer.

## Article 15

### **Qualifying holdings**

1 Member States shall require any natural or legal person who proposes to hold, directly or indirectly, a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of the intended holding. Such a person must likewise inform the competent authorities of the home Member State if he/she proposes to increase his/her qualifying holding so that the proportion of the voting rights or of the capital held by him/her would reach or exceed 20 %, 33 % or 50 % or so that the assurance undertaking would become his/her subsidiary.

The competent authorities of the home Member State shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the assurance undertaking, they are not satisfied as to the qualifications of the person referred to in the first subparagraph. If they do not oppose the plan in question they may fix a maximum period for its implementation.

2 Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in an assurance undertaking first to inform the competent authorities of the home Member State, indicating the size of his/her intended holding. Such a person must likewise inform the competent authorities if he/she proposes to reduce his/her qualifying holding so that the proportion of the voting rights or of the capital held by him/her would fall below 20 %, 33 % or 50 % or so that the assurance undertaking would cease to be his/her subsidiary.

3 On becoming aware of them, assurance undertakings shall inform the competent authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 2.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

4 Member States shall require that, if the influence exercised by the persons referred to in paragraph 1 is likely to operate to the detriment of the prudent and sound management of the assurance undertaking, the competent authorities of the home Member State shall take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

#### *Article 16*

#### **Professional secrecy**

1 Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual assurance undertakings cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an assurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

2 Paragraph 1 shall not prevent the competent authorities of the different Member States from exchanging information in accordance with the directives applicable to assurance undertakings. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3 Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 6 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

4 Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of assurance are met and to facilitate monitoring of the conduct of such business, especially with regard to the monitoring of technical provisions, solvency margins, administrative and accounting procedures and internal control mechanisms, or
- to impose sanctions, or
- in administrative appeals against decisions of the competent authority, or
- in court proceedings initiated pursuant to Article 67 or under special provisions provided for in this Directive and other directives adopted in the field of assurance undertakings.

5 Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or, between Member States, between competent authorities and:

- authorities responsible for the official supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation and bankruptcy of assurance undertakings and in other similar procedures, and
- persons responsible for carrying out statutory audits of the accounts of assurance undertakings and other financial institutions,

in the discharge of their supervisory functions, and the disclosure, to bodies which administer (compulsory) winding-up proceedings or guarantee funds, of information necessary to the performance of their duties. The information received by these authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in paragraph 1.

6 Notwithstanding paragraphs 1 to 4, Member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of assurance undertakings and other similar procedures, or
- the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions, or
- independent actuaries of insurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- this information shall be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to this paragraph.

7 Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the third indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

- 8 Member States may authorise the competent authorities to transmit:
- to central banks and other bodies with a similar function in their capacity as monetary authorities,
  - where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task and may authorise such authorities or bodies to communicate to the competent authorities such information as

they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

9 In addition, notwithstanding paragraphs 1 and 4, Member States may, under provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and assurance undertakings and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

However, Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 11 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

#### *Article 17*

##### **Duties of auditors**

- 1 Member States shall provide at least that:
  - a any person authorised within the meaning of Council Directive 84/253/EEC<sup>(1)</sup>, performing in an assurance undertaking the task described in Article 51 of Council Directive 78/660/EEC<sup>(2)</sup>, Article 37 of Directive 83/349/EEC or Article 31 of Council Directive 85/611/EEC<sup>(3)</sup> or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he/she has become aware while carrying out that task which is liable to:
    - constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of assurance undertakings, or
    - affect the continuous functioning of the assurance undertaking or
    - lead to refusal to certify the accounts or to the expression of reservations;
  - b that person shall likewise have a duty to report any facts and decisions of which he/she becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the assurance undertaking within which he/she is carrying out the abovementioned task.

2 The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

#### *Article 18*

##### **Pursuit of life assurance and non-life insurance activities**

1 Without prejudice to paragraphs 3 and 7, no undertaking may be authorised both pursuant to this Directive and pursuant to Directive 73/239/EEC.

- 2 By way of derogation from paragraph 1, Member States may provide that:
- undertakings authorised pursuant to this Directive may also obtain authorisation, in accordance with Article 6 of Directive 73/239/EEC for the risks listed in classes 1 and 2 in the Annex to that Directive,
  - undertakings authorised pursuant to Article 6 of Directive 73/239/EEC solely for the risks listed in classes 1 and 2 in the Annex to that Directive may obtain authorisation pursuant to this Directive.

- 3 Subject to paragraph 6, undertakings referred to in paragraph 2 and those which on:
- 1 January 1981 for undertakings authorised in Greece,
  - 1 January 1986 for undertakings authorised in Spain and Portugal,
  - 1 January 1995 for undertakings authorised in Austria, Finland and Sweden, and
  - 15 March 1979 for all other undertakings,

carried on simultaneously both the activities covered by this Directive and those covered by Directive 73/239/EEC may continue to carry on those activities simultaneously, provided that each activity is separately managed in accordance with Article 19 of this Directive.

4 Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing assurance undertakings authorised pursuant to this Directive for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in the Annex to Directive 73/239/EEC carried on by the undertakings referred to in paragraph 2 shall be governed by the rules applicable to life assurance activities.

5 Where an undertaking carrying on the activities referred to in the Annex to Directive 73/239/EEC has financial, commercial or administrative links with an assurance undertaking carrying on the activities covered by this Directive, the competent authorities of the Member States within whose territories the head offices of those undertakings are situated shall ensure that the accounts of the undertakings in question are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.

6 Any Member State may require assurance undertakings whose head offices are situated in its territory to cease, within a period to be determined by the Member State concerned, the simultaneous pursuit of activities in which they were engaged on the dates referred to in paragraph 3.

7 The provisions of this Article shall be reviewed on the basis of a report from the Commission to the Council in the light of future harmonisation of the rules on winding-up, and in any case before 31 December 1999.

#### *Article 19*

#### **Separation of life assurance and non-life insurance management**

1 The separate management referred to in Article 18(3) must be organised in such a way that the activities covered by this Directive are distinct from the activities covered by Directive 73/239/EEC in order that:

- the respective interests of life policy holders and non-life policy holders are not prejudiced and, in particular, that profits from life assurance benefit life policy holders as if the assurance undertaking only carried on the activity of life assurance,



- the minimum financial obligations, in particular solvency margins, in respect of one or other of the two activities, namely an activity under this Directive and an activity under Directive 73/239/EEC, are not borne by the other activity.

However, as long as the minimum financial obligations are fulfilled under the conditions laid down in the second indent of the first subparagraph and, provided the competent authority is informed, the undertaking may use those explicit items of the solvency margin which are still available for one or other activity.

The competent authorities shall analyse the results in both activities so as to ensure that the provisions of this paragraph are complied with.

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- a Accounts shall be drawn up in such a manner as to show the sources of the results for each of the two activities, life assurance and non-life insurance. To this end all income (in particular premiums, payments by re-insurers and investment income) and expenditure (in particular insurance settlements, additions to technical provisions, reinsurance premiums, operating expenses in respect of insurance business) shall be broken down according to origin. Items common to both activities shall be entered in accordance with methods of apportionment to be accepted by the competent authority.
- b Assurance undertakings must, on the basis of the accounts, prepare a statement clearly identifying the items making up each solvency margin, in accordance with Article 27 of this Directive and Article 16(1) of Directive 73/239/EEC.

3 If one of the solvency margins is insufficient, the competent authorities shall apply to the deficient activity the measures provided for in the relevant Directive, whatever the results in the other activity. By way of derogation from the second indent of the first subparagraph of paragraph 1, these measures may involve the authorisation of a transfer from one activity to the other.

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*Status: This is the original version (as it was originally adopted).*

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- (1) [OJ L 126, 12.5.1984, p. 20.](#)
- (2) [OJ L 222, 14.8.1978, p. 11.](#) Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council ([OJ L 283, 27.10.2001, p. 28](#)).
- (3) [OJ L 375, 31.12.1985, p. 3.](#) Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council ([OJ L 41, 13.2.2002, p. 35](#)).