

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

TITLE IV

**PROVISIONS RELATING TO RIGHT OF ESTABLISHMENT
AND FREEDOM TO PROVIDE SERVICES**

Article 40

Conditions for branch establishment

1 An assurance undertaking that proposes to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2 The Member States shall require every assurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

- a the Member State within the territory of which it proposes to establish a branch;
- b a scheme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation of the branch;
- c the address in the Member State of the branch from which documents may be obtained and to which they may be delivered, it being understood that that address shall be the one to which all communications to the authorised agent are sent;
- d the name of the branch's authorised agent, who must possess sufficient powers to bind the assurance undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State of the branch. With regard to Lloyd's, in the event of any litigation in the Member State of the branch arising out of underwritten commitments, the assured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type. The authorised agent must, therefore, possess sufficient powers for proceedings to be taken against him and must in that capacity be able to bind the Lloyd's underwriters concerned.

3 Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the assurance undertaking or the good repute and professional qualification or experience of the directors or managers or the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the Member State of the branch and shall inform the undertaking concerned accordingly.

The competent authorities of the home Member State shall also attest that the assurance undertaking has the minimum solvency margin calculated in accordance with Articles 28 and 29.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the Member State of the branch, they shall give the reasons for their refusal to the assurance undertaking concerned within three months of receiving all the information in question. That refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

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4 Before the branch of an assurance undertaking starts business, the competent authorities of the Member State of the branch shall, within two months of receiving the information referred to in paragraph 3, inform the competent authority of the home Member State, if appropriate, of the conditions under which, in the interest of the general good, that business must be carried on in the Member State of the branch.

5 On receiving a communication from the competent authorities of the Member State of the branch or, if no communication is received from them, on expiry of the period provided for in paragraph 4, the branch may be established and start business.

6 In the event of a change in any of the particulars communicated under paragraph 2(b), (c) or (d), an assurance undertaking shall give written notice of the change to the competent authorities of the home Member State and of the Member State of the branch at least one month before making the change so that the competent authorities of the home Member State and the competent authorities of the Member State of the branch may fulfil their respective roles under paragraphs 3 and 4.

Article 41

Freedom to provide services: prior notification to the home Member State

Any assurance undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first inform the competent authorities of the home Member State, indicating the nature of the commitments it proposes to cover.

Article 42

Freedom to provide services: notification by the home Member State

1 Within one month of the notification provided for in Article 41, the competent authorities of the home Member State shall communicate to the Member State or Member States within the territory of which the assurance undertaking intends to carry on business by way of the freedom to provide services:

- a a certificate attesting that the assurance undertaking has the minimum solvency margin calculated in accordance with Articles 28 and 29;
- b the classes which the assurance undertaking has been authorised to offer;
- c the nature of the commitments which the assurance undertaking proposes to cover in the Member State of the provision of services.

At the same time, they shall inform the assurance undertaking concerned accordingly.

2 Where the competent authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down, they shall give the reasons for their refusal to the assurance undertaking within that same period. The refusal shall be subject to a right to apply to the courts in the home Member State.

3 The assurance undertaking may start business on the certified date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

Article 43

Freedom to provide services: changes in the nature of commitments

Any change which an assurance undertaking intends to make to the information referred to in Article 41 shall be subject to the procedure provided for in Articles 41 and 42.

Article 44

Language

The competent authorities of the Member State of the branch or the Member State of the provision of services may require that the information which they are authorised under this Directive to request with regard to the business of assurance undertakings operating in the territory of that State shall be supplied to them in the official language or languages of that State.

Article 45

Rules relating to conditions of assurance and scales of premiums

The Member State of the branch or of the provision of services shall not lay down provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions, forms and other printed documents which an assurance undertaking intends to use in its dealings with policy holders. For the purpose of verifying compliance with national provisions concerning assurance contracts, it may require an assurance undertaking that proposes to carry on assurance business within its territory, under the right of establishment or the freedom to provide services, to effect only non-systematic notification of those policy conditions and other printed documents without that requirement constituting a prior condition for an assurance undertaking to carry on its business.

Article 46

Assurance undertakings not complying with the legal provisions

1 Any assurance undertaking carrying on business under the right of establishment or the freedom to provide services shall submit to the competent authorities of the Member State of the branch and/or of the Member State of the provision of services all documents requested of it for the purposes of this Article in so far as assurance undertakings the head office of which is in those Member States are also obliged to do so.

2 If the competent authorities of a Member State establish that an assurance undertaking with a branch or carrying on business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that State, they shall require the assurance undertaking concerned to remedy that irregular situation.

3 If the assurance undertaking in question fails to take the necessary action, the competent authorities of the Member State concerned shall inform the competent authorities

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of the home Member State accordingly. The latter authorities shall, at the earliest opportunity, take all appropriate measures to ensure that the assurance undertaking concerned remedies that irregular situation. The nature of those measures shall be communicated to the competent authorities of the Member State concerned.

4 If, despite the measures taken by the home Member State or because those measures prove inadequate or are lacking in that State, the assurance undertaking persists in violating the legal provisions in force in the Member State concerned, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new assurance contracts within its territory. Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on assurance undertakings.

5 Paragraphs 2, 3 and 4 shall not affect the emergency power of the Member States concerned to take appropriate measures to prevent or penalise irregularities committed within their territories. This shall include the possibility of preventing assurance undertakings from continuing to conclude new assurance contracts within their territories.

6 Paragraphs 2, 3 and 4 shall not affect the power of the Member States to penalise infringements within their territories.

7 If an assurance undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the competent authorities of the latter may, in accordance with national law, apply the administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

8 Any measure adopted under paragraphs 3 to 7 involving penalties or restrictions on the conduct of assurance business must be properly reasoned and communicated to the assurance undertaking concerned.

9 Every two years, the Commission shall submit to the Insurance Committee a report summarising the number and type of cases in which, in each Member State, authorisation has been refused pursuant to Articles 40 or 42 or measures have been taken under paragraph 4 of this Article. Member States shall cooperate with the Commission by providing it with the information required for that report.

Article 47

Advertising

Nothing in this Directive shall prevent assurance undertakings with head offices in other Member States from advertising their services through all available means of communication in the Member State of the branch or Member State of the provision of services, subject to any rules governing the form and content of such advertising adopted in the interest of the general good.

Article 48

Winding-up

Should an assurance undertaking be wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other assurance contracts,

without distinction as to nationality as far as the lives assured and the beneficiaries are concerned.

Article 49

Statistical information on cross-border activities

Every assurance undertaking shall inform the competent authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, without deduction of reinsurance, by Member State and by each of classes I to IX, as defined in Annex I.

The competent authority of the home Member State shall, within a reasonable time and on an aggregate basis forward this information to the competent authorities of each of the Member States concerned which so requests.

Article 50

Taxes on premiums

1 Without prejudice to any subsequent harmonisation, every assurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on assurance premiums in the Member State of the commitment, and also, with regard to Spain, to the surcharges legally established in favour of the Spanish ‘Consorcio de Compensación de Seguros’ for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

2 The law applicable to the contract pursuant to Article 32 shall not affect the fiscal arrangements applicable.

3 Pending future harmonisation, each Member State shall apply to those assurance undertakings which cover commitments situated within its territory its own national provisions for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.