

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

TITLE V

**RULES APPLICABLE TO AGENCIES OR BRANCHES ESTABLISHED
WITHIN THE COMMUNITY AND BELONGING TO UNDERTAKINGS
WHOSE HEAD OFFICES ARE OUTSIDE THE COMMUNITY**

Article 51

Principles and conditions of authorisation

1 Each Member State shall make access to the activities referred to in Article 2 by any undertaking whose head office is outside the Community subject to an official authorisation.

2 A Member State may grant an authorisation if the undertaking fulfils at least the following conditions:

- a it is entitled to undertake insurance activities covered by Article 2 under its national law;
- b it establishes an agency or branch in the territory of such Member State;
- c it undertakes to establish at the place of management of the agency or branch accounts specific to the activity which it carries on there and to keep there all the records relating to the business transacted;
- d it designates a general representative, to be approved by the competent authorities;
- e it possesses in the Member State where it carries on an activity assets of an amount equal in value to at least one half of the minimum amount prescribed in Article 29(2), first subparagraph, in respect of the guarantee fund and deposits one quarter of the minimum amount as security;
- f it undertakes to keep a solvency margin complying with Article 55;
- g it submits a scheme of operations in accordance with the provisions of paragraph 3.

3 The scheme of operations of the agency or branch referred to in paragraph 2(g) shall contain the following particulars or evidence of:

- a the nature of the commitments which the undertaking proposes to cover;
- b the guiding principles as to reinsurance;
- c the state of the undertaking's solvency margin and guarantee fund referred to in Article 55;
- d estimates relating to the cost of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs;

and, in addition shall include, for the first three financial years:

- e a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- f a forecast balance sheet;
- g estimates relating to the financial resources intended to cover underwriting liabilities and the solvency margin.

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4 A Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for an assurance undertaking to carry on its business.

Article 52

Rules applicable to branches of third-country undertakings

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- a Subject to point (b), agencies and branches referred to in this Title may not simultaneously carry on in a Member State the activities referred to in the Annex to Directive 73/239/EEC and those covered by this Directive.
- b Subject to point (c), Member States may provide that agencies and branches referred to in this Title which on the relevant date referred to in Article 18(3) carried on both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 19.
- c Any Member State which under Article 18(6) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they were engaged on the relevant date referred to in Article 18(3) must also impose this requirement on agencies and branches referred to in this Title which are established in its territory and simultaneously carry on both activities there.
- d Member States may provide that agencies and branches referred to in this Title whose head office simultaneously carries on both activities and which on the dates referred to in Article 18(3) carried on in the territory of a Member State solely the activity covered by this Directive may continue their activity there. If the undertaking wishes to carry on the activity referred to in Directive 73/239/EEC in that territory it may only carry on the activity covered by this Directive through a subsidiary.

2 Articles 13 and 37 shall apply *mutatis mutandis* to agencies and branches referred to in this title.

For the purposes of applying Article 37, the competent authority which supervises the overall solvency of agencies or branches shall be treated in the same way as the competent authority of the head-office Member State.

3 In the case of a withdrawal of authorisation by the authority referred to in Article 56(2), this authority shall notify the competent authorities of the other Member States where the undertaking operates and the latter authorities shall take the appropriate measures. If the reason for the withdrawal of authorisation is the inadequacy of the solvency margin calculated in accordance with Article 56(1)(a), the competent authorities of the other Member States concerned shall also withdraw their authorisations.

Article 53

Transfer of portfolio

1 Under the conditions laid down by national law, each Member State shall authorise agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an accepting office established in the same Member State if the competent authorities of that Member State or, if appropriate, those of the Member State referred to in Article 56 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

2 Under the conditions laid down by national law, each Member State shall authorise agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an assurance undertaking with a head office in another Member State, if the competent authorities of that Member State certify that after taking the transfer into account the accepting office possesses the necessary solvency margin.

3 If under the conditions laid down by national law, a Member State authorises agencies and branches set up within its territory and covered by this Title to transfer all or part of their portfolios of contracts to an agency or branch covered by this Title and set up within the territory of another Member State, it shall ensure that the competent authorities of the Member State of the accepting office or, if appropriate, of the Member State referred to in Article 56 certify that after taking the transfer into account the accepting office possesses the necessary solvency margin, that the law of the Member State of the accepting office permits such a transfer and that the State has agreed to the transfer.

4 In the circumstances referred to in paragraphs 1, 2 and 3 the Member State in which the transferring agency or branch is situated shall authorise the transfer after obtaining the agreement of the competent authorities of the Member State of the commitment, where different from the Member State in which the transferring agency or branch is situated.

5 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 from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

6 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, assured persons and any other persons having rights or obligations arising out of the contracts transferred.

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

Article 54

Technical provisions

Member States shall require undertakings to establish provisions, referred to in Article 20, adequate to cover the underwriting liabilities assumed in their territories. Member States shall see that the agency or branch covers such provisions by means of assets which are equivalent to such provisions and matching assets in accordance with Annex II.

The law of the Member States shall be applicable to the calculation of such provisions, the determination of categories of investment and the valuation of assets, and, where appropriate, the determination of the extent to which these assets may be used for the purpose of covering such provisions.

The Member State in question shall require that the assets covering these provisions, shall be localised in its territory. Article 20(4) shall, however, apply.

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Article 55

Solvency margin and guarantee fund

1 Each Member State shall require of agencies or branches set up in its territory a solvency margin consisting of the items listed in Article 27. The minimum solvency margin shall be calculated in accordance with Article 28. However, for the purpose of calculating this margin, account shall be taken only of the operations effected by the agency or branch concerned.

2 One third of the minimum solvency margin shall constitute the guarantee fund.

However, the amount of this fund may not be less than one half of the minimum required under Article 29(2) first subparagraph. The initial deposit lodged in accordance with Article 51(2)(e) shall be counted towards such guarantee fund.

The guarantee fund and the minimum of such fund shall be constituted in accordance with Article 29.

3 The assets representing the minimum solvency margin must be kept within the Member State where activities are carried on up to the amount of the guarantee fund and the excess within the Community.

Article 56

Advantages to undertakings authorised in more than one Member State

1 Any undertaking which has requested or obtained authorisation from more than one Member State may apply for the following advantages which may be granted only jointly:

- a the solvency margin referred to in Article 55 shall be calculated in relation to the entire business which it carries on within the Community; in such case, account shall be taken only of the operations effected by all the agencies or branches established within the Community for the purposes of this calculation;
- b the deposit required under Article 51(2)(e) shall be lodged in only one of those Member States;
- c the assets representing the guarantee fund shall be localised in any one of the Member States in which it carries on its activities.

2 Application to benefit from the advantages provided for in paragraph 1 shall be made to the competent authorities of the Member States concerned. The application must state the authority of the Member State which in future is to supervise the solvency of the entire business of the agencies or branches established within the Community. Reasons must be given for the choice of authority made by the undertaking. The deposit shall be lodged with that Member State.

3 The advantages provided for in paragraph 1 may only be granted if the competent authorities of all Member States in which an application has been made agree to them. They shall take effect from the time when the selected competent authority informs the other competent authorities that it will supervise the state of solvency of the entire business of the agencies or branches within the Community.

The competent authority selected shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the agencies and branches established in their territory.

4 At the request of one or more of the Member States concerned, the advantages granted under this Article shall be withdrawn simultaneously by all Member States concerned.

Article 57

Agreements with third countries

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different from those provided for in this Title, for the purpose of ensuring, under conditions of reciprocity, adequate protection for policy holders in the Member States.