

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

TITLE II

THE TAKING UP OF THE BUSINESS OF LIFE ASSURANCE

Article 4

Principle of authorisation

The taking up of the activities covered by this Directive shall be subject to prior official authorisation.

Such authorisation shall be sought from the authorities of the home Member State by:

- (a) any undertaking which establishes its head office in the territory of that State;
- (b) any undertaking which, having received the authorisation required in the first subparagraph, extends its business to an entire class or to other classes.

Article 5

Scope of authorisation

1 Authorisation shall be valid for the entire Community. It shall permit an assurance undertaking to carry on business there, under either the right of establishment or freedom to provide services.

2 Authorisation shall be granted for a particular class of assurance as listed in Annex I. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

The competent authorities may restrict authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Article 7.

Each Member State may grant authorisation for two or more of the classes, where its national laws permit such classes to be carried on simultaneously.

Article 6

Conditions for obtaining authorisation

1 The home Member State shall require every assurance undertaking for which authorisation is sought to:

- a adopt one of the following forms:
 - in the case of the Kingdom of Belgium: ‘société anonyme/naamloze vennootschap’, ‘société en commandite par actions/commanditaire vennootschap op aandelen’, ‘association d’assurance mutuelle/onderlinge verzekeringsvereniging’, ‘société coopérative/coöperatieve vennootschap’,

- in the case of the Kingdom of Denmark: ‘aktieselskaber’, ‘gensidige selskaber’, ‘pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)’,
- in the case of the Federal Republic of Germany: ‘Aktiengesellschaft’, ‘Versicherungsverein auf Gegenseitigkeit’, ‘öffentlich-rechtliches Wettbewerbsversicherungsunternehmen’,
- in the case of the French Republic: ‘société anonyme’, ‘société d'assurance mutuelle’, ‘institution de prévoyance régie par le code de la sécurité sociale’, ‘institution de prévoyance régie par le code rural’ and ‘mutuelles régies par le code de la mutualité’,
- in the case of Ireland: ‘incorporated companies limited by shares or by guarantee or unlimited’, ‘societies registered under the Industrial and Provident Societies Acts’ and ‘societies registered under the Friendly Societies Acts,’
- in the case of the Italian Republic: ‘società per azioni’, ‘società cooperativa’, ‘mutua di assicurazione’,
- in the case of the Grand Duchy of Luxembourg: ‘société anonyme’, ‘société en commandite par actions’, ‘association d'assurances mutuelles’, ‘société coopérative’,
- in the case of the Kingdom of the Netherlands: ‘naamloze vennootschap’, ‘onderlinge waarborgmaatschappij’,
- in the case of the United Kingdom: ‘incorporated companies limited by shares or by guarantee or unlimited’, ‘societies registered under the Industrial and Provident Societies Acts’, ‘societies registered or incorporated under the Friendly Societies Acts’, ‘the association of underwriters known as Lloyd’s’,
- in the case of the Hellenic Republic: ‘ανώνυμη εταιρία’,
- in the case of the Kingdom of Spain: ‘sociedad anónima’, ‘sociedad mutua’, ‘sociedad cooperativa’,
- in the case of the Portuguese Republic: ‘sociedade anónima’, ‘mútua de seguros’,
- in the case of the Republic of Austria: ‘Aktiengesellschaft’, ‘Versicherungsverein auf Gegenseitigkeit’,
- in the case of the Republic of Finland: ‘keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag’, ‘vakuutusosakeyhtiö/försäkringsaktiebolag’, ‘vakuutusyhdistys/försäkringsförening’,
- in the case of Kingdom of Sweden: ‘försäkringsaktiebolag’, ‘ömsesidiga försäkringsbolag’, ‘understödsföreningar’.

An assurance undertaking may also adopt the form of a European company when that has been established.

Furthermore, Member States may, where appropriate, set up undertakings in any public-law form provided that such bodies have as their object insurance operations under conditions equivalent to those under which private-law undertakings operate;

- b limit its objects to the business provided for in this Directive and operations directly arising therefrom, to the exclusion of all other commercial business;
- c submit a scheme of operations in accordance with Article 7;
- d possess the minimum guarantee fund provided for in Article 29(2);
- e be effectively run by persons of good repute with appropriate professional qualifications or experience.

2 Where close links exist between the assurance undertaking and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the assurance undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require assurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3 Member States shall require that the head offices of insurance undertakings be situated in the same Member State as their registered offices.

4 An assurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 7.

It shall, furthermore, be required to show proof that it possesses the solvency margin provided for in Article 28 and the guarantee fund referred to in Article 29(1) and (2).

5 Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions or of forms and other printed documents which an assurance undertaking intends to use in its dealings with policy holders.

Notwithstanding the first subparagraph, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home 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.

Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and the communication of any other documents necessary for the normal exercise of supervision.

Not later than 1 July 1999, the Commission shall submit a report to the Council on the implementation of this paragraph.

6 The provisions referred to in paragraphs 1 to 5 may not require that any application for authorisation be considered in the light of the economic requirements of the market.

Article 7

Scheme of operations

The scheme of operations referred to in Article 6(1)(c) and (4) shall include particulars or evidence of:

- (a) the nature of the commitments which the assurance undertaking proposes to cover;

- (b) the guiding principles as to reassurance;
- (c) the items constituting the minimum guarantee fund;
- (d) estimates relating to the costs of setting up the administrative services and the organisation for securing business and the financial resources intended to meet those costs;

in addition, for the first three financial years:

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

Article 8

Shareholders and members with qualifying holdings

The competent authorities of the home Member State shall not grant an undertaking authorisation to take up the business of assurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

The same authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an assurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

Article 9

Refusal of authorisation

Any decision to refuse an authorisation shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

Each Member State shall make provision for a right to apply to the courts should there be any refusal.

Such provision shall also be made with regard to cases where the competent authorities have not dealt with an application for an authorisation upon the expiry of a period of six months from the date of its receipt.