

Protocol

**Relating to the Cooperation of the Competent Authorities
of the Member States of the European Union in Particular
Concerning the Application of Directive 2002/92/EC of the
European Parliament and of the Council of 9 December 2002
on Insurance Mediation**

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Executive Summary

This Protocol provides a framework for the cooperation of Competent Authorities with regard to the implementation of the Directive 2002/92/EC¹ of the European Parliament and of the Council of 9 December 2002 on Insurance Mediation.

It sets out the agreement between Competent Authorities to cooperate and exchange information in order to ensure an efficient supervision of intermediaries and facilitate their single registration in the European Union.

The relevant Competent Authorities, which are Members of CEIOPS, and other Competent Authorities, who accept this document by signing it individually, are referred to as the "Competent Authorities" throughout this document.

The Protocol contains four parts and five annexes.

Part I sets out the general aims and principles for the cooperation between Competent Authorities regarding mainly the registration procedure, the supervision of professional requirements and professional secrecy.

Part II covers the registration and notification procedures, including the minimum information to be contained in the public registers and to be given in a notification for cross-border mediation services.

Part III provides details on the procedures of exchange of information and on going supervision of intermediaries.

Part IV covers some general matters regarding out-of-court settlements of complaints.

The **annexes** contain standardised forms for cross-border notification, a list of Competent Authorities for making and receiving notifications and a list of national bodies for out-of-court settlement of complaints.

A specific procedure was adopted for allowing non CEIOPS Members to join this Protocol. Annex I-B and Annex III-B mention the Competent Authorities, being non CEIOPS Members, and agreeing to be bound by the terms of this Protocol by signing a Joinder Agreement.

These annexes will be up-dated at the receipt of each signed Joinder Agreement by CEIOPS.

¹ O.J. L 009, 15/01/2003, P 003 – 010.

PART I - GENERAL CONSIDERATIONS

1.1. General aims

Directive 2002/92/EC² of the European Parliament and of the Council of 9 December 2002 on Insurance Mediation (hereinafter the "Directive") sets out the principles of single registration.

The Competent Authorities of the Member States consider that the adoption of the Directive makes necessary a deepening of their cooperation.

In determining these rules of behaviour, the Competent Authorities intend to uphold practical cooperation between national administrative services for the purpose of facilitating the supervision of insurance and reinsurance intermediaries (hereinafter the "Intermediaries") within the European Union and of examining any difficulties which may arise in the application of the Directive.

1.2. Cooperation between Competent Authorities

The Competent Authorities, ascertaining that the supervision of Intermediaries has an ongoing character and that its efficiency shall be based upon the knowledge of the situation of the Intermediaries and of the possibility of joint action, intend to cooperate in all cases necessary for the proper application of EU rules and to mutually facilitate the carrying out of their tasks and to guarantee the good functioning of the Single Market.

They agree that the cooperation between Competent Authorities which ensues as a result of the provisions of the Directive should be expressed by an attitude permitting spontaneous exchanges and the introduction of a genuine dialogue between themselves with a view to the promotion within the EU of a system of supervision which is as satisfactory as possible.

The Competent Authorities acknowledge that these mutual exchanges may not in any case result in the removal from the various authorities of the competence which is laid down by the Directive.

In particular, they may not affect the duty vested in the Competent Authority of the home Member State to check the fulfilment of requirements for the access to and exercise of the insurance mediation activity.

² O.J. L 009, 15/01/2003, P 003 – 010.

1.3. Harmonisation of documents used

The Competent Authorities acknowledge that the analysis of the situation of Intermediaries in their respective countries calls for a variety of methods and practices. The exchange of best practices of supervision would be improved by means of a common terminology of analysis within the scope allowed by national legislation.

1.4. Rules on professional secrecy

The Competent Authorities agree to exchange confidential information whenever possible, within the limits of the rules laid down in article 9 paragraph 3 of the Directive.

1.5. Supervision of professional requirements

In view of the importance of supervision of the good repute, competence, professional know-how and financial requirements for Intermediaries as well as the guarantee amount of their professional indemnity insurance when registration is granted or withdrawn and when the Intermediary is already operating, the Competent Authorities shall endeavour to share as much as possible of the information available to them in those fields.

Within the context of the single market, the Competent Authorities of the Member States stress the importance of a rigorous examination of the registration files for new Intermediaries and the consistent application of the minimum criteria relating to the supervision of access to the insurance mediation activity.

1.6. Possible addition to rules on cooperation

Finally, the Competent Authorities acknowledge that the rules for cooperation set out in this document may show themselves to be inadequate when faced with actual cases. They agree that as a result the rules will be adapted on a bilateral basis as the need arises for a specific case and that such bilateral arrangements will be drawn up in conformity with the principles of Community law.

Competent Authorities also agree that their cooperation may extend to areas not expressly provided for by the Directive, taking account, as far as possible, of the principles of the Directive.

This is especially the case for the registration and out-of-court settlement of complaints by persons seeking for coverage, policyholders, insureds, beneficiaries and interested third parties against insurance intermediaries.

1.7. Cooperation with non-EU States that are parties to the EEA Agreement

This Protocol applies to the Competent Authorities of non-EU Member States that are parties to the EEA agreement.

PART II - ACTIVITY OF INTERMEDIARIES: REGISTRATION, NOTIFICATION

2.1. Register of Intermediaries³

(Article 3 paragraph 1 of the Directive)

2.1.1. Registration

In accordance with the principle of single registration, the decision to register an Intermediary, valid for the whole of the European Union, shall be the sole responsibility of the authorities of the home Member State.

For information purposes only, details about Intermediaries may also be made available on the public register of the host Member State.

2.1.2. Minimum contents of public register

(Article 3 paragraph 2 of the Directive)

The registration requirements apply to natural and legal persons. It is recommended to publish the headings of the public register in the national language and in English.

The Competent Authorities agree on the following minimum information to be contained in the register of the competent body in the home Member State:

2.1.2.1. Natural persons

For natural persons, the minimum information to be contained in the register is the following:

- First name and surname of the Intermediary, its address or its registration number;
- Category to which the Intermediary belongs, if applicable;
- Classes of insurance for which the Intermediary holds a license in the home Member State, if applicable;

³ Annexes III-A and III-B include the list of web site addresses of public registers for Intermediaries in the various Member States/ CEIOPS and Non-CEIOPS Members and Observers

- The current Competent Authority, if different from the registration authority;
- Member States for which the Intermediary has notified his/her intention to work by way of freedom to provide services;
- Member States for which the Intermediary has notified his/her intention to work by way of freedom of establishment.

In the case of an Intermediary carrying out insurance mediation for and on behalf of an insurance undertaking, and who acts under the full responsibility of that insurance undertaking⁴, it is recommended that the name of the insurance undertaking which the Intermediary represents should be contained in the register.

2.1.2.2. Legal persons

For legal persons, the minimum information to be contained in the register is the following:

- Name of Intermediary, its address or its registration number;
- Name of at least one natural person within the management who is responsible for the mediation business;
- Category to which the Intermediary belongs, if applicable;
- Classes of insurance for which the Intermediary holds a license in the home Member State, if applicable;
- The current Competent Authority, if different from the registration authority;
- Member States for which the Intermediary has notified its intention to work by way of freedom to provide services;
- Member States for which the Intermediary has notified its intention to work by way of freedom of establishment.

In the case of an Intermediary carrying out insurance mediation for and on behalf of an insurance undertaking, and who acts under the full responsibility of that insurance undertaking⁵, it is recommended that the name of the insurance undertaking which the Intermediary represents should be contained in the register.

2.2. Activity

The Competent Authority of the host Member State may choose to receive or not to receive notification for Intermediaries who intend to carry out business for the first time under the freedom of establishment or the freedom to provide services.

⁴ Defined as such in the Insurance Mediation Directive, Recital (10).

⁵ Defined as such in the Insurance Mediation Directive, Recital (10).

2.2.1. Opening a branch by way of freedom of establishment

Contents of the notification made by the authority of the home Member State to the authority of the host Member State⁶

Provided that it does not oppose the opening of a branch in another Member State, the Competent Authority of the Intermediary's home Member State transmits to the Competent Authority of the host Member State a notification with the following contents:

- The precise name of the Intermediary, the address of its head office or alternatively its registration number;
- The category of Intermediary to which the Intermediary belongs, if applicable;
- In case of an Intermediary, carrying out insurance mediation for and on behalf of an insurance undertaking, and who acts under the full responsibility of that insurance undertaking⁷, the name of the insurance undertaking for which the Intermediary is authorised to market insurance products, if applicable;
- The classes of insurance according to the annexes to the First Non-Life Insurance Directive and the First Life Assurance Directive for which the Intermediary is authorised in his home Member State, if applicable;
- The address in the host Member State from which documents may be obtained from the Intermediary and to which they may be delivered;
- The name of the natural person representing the branch;
- The name of the current Competent Authority, if different from the registration authority;
- The address of the online register in which details about the Intermediary may be found.

All documents must be written either in English or in another language agreed upon by the authorities concerned.

At the same time, the Competent Authority of the home Member State will advise the Intermediary concerned that the notification has been sent. The Competent Authority of the host Member State acknowledges receipt of these documents without undue delay by letter or by any other means agreed upon by the authorities concerned

⁶ For the sake of clarity, an example of a notification form is attached (ANNEX II-A). This form is not intended to be binding and can be altered.

⁷ Defined as such in the Insurance Mediation Directive, Recital (10).

2.2.2. Exercise of activities by way of freedom to provide services

Contents of the notification made by the authority of the home Member State to the authority of the host Member State⁸

Provided that it is not opposed to the exercise of the activity by way of freedom to provide services in another Member State, the Competent Authority of the home Member State transmits to the Competent Authority of the host Member State a notification with the following contents:

- The precise name of the Intermediary, the address of its head office or alternatively its registration number;
- The name of the current Competent Authority if different from the registration authority;
- The classes of insurance according to the annexes to the First Non-Life Insurance Directive and the First Life Assurance Directive for which the Intermediary is authorised in his home Member State, if applicable;
- The address of the online register in which details about the Intermediary may be found.

All documents must be written either in English or in another language agreed upon by the authorities concerned.

At the same time, the Competent Authority of the home Member State will advise the Intermediary concerned that the notification has been made. The Competent Authority of the host Member State will acknowledge receipt of these documents without undue delay by letter or by any other means agreed upon by the authorities concerned.

2.3. Changes to information contained in notification concerning the branch or the Intermediary engaging in an activity by way of freedom to provide services

The Competent Authority of the home Member State shall inform the Competent Authority of the host Member State of any changes to information provided under section 2.2.

2.4. Cross-border activity not notified

If a Competent Authority, requiring prior notification, becomes aware of an activity of an Intermediary on its territory for whom no notification has been received in accordance with article 6 of the Directive, it without undue delay

⁸ For the sake of clarity, an example of a notification form is attached (ANNEX II-B). This form is not intended to be binding and can be altered.

informs the Competent Authority of the home Member State, where this authority is known, and may take any measure which is deemed appropriate in accordance with article 8 paragraph 4 of the Directive informing the Competent Authority of the home Member State of the action taken.

The Competent Authority of the home Member State informs the Competent Authority of the Member State having discovered the infringement of the action taken including any sanction it may have taken against the Intermediary.

PART III - EXCHANGE OF INFORMATION AND ONGOING SUPERVISION OF INTERMEDIARIES

The Competent Authorities concerned collaborate during the ongoing supervision of the Intermediary in good faith and in mutual recognition of the competence of each other.

The specific features of the collaboration should be determined by the Competent Authorities concerned on a case-by-case basis.

3.1. Voluntary exchanges of non-financial information between supervisory authorities

3.1.1. Exchange of information

The Competent Authority of the host Member State will supply the Competent Authority of the home Member State on a non-systematic basis, as and when it is brought to its attention, with particular information which is appropriate to the exercise of prudential control, in so far as it considers such information to be credible.

Such information may, for instance, relate to the level of complaints from policyholders, beneficiaries and interested third parties, the standard of business conduct, unsatisfactory commercial practices and details concerning the natural persons within the management of the Intermediary.

The information referred to above, which does not constitute an exhaustive list, will be passed on in a way appropriate to the circumstances and nature of the information and will remain subject to any limitation which may be imposed by the Competent Authority of the host Member State.

3.1.2. Right to warn

If the Competent Authority of the host Member State has reasons to consider that the activities of an Intermediary could harm the insurance market, it informs the Competent Authority of the home Member State. If necessary, the latter informs the Competent Authority of the host Member State of any decision it has been led to take and, in any case, checks that the Intermediary concerned is complying with the prudential requirements set out by the Directive.

3.2. Exchanges of information on good repute, competence and professional experience

Exchanges of information between the Member States may include information on the good repute, competence or professional experience of:

- the Intermediary himself or any member of his staff providing insurance mediation services, in case of a natural person;
- the managers or directors of an Intermediary or any member of its staff providing insurance mediation services, in case of a legal person.

PART IV - TREATMENT OF COMPLAINTS

The Competent Authorities communicate to the CEIOPS Secretariat the names and addresses of the national bodies entitled to register complaints of customers and other interested parties such as consumer associations.

Without prejudice to the FIN-NET network, Competent Authorities should cooperate to facilitate/enable customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning Intermediaries established in another Member State.

In case Member States have set up procedures for out-of-court settlement of complaints and/or have charged a different body with this kind of settlement, they also communicate to the CEIOPS Secretariat the names and addresses of such bodies.

The CEIOPS Secretariat will make available the list of all these extra-judicial bodies.

ANNEXES

ANNEX I - A: List of Competent Authorities of the Member States of the EU and the EEA regarding notification of cross-border activities of Intermediaries / CEIOPS Members and Observers

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_InsuranceMediationProtocol-AnnexI-A.pdf

ANNEX I – B : List of Competent Authorities of the Member States of the EU and the EEA regarding notification of cross-border activities of Intermediaries / Non - CEIOPS Members and Observers, having signed the Joinder Agreement

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_InsuranceMediationProtocol-AnnexI-B.pdf

ANNEX II–A: Notification form for an Intermediary to operate under the freedom of establishment

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_InsuranceMediationProtocol_-_AnnexII-A.pdf

ANNEX II– B: Notification form for an Intermediary to operate under the freedom to provide services

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_IMnProtocol-AnnexII-B.pdf

ANNEX III - A: List of website address of public registers for Intermediaries in the various Member States/ CEIOPS Members and Observers

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_IMProtocol-AnnexIII-A.pdf

ANNEX III - B: List of website address of public registers for Intermediaries in the various Member States / Non - CEIOPS Members and Observers, having signed the Joinder Agreement

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_IMProtocol_-_AnnexIII-B.pdf

ANNEX IV - A: List of competent bodies for receipt of complaints and out-of-court settlement of complaints / CEIOPS Members and Observers

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_InsuranceMediationProtocol-AnnexIV-A.pdf

ANNEX IV - B: List of competent bodies for receipt of complaints and out-of-court settlement of complaints / Non-CEIOPS Members and Observers

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_InsuranceMediationProtocol_-_AnnexIV-B.pdf

ANNEX V: Joinder Agreement

http://www.ceiops.org/media/files/publications/protocols/CEIOPS-DOC-02-06_InsuranceMediationProtocol_AnnexV.pdf