

Life and Non-life Insurance Directives

Michaela SUCHARDOVÁ
Insurance and Pensions Unit

Screening process
Explanatory meeting with Croatia and Turkey
29 March 2006

Overview of the presentation

1. Internal market in insurance
2. The EU life and non-life insurance directives
3. Insurance Directives
 - 3.1. Authorization requirements
 - 3.2. Supervision of insurance undertakings and financial requirements
 - Financial supervision - general principles
 - Technical provisions
 - Solvency margin
 - 3.3. Contract law rules and supervision of policy conditions and tariffs
4. Agreement between the EU and Switzerland on non-life insurance

1. Internal market in insurance

- The right for any insurer having a head office in the EU, to carry out insurance business through the European Union :
 - by branch, agency or subsidiaries
(RIGHT OF ESTABLISHMENT)
 - on a cross-border basis (FREE PROVISION OF SERVICES)
- The possibility for policyholders to look for insurance cover from any EU insurer in order to find the most appropriate cover for their needs.

3 generations of Directives

- **1st** generation directives : Freedom of establishment
1973 : non-life 1979 : life
- **2nd** directives : Freedom to provide services
1988 : non-life
 large risks : Home country control
 mass risks : Host country control
1990 : life
 policyholder's initiative : Home country control
 insurer's initiative : Host country control
- **3rd** directives : European passport
 exclusive Home country control
1992: life and non-life directives

2.1. The EU non-life insurance directives

- 73/239/EEC 1st non-life
- 88/357/EEC 2nd non-life
- 92/49/EEC 3rd non-life
- 1991 Swiss agreement on non-life insurance
- 2002/13/EC Solvency I for non-life



2.2. The EU life insurance directives

- 2002/83/EC life recasting and repealing:
 - 79/267/EEC 1st life
 - 90/619/EEC 2nd life
 - 92/96/EEC 3rd life
 - 2002/12/EC Solvency I for life



3.1. Authorisation requirements

Principles of authorisation

- Authorisation from competent authority of Home Member State
- Any business establishing its Head Office or Extending its business

Scope of authorisation

- Entire Community
- Authorisation for a particular class of insurance or group of classes
- Ancillary risks
- Not possible to authorise one undertaking according to both life and non-life Directives (some exceptions but then – separation of life and non-life management)

- **Conditions of authorisation**
 - Legal forms – each MS provides the list
 - Limit its business to insurance
 - Persons of good repute
 - Scheme of operations (Business plan)
- MS cannot require
 - prior approval or systematic notification of policy conditions or scales of premiums
- No economic needs test

Control of shareholders

- Identities of the shareholders
- Fit and proper

Moreover

- The insurance undertaking must have the head office in the same Member State as its registered office

HOME COUNTRY CONTROL

- Logically: Financial and prudential supervision by Home State
- But Host State still retain some powers of supervision -
Ex post and non-systematic notification of policy conditions and compliance with General Good

3.2. Financial supervision - general principles

- The sole responsibility of the Home Member State that shall require
 - Sound administrative and accounting procedures and
 - Adequate internal control mechanisms of the company
- Mutual recognition
- Minimum harmonisation / accept national differences

Technical provisions

- Should be “adequate” in respect of the entire business of the company
- Generally set in a conservative way but different traditions exist in MS (best estimate, case by case, estimated ultimate cost, no adverse runoff)
- Non-life: Insurance Companies Accounts Directive 91/674/EC
- Life: harmonization of rules for calculation of technical provisions (Art.20 of Dir.2002/83/EC)

Investment rules

- Assets for covering technical provisions
 - General principle: “...secure the safety, yield and marketability of its investment, which the undertaking shall ensure are diversified and adequately spread”
 - List of admissible assets
- Rules for investment diversification (ex. max 10% in one piece of land or building)
- Rules for currency matching

Solvency margin

AVAILABLE SOLVENCY MARGIN

- Every insurance undertaking is required to establish an available solvency margin in respect of its entire business.
- The solvency margin shall correspond to the assets of the undertaking free of any foreseeable liabilities less any intangible item.
- Detailed rules of assets that can be included in the available solvency margin

Minimum solvency margin – NON-LIFE

(Art. 16a of 73/239/EEC Article as amended by Art. 1(3)) 2002/13/EC)

- **REQUIRED SOLVENCY MARGIN** is the higher of two results.
 - **THE PREMIUMS BASIS** (16% to 18% of premiums)
 - **THE CLAIMS BASIS** (23% to 26% of average claims for the past three years)
- Premiums and claims in liability increased by 50% for the calculation
- Reduction for reinsurance of 50% max
- Absolute minimum of € 2 or 3 million

Minimum solvency margins – LIFE

(Art. 28 of Dir 2002/83/EC)

- **REQUIRED SOLVENCY MARGIN =**
4% of the mathematical provisions +
0,3% of capital at risk
- Reduction for reinsurance of 15% max
- Absolute minimum of € 3 million

The minimum guarantee fund

- One third of the required solvency margin shall constitute the guarantee fund
- Floor :
 - No less than € 2 million (non-life)
 - If motor vehicle, aircraft, ship liability, general liability credit or surety insurance is included, then € 3 million.
 - € 3 million for life
 - Member States may provide for a one fourth reduction of the minimum guarantee fund in the case of mutuals (life and non-life).

The Solvency II project

- Main objective: protection of policyholders and beneficiaries
- As Basel II for banks
- It should
 - focus on the overall solvency of institutions looking at both quantitative and qualitative aspects
 - be risk-oriented, prospective and robust
 - improve risk management;
 - and promote international convergence / compatibility.
- Proposal of framework directive foreseen for July 2007

3.3. Contract law rules and material supervision of policy conditions and tariffs

- The insurance contract rules are NOT harmonised

Law applicable to insurance contracts – NON-LIFE

(Art.7 of Dir. 88/357/EEC)

- Large risks : free choice of the law applicable to the contract
- Mass risks (all others than large risks)= consumer risks
 - law of the MS of location of the risk
 - law of the MS of location of the risk or law of the MS of the policyholder's residence
 - law of the MS where the event may rise
 - MS may allow greater freedom of choice of law
- Compulsory insurance : law of MS imposing it

Law applicable to insurance contracts – LIFE

(Art.32 of Dir.2002/83/EC)

- Law of the MS of the commitment (country of residence of the policyholder), OR
- Law of the MS of policyholder's nationality
- In certain cases, more flexibility

Life insurance- transparency

Written information to policy holders (Art. 36 + Annex III of Directive 2002/83/EC)

– before concluding the contract and during the life of the contract:

- definition of benefits
- term of the contract
- means or payments of premiums
- surrender value and paid-up value (if any), etc.

Life insurance – policy holder protection

- Cancellation period (Art. 35 of Dir 2002/83/EC)
 - The policy-holder has to have the opportunity to cancel the contract within a period of between 14 and 30 days
 - From the time the policy holder was informed that the contract was concluded

Supervision of tariffs

- No material control (prior approval or notification)
- But in LIFE – Home MS may require systematic notification of technical bases used for calculating scales of premiums and technical provisions (however, this cannot be required as a prior condition for carrying a business)(Art.6(5)2nd int. of Dir.2002/83/E)

Supervision of policy conditions

- No prior approval or systematic notification by supervisory authorities (both Home and Host State)
- But : Ex-post and non systematic control
- Derogation: prior systematic notification of policy conditions is allowed for NON-LIFE:
 - Compulsory Insurance
(Art. 30(2) of Dir. 92/49/EEC)
 - Health Insurance as an alternative to statutory social security health insurance (Art. 54 of Dir. 92/49/EEC)

General good

- Community concept developed by the ECJ
- left to Host Member State
- But not total freedom of the Host MS
 - Only in non-harmonised area
 - Meet objective goals
 - Necessary to protect objective
 - Proportional to the objective – are there less restrictive ways?
 - Non-discriminatory (de juri / de facto)
 - Public interest is not protected already in the Home MS (equivalence rule)

4. Agreement between the EEC and Switzerland on non-life insurance from 10 October 1989

- Council Decision 91/370/EEC of 20 June 1991- approved the Agreement and contain the Agreement
- Council Directive 91/371/EEC which requires the MS to implement the Agreement into their legal orders

- Introduced freedom of establishment between Switzerland and EU Member States in non-life insurance
- System of licensing by the Host Member State

More information at :

http://europa.eu.int/comm/internal_market/insurance

Or contact:

michaela.suchardova@cec.eu.int