COMMISSION RECOMMENDATION

of 18 December 1991

on insurance intermediaries

(92/48/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 155 thereof,

Whereas insurance intermediaries are an important factor in the distribution of insurance in the Member States; whereas the creation of the internal market will entail an increasing range of products as a result of the freedom to provide services; whereas the professional competence of insurance intermediaires is an essential element for the protection of the policyholders and those seeking insurance; whereas not all Member States require for the taking up of the activity of insurance intermediary or specific categories of intermediary general, commercial and professional knowledge and ability; whereas such knowledge is desirable in principle for all insurance intermediaries and measures for further convergence are necessary;

Whereas Council Directive 77/92/EEC [1] sets out measures, in the absence of mutual recognition of diplomas and immediate coordination, to facilitate the effective exercise of freedom of establishment and freedom to provide services for the taking up and pursuit of activities of insurance agent and broker; whereas these measures are of a transitional nature;

Whereas it should be left to the Member States or, in certain cases, their insurance undertakings or recognized professional organizations, in conformity with the EEC Treaty, to establish the exact level of general, commercial and professional knowledge considered appropriate to guarantee that policyholders and persons seeking insurance will be adequately informed and assisted, taking into account the type of intermediary involved;

Whereas it is desirable that where appropriate insurance intermediaries also meet professional requirements with regard to professional indemnity insurance, fitness and properness; whereas consistency should exist with Community rules imposing capital requirements on intermediaries holding clients' monies in assisting the administration and performance of insurance contracts;

Whereas it is appropriate to clarify the definition of independence of insurance brokers in view of the application of the relevent provisions of Council Directive 90/619/EEC [2] to insurance intermediaries;

Whereas competent insurance intermediaries should be registered in their Member States and such registration should be a condition for the taking-up and exercise of the activity of intermediating in insurance; whereas central registers should distinguish between dependent and independent insurance intermediaries;

Whereas a recommendation, which is not binding on the Member States to which it is addressed as to the result to be achieved but solicits their cooperation on a voluntary basis, should be an effective means of enabling them to adopt where necessary the appropriate provisions,

HEREBY RECOMMENDS:

1. that Member States ensure that insurance intermediaries established on their territory are subject to professional requirements and registration in accordance with the provisions contained in the attached Annex;

2. that Member States inform the Commission within 36 months of the notification of this recommendation of the texts of the main laws, regulations, administrative provisions which have been adopted or measures taken by professional organizations or insurance undertakings with respect to this recommendation and inform the Commission of any further changes in this field.

Done at Brussels, 18 December 1991.

For the Commission

Leon BRITTAN

Vice-President

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[1] OJ No L 26, 31. 1. 1977, p. 14.

[2] OJ No L 330, 29. 11. 1990, p. 50.

ANNEX

PROFESSIONAL REQUIREMENTS AND REGISTRATION OF INSURANCE INTERMEDIARIES

Article 1

Definitions

For the purpose of this recommendation :

— 'insurance intermediary' is defined as a person taking up or pursuing an activity as defined in Article 2, paragraph 1 (a) to (c) of Directive 77/92/EEC in a self-employed capacity or as a paid employee.

Article 2

Scope

1. Subject to paragraphs 2 and 3, this recommendation shall apply to all insurance intermediaries as defined in Article 1.

2. The Member States need not apply this recommendation to persons providing insurance which does not require any general or specific knowledge and where such insurance covers the risk of loss or damage to goods supplied by that person, whose principal professional activity is other than providing advice on and selling insurance.

3. The management of an undertaking taking up and exercising the activity of insurance intermediary shall include an adequate number of persons who possess the general, commercial and professional knowledge and ability required by Article 4, paragraph 2.

Member States are recommended to further that such undertakings offer relevant basic training for their employees who are involved in mediating in insurance products.

Article 3

Independence of intermediaries

The persons defined in Article 2, paragraph 1 (a) of Directive 77/92/EEC shall disclose :

— to persons seeking insurance or reinsurance of risks, any direct legal or economic ties to an insurance undertaking or any shareholdings in or by such undertakings which could affect the complete freedom of choice of insurance undertaking, and

— to a competent body, as determined by the Member State, the spread of business with different insurance undertakings over the previous year.

Article 4

Professional competence

1. The taking up and pursuit of the activity of insurance intermediary shall be subject to the professional requirements of paragraphs 2 to 5.

2. Insurance intermediaries shall possess general, commercial and professional knowledge and ability. The Member States shall require if necessary different levels of knowledge and ability for the category of intermediary mentioned in Article 3. The level of such knowledge and ability shall be determined by the Member States.

Such levels and their practical application may also be determined and administered by professional organisations recognized by a Member State.

Subject to the supervision by Member States, such levels and their practical application may also be determined and administered by an insurance undertaking assuming responsibility and liability for the activities exercised by the category of intermediary defined in Article 2, paragraph 1 (b) of Directive 77/92/EEC.

3. An insurance intermediary shall possess professional indemnity insurance or any other comparable guarantee against liability arising from professional negligence, unless such insurance is already provided for by an insurance undertaking or other undertaking by which he is employed or for which he is empowered to act.

4. An insurance intermediary shall be of good repute. He shall not have previously been declared bankrupt, unless he has been rehabilited in accordance with his national law.

5. Insurance intermediaries as defined in Article 2, paragraph 1 (a) of Directive 77/92/EEC, may be required to have sufficient financial capacity. The level and form of capital required shall be determined by the Member States.

Article 5

Registration

1. Insurance intermediaries that fulfil the professional requirements of Article 4, paragraphs 2 to 5, shall be registered in their Member State. Only registered persons shall be allowed to take up and pursue the activity of insurance intermediary.

2. Each Member State shall appoint a competent body to administer the register mentioned in paragraph 1. Professional organizations recognized by a Member State may also be appointed to administer the register. In the case of Article 4, paragraph 2, last subparagraph, such registers may also be administered by an insurance undertaking. Member States' competent authorities shall have access to the registers.

3. Where one central register exists, it should distinguish between independent and dependent insurance intermediaries.

4. Insurance intermediaries shall inform the public of the fact that they have been registered.

Article 6

Sanctions

1. Adequate sanctions and measures shall exist in the Member States which shall apply to any person pursuing the activity of insurance intermediary without being registered as such in a Member State.

2. Adequate sanctions and measures shall exist in the Member States against an insurance intermediary who ceases to fulfil the requirements of Article 4, paragraphs 3 to 5, including the possibility of removal from the register.