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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, non CEIOPS Members or Observers, who have adhered to the principles of the Luxembourg Protocol, 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 Authorities competent for the registration and notifications, and a list of national bodies for out-of-court settlement of complaints.

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

PART I - GENERAL CONSIDERATIONS

1.1. General aims and principles

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.

This Protocol applies to CEIOPS Members and Observers as far as they are competent for the supervision of insurance and reinsurance intermediaries, in respect of the application of the Directive.

Certain supervisory tasks according to the Directive fall under the competence of other authorities that are not Members or Observers of CEIOPS. Those national authorities may, subject to approval by Members of CEIOPS, join the Protocol, if this contributes to further strengthening cross-border cooperation. The term 'Competent Authorities' shall therefore include those authorities which have adhered to the principles of the Luxembourg Protocol by signing the Joinder Agreement (Annex V) or by sending a Letter informing CEIOPS of their willingness to adhere to the principle laid down in the Luxembourg Protocol.

Annex I-A and Annex II-A mention the Competent Authorities that are CEIOPS Members and Observers.

Annex I-B and Annex III-B mention the Competent Authorities non CEIOPS Members or Observers that have adhered to the principles laid down in the Luxembourg Protocol.

The Competent Authorities 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.

The Protocol may be altered by CEIOPS at any time. If it is altered, Competent Authorities which are not Members of CEIOPS and which wish to continue to accept it, will need to adhere to the amended Protocol on an individual basis.

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

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 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.

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. Notification

2.2.1. General

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).

2.2.2. Mutual Recognition

Even if there is no specific mutual recognition clause in the IMD (as it was in Directive 77/92/EEC), the General system serves as "lex specialis" under the conditions and circumstances as described below:

Natural persons fully qualified as insurance intermediaries in a EU Member State wishing to take up the same profession in another EU Member State on the basis of permanent establishment, without keeping their original licence, should also be able to benefit from Title III, Chapter I of Directive 2005/36/EC as the situation is not covered by the IMD. (*Remark: Title III, Chapter I of Directive 2005/36/EC lays down the general system for the recognition of evidence of training*).

2.2.3. Definition of "Freedom of Services"

The Competent Authorities approve the following definition of freedom to provide services⁶:

An IIM is operating under FOS if it intends to supply a policyholder, who is established in a Member State different from the one where the IIM is established, with an insurance contract relating to a risk situated in a MS different from the MS where the IIM is established.

The IIM should notify its intention to operate under freedom of services in the sole MS where the policyholder is established or has his residence, also in the case the policyholder acts on behalf of different insured and/ or risks established or situated in one or more other MS.

If the IIM already notified its intention to operate under FOS in a MS other than the one where the IIM has its residence, this notification procedure is considered as the legal proof of its intention to write business under FOS with residents of that MS.

If the IIM did not notify its intention to operate under FOS in an other MS, an intermediary shall nevertheless be considered as having the intention to write business under FOS with residents of that MS, when it is marketing, providing insurance mediation services or when it is actively seeking business from a client/consumer resident or established in that MS.

Non exhaustive lists of examples:

- *The IIM asks for and organises, on its own initiative meetings with clients established in another country.*
- *Re advertisement: the IIM gives/sends information on specific products, conditions etc to selected groups of clients established in a given country / in specific languages of some EU MS etc. Here the advertisement has an active character, the intention of the intermediary to contact clients in another country is clear.*
- *Re electronic distance or distance marketing activities: If the content of the website of the IIM is general and only in the language of the MS of the intermediary, if it is not addressed to a specific group of clients or clients in specific countries, then the IIM cannot be considered as actively seeking for these clients and therefore cannot be considered as*

⁶ This definition was approved by CEIOPS Members Meeting as being the most workable definition in line with the objectives of the IMD regarding the intention of the intermediary, the creation of the Single Market and consumer protection. It is the outcome of CEIOPS IMEG survey on this issue: http://www.ceiops.eu/media/docman/public_files/publications/submissionstotheec/CEIOPS-DOC-15-07%20-%20Proposals%20Definition%20FOS%20under%20IMD.pdf

having the intention to do FOS in the countries where those clients are established. If the IIM is contacted by those clients it will not be considered as doing FOS in the countries of these clients.

2.2.4. 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 State⁷

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 undertaking⁸, 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

⁷ 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.

⁸ Defined as such in the Insurance Mediation Directive, Recital (10).

2.2.5. 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 State⁹

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 informs the Competent Authority of the home Member State, where this authority is known, and

⁹ 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.

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

4.1. Complaints handling systems in Member States

In the context of the development of the single market of insurance intermediaries, it is important that all complaints from policyholders¹⁰ are dealt with by the relevant complaints handling body, irrespective of whether the complaint involves policyholders, insurers and intermediaries in different Member States.

The manner in which complaints handling is organised within a jurisdiction is a matter for each jurisdiction and therefore not subject to this Protocol. There are a wide variety of complaints handling systems in Member States. In some Member States, complaints are dealt with by Competent Authorities, whilst others have developed Ombudsman services or other systems, or have a combination of both. The ways in which these systems operate vary considerably across the Member States.

Where complaints have a cross-border component, it is important for individual policyholders and for consumer confidence generally, that the differences in complaints handling systems do not prevent or deter complaints from being directed to the relevant bodies and subsequently dealt with.

The procedures outlined in this Protocol are intended to facilitate the process of identifying the relevant complaints handling body and ensure that complaints filed with a Competent Authority are addressed and arrive at the body that is competent to deal with the complaint.

It is recognised that the Commission has set up a network (FIN-NET)¹¹ to facilitate the out-of-court resolution of consumer complaints where the service provider is established in a Member State other than the Member State where the consumer is domiciled. Nothing in this Protocol is intended to interfere with this agreement or the process developed under FIN-NET.

4.2. Complaints handling procedures

It is important that a complaint is assessed by the Competent Authority which initially receives it, to establish which body is competent to deal with the complaint. Where possible, the Competent Authority shall keep the complainant informed about further handling of the complaint.

In cases where the Competent Authority that receives the complaint is competent to deal with the complaint, it shall inform the complainant, as soon as possible, of applicable national procedures.

¹⁰ The term 'policyholder' shall be understood in a broad sense, including all persons that file an insurance-related complaint.

¹¹ <http://ec.europa.eu/fin-net>

In cases where the Competent Authority that receives the complaint is not competent to deal with the complaint, but another body in the same jurisdiction is, the Competent Authority shall, as soon as possible:

- if legally possible, pass the complaint directly to the body competent to deal with the complaint and inform the complainant of the referral;
- if legally not possible, provide the complainant with any relevant information about the body competent to deal with the complaint, to facilitate the referral of the complaint by the complainant.

In cases where the Competent Authority that receives the complaint is not competent to deal with the complaint, but a Competent Authority or a competent body in another jurisdiction is, the Competent Authority that receives the complaint shall, as soon as possible:

- if legally possible, pass the complaint directly to the Competent Authority or competent body in the other jurisdiction and inform the complainant of the referral;
- if legally not possible, provide the complainant with any relevant information about the Competent Authority or competent body in the other jurisdiction, in order to facilitate the referral of the complaint by the complainant;
- inform, if legally possible, the Competent Authority of the other jurisdiction of the complaint.

If a complaint contains issues relevant to the supervision of an Insurance or Reinsurance Intermediary, the Competent Authority that deals with the complaint shall, as soon as possible, and if legally possible, provide the Competent Authority of the Home State with relevant information on the complaint.

In the cases that the Competent Authority that initially receives the complaint is not competent, it shall explain to the complainant why it considers itself not to be competent to deal with the complaint, and why it considers the other Competent Authority or body to be competent.

4.3. Dispute over responsibilities

A complaint shall not be passed to another Competent Authority or competent body, if the Competent Authority or competent body has already declined responsibility for dealing with the complaint.

Where differences of opinion exist as to who assumes responsibility for the complaint, every best endeavour shall be made to resolve the issue in good faith within four weeks from the date on which the complaint was initially received from the complainant.

If the question of responsibility cannot be settled, the Competent Authority which initially received the complaint from the complainant, may refer the matter to the CEIOPS Mediation Mechanism¹².

4.4. Information to the public

The Competent Authorities shall provide the following information¹³ about their national system, including updates, as necessary:

- Authorities/bodies competent to deal with policyholder complaints (indicating, in particular, whether it is an ombudsman or a supervisory service);
- Contact information for the Competent Authority/body competent to deal with policyholder complaints (name, postal address, phone number, fax number, any e-mail address, any website address);
- Organisation for the Competent Authority/body competent to deal with policyholder complaints (e.g. whether it is a statutory/voluntary system, free/with charges payable by the complainant);
- Coverage for the Competent Authority/body competent to deal with policyholder complaints (e.g. insurers/intermediaries covered, insurance products covered);
- Competence for the Competent Authority/body competent to deal with policyholder complaints (e.g. out of court settlement/system that does not issue decisions; information on whether the decision is binding or not);
- Preconditions of the Competent Authority/body competent to deal with policyholder complaints (e.g. necessity to address the Undertaking in the first place);
- Restrictions of the Competent Authority/body competent to deal with policyholder complaints (e.g. any limit on the amount awarded, time limits in bringing the complaint to the Competent Authority, restrictions on the type of complainant - professional/non professional, consumer associations/other third parties);
- Indication of the typical time for handling complaints/transfer of the complaint to the Competent Authority/body competent to deal with policyholder complaints.

The Competent Authorities will make the aforementioned information available through their public website.¹⁴ The Public Area of the CEIOPS website shall provide links to the relevant national websites.

12 CEIOPS-DOC-14/07 Protocol on Mediation Mechanism between Insurance and Pensions Supervisors (October 2007)

13 Paragraph VII.4.1 does not impose a requirement on the Competent Authority to provide the information in a particular format.

14 A Competent Authority may make the information in paragraph VII.4.1 available by way of a link on their website to the relevant information.