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## Insurance Mediation Directive Luxembourg Transposition – Action Required

### The European Directive

The European Directive 2002/92/EC on insurance mediation is aimed at harmonising the mediation of insurance products within the European Union.

More concretely, the purpose of the Directive is:

- to enable insurance intermediaries to avail of the freedom of establishment and the freedom to provide services in Member States of the EU.
- to reduce barriers to cross-border insurance mediation.
- to improve customer protection.
- to ensure equality of treatment between the various persons and institutions distributing insurance products.

### The Transposition into Luxembourg Law

The Directive must be transposed into the law of each Member State of the European Union by January 15, 2005. For Luxembourg, draft law no. 5409 of November 29, 2004, which modifies the law of December 6, 1991, represents the local transposition of the Directive.

The draft law introduces the following changes to the previous law:

- a concept of financial “solidarity” of the insurance company towards the intermediary has been introduced in order to protect policyholders.
- a new category of intermediary has been introduced, namely a “sous-courtier” or “under-broker”.
- all approved insurance intermediaries will be registered; the register will be accessible to the public via the internet.
- the role of the Commissariat aux Assurances has been enhanced so as to receive and deal with the complaints lodged by insurance policyholders concerning insurance intermediaries or insurance companies.

All necessary information relating to the status of each intermediary must be disclosed to its clients. In addition, the “courtier” must analyse a sufficient number of contracts and justify the advice given on each insurance product in respect of the client’s needs.

The draft law distinguishes three types of insurance intermediaries: the agent, the “courtier” and the “sous-courtier”.

An agent is either a natural or legal person who carries on the activity of insurance mediation for and on behalf of one insurance company or more, if the products of the companies are not in competition. The agent acts under the entire responsibility of the insurance company. This also applies in the event where the insurance mediation is only complementary to the principal profession of the agent or to the services and products offered by the agent.

The agent may collect premiums and amounts intended for the customer. This is not foreseen by the Directive and the Luxembourg “agent” status is, therefore, more flexible. This may present some advantages for Luxembourg-based agents, however, insurance companies become responsible for these agents and should modify procedures accordingly to ensure compliance.

The second type of insurance intermediary mentioned in the modified law of 6 December 1991 is the “courtier” or broker. The broker can be a natural person, managing an insurance brokerage company or being established as a broker in his own name, or a legal person serving as an intermediary between insurance policyholders and insurance companies. The broker may not be tied to one or several insurance companies.

The newly introduced third type of insurance intermediary, the “sous-courtier” or under-broker, is a natural person who works under the responsibility of a broker and acts as an intermediary between the insurance policyholders represented by the broker and the insurance companies. The under-broker is basically a client account manager for the broker and comparable to the agent in terms of required knowledge and activities.

Contrary to an agent or broker, the under-broker cannot exercise his profession in another Member State as he cannot act in his own name. He may, however, work in another Member State for the branch of the broker under whose responsibility he works if that broker is registered to offer services in the other Member State.

The European Directive stipulates that the “home Member State” of the intermediary, who is a natural person, is the Member State in which the residence of the intermediary is situated. The Luxembourg transposition specifies that residence in this context means “professional residence” and not “private residence”. This is an important clarification for the Luxembourg industry given that a considerable portion of the local workforce does not live in the Grand-Duchy.

Of the various options offered by the Directive to ensure the protection of customers against the default of the intermediary to transfer amounts, for example of premiums or claims, the Luxembourg transposition retained the following two:

- a) monies transferred to the intermediary are treated as monies paid to the insurance company and monies paid by the insurance company to the intermediary are treated as not having been paid to the customer until the latter actually receives them and;
- b) monies have to be transferred via segregated client accounts which could not be used to reimburse creditors in the case of bankruptcy of the intermediary.

The transposition into Luxembourg law does not, therefore, contain the requirement for intermediaries to have a permanent financial capacity of 4% of annual premiums received or at least EUR 15,000, which was one of the options provided by the Directive. Consequently, the options retained by the modified law ensure customer protection while limiting burdens to business.

## The situation in the other EU Member States

The following table provides a short overview of the current status of the transposition of the Insurance Mediation Directive in the main markets of the EU.

Country	Status	Date of entry into force of transposition
Belgium	A consultation paper was published by the Belgian Banking, Finance and Insurance Commission in May 2004	First quarter 2005
France	Draft law exists	Unknown
Germany	Initial discussions have started though no official draft law has been presented as yet. The final transposition will probably be made in two steps.	Summer 2005 for the first step; 2006 for the second step
Italy	A decree to implement the Directive will be issued not before May 2005	Unknown
Netherlands	Draft law published on April 3, 2004	January 1, 2005
Spain	Second draft law was published in November 2004	Early 2005
UK	Implemented	January 14, 2005

### Conclusion

Based on the current draft law, it is clear that Luxembourg offers a competitive environment to international networks of intermediaries for using the EU passport.

It is important to note that the comments of the draft law confirm that bank employees who sell insurance products qualify as insurance intermediaries. They must, therefore, pass an exam and be authorised unless related professional know-how can be proven otherwise.

The directive reinforces the responsibility of the insurer vis-à-vis the distribution of the products to their ultimate clients.

Insurers will need to review their distribution model as soon as possible and analyse the complete network regarding the applicability of the draft law. This includes the legal status and the authorisation of intermediaries, the relationship with insurers and policyholders, rights and obligations.

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