

Reinsurance

2004/0097(COD) - 16/11/2005 - Final act

PURPOSE: To provide a comprehensive legal framework of reinsurance and to amend a number of related EU Directives in order to take account of the new reinsurance legal framework.

PROPOSED ACT: Directive 2005/68/EC of the European Parliament and of the Council on reinsurance and amending Council Directives 73/239, 92/49, 98/78 and 2002/83.

CONTENT: Current EU legislation applies to direct insurance undertakings in respect of their entire business activities; both in terms of their direct insurance activities as well as reinsurance activities by way of acceptances. However, reinsurance activities conducted by specialised reinsurance undertakings are neither subject to that regime nor any other regime provided for by Community law. Hence the need for this Directive. Indeed, weaknesses in existing provisions has resulted in significant differences in the level of supervision of reinsurance undertakings in the Community, which in turn creates barriers to the pursuit of reinsurance business. The purpose of the Directive, therefore, is to establish a legal framework for the taking up and pursuit of reinsurance activities. The provisions are defined in the following structure:

- Title I: Scope and definitions

As far as the scope is concerned, the Directive lays down the rules for the taking up and the pursuit of the self-employed activity of reinsurance carried on by reinsurance undertakings, which conduct only reinsurance activities and which are established in a Member State or are looking to establish themselves within a Member State. The Directive lists the insurance undertakings, bodies and activities to which it does not apply. In addition, this Title lists a comprehensive set of terms related to reinsured.

- Title II: The taking up of the business of reinsurance and authorisation of the reinsurance undertaking

Under this Title, a number of provisions are outlined and cover, *inter alia*, the principle and scope of authorisation, the form of reinsurance undertaking, where the head office of the reinsurance undertakings should be situated, the scheme of operations, the need for prior consultation with Member State authorities and under what conditions an authorisation can be refused.

- Title III: Conditions governing the business of reinsurance.

This Title seeks to establish the principles and methods of financial supervision, professional secrecy and exchanges of information, the duties of the auditors, rules relating to technical provisions, rules relating to the solvency margin and to the guarantee fund, the required solvency margins as well as reinsurance undertakings in difficulty or in an irregular situation and the withdrawal of authorisation.

- Title IV: Provisions relating to finite reinsurance and special purpose vehicles.

This Title establishes provisions relating to both finite reinsurance and to special purpose vehicles. The remaining Titles are as follows:

- Title V: Provisions relating to the right of establishment and freedom to provide services.
- Title VI: Reinsurance undertakings whose head offices are outside the Community and conducting reinsurance activities in the Community.

- Title VII: Subsidiaries of parent undertakings governed by the laws of a third country and acquisition of holdings by such parent undertakings
- Title VIII: Other provisions. This Title deals with the right to apply to the courts, co-operation between the Member States and the Commission as well as committee procedures and implementing measures.
- Title IX: Amendments to existing Directives

As far as transposition is concerned, the Member States must bring all the laws, regulation and administrative provisions necessary to comply with this Directive into force by 10 December 2007.

ENTRY INTO FORCE: 10 December 2005.