



FSMA

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# FSMA NEWS

**Newsletter for  
intermediaries**

August 2019

In this Newsletter

**THE IMPACT OF BREXIT ON (RE)INSURANCE  
INTERMEDIARIES - THE  
REGISTRATION OBLIGATION IN BELGIUM**

In preparation for a departure of the United Kingdom from the European Union (EU) and the European Economic Area (EEA), the FSMA wishes in this Newsletter to clarify the conditions for registration of (re)insurance intermediaries in Belgium.

Brexit could result in British insurance intermediaries no longer being allowed to carry out their activities in Belgium. Such intermediaries currently hold a European passport for carrying out insurance activities in our country. They have a right to do so on the basis of the freedom to provide services and the freedom of establishment. British insurance intermediaries who fulfil all legal and regulatory requirements in the United Kingdom may also operate in the other EU Member States. That right also applies to intermediaries from countries that belong only to the EEA. Should the United Kingdom leave the latter, intermediaries risk losing that right and the associated European passport.

There is still a great lack of clarity about Brexit. Will it go through? At the moment, 31 October 2019 is the date when the United Kingdom is to leave the EU. Will that date be maintained?

The conditions under which the UK may leave are also uncertain. Will the United Kingdom opt for a hard Brexit, without a deal? In that case, British insurance intermediaries will lose the European passport that allows them to carry out activities in Belgium.

The conditions under which the UK may leave are also uncertain. Will the United Kingdom opt for a hard Brexit, without a deal? In that case, British insurance intermediaries will lose the European passport that allows them to carry out activities in Belgium.

The Belgian **Law of 3 April 2019** on the withdrawal of the United Kingdom from the European Union provides in this regard, among other things, that a Royal Decree can adopt more specific measures providing for continuity in the handling of insurance contracts currently in place that were entered into before Brexit via British insurance intermediaries active in Belgium under the freedom to provide services or the freedom of establishment.

Will the United Kingdom opt to remain a member of the EEA? If the United Kingdom remains a member of the EEA, then British insurance intermediaries can retain their European passport.

The choice that the United Kingdom will make has an impact on the activities of British insurance intermediaries in Belgium and the way in which one can work with them.

This Newsletter clarifies the scope of the registration obligation as an insurance, reinsurance or ancillary insurance intermediary in Belgium.

# REGISTRATION OBLIGATION IN BELGIUM

A (re)insurance or ancillary insurance intermediary who is **established in Belgium** may carry out the activities of (re)insurance distribution only after first being registered in the register of (re) insurance and ancillary insurance intermediaries kept by the FSMA.

A (re)insurance or ancillary insurance intermediary **established in another EEA state** may carry out the activities of (re)insurance distribution in Belgium only after first registering with its home supervisory authority and after its home authority has sent to the FSMA a notification of its intention to carry out its activities in Belgium. This is the European passport.

A (re)insurance or ancillary insurance intermediary **established outside the EEA** may carry out the activities of (re)insurance distribution in Belgium only after first being registered in the register of (re)insurance and ancillary insurance intermediaries kept by the FSMA.

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In line with European positions on the matter<sup>1</sup>, the FSMA follows the principle that (re)insurance distribution takes place in Belgium where a (re)insurance or ancillary insurance intermediary carries out:

- / Insurance (or reinsurance) distribution activities for **policyholders based in Belgium** and covering **risks located in the EEA**.
  - Where there are several policyholders on a single insurance contract, this means that insurance distribution activities are taking place in Belgium **provided one of the policyholders is based in Belgium** and the insurance refers to a risk located in the EEA.
- / Insurance (or reinsurance) distribution activities that are **de facto carried out in Belgium**, for example using a website or other type of communication that is clearly and specifically aimed at the Belgian market, whether or not in the Belgian national languages, even if the insurance intermediary is physically located outside Belgium.

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It is important to note that if (re)insurance or ancillary insurance intermediaries carry out distribution activities to cover risks located in the EEA for policyholders based in the EEA, they may only call upon the services of other (re)insurance intermediaries and (re)insurance companies that are authorized to carry out their activities in the EEA.

After Brexit and a potential transition period, such intermediaries may therefore no longer use the services of British (re)insurance intermediaries or British (re)insurance companies that are not authorised to underwrite risks in the EEA.



<sup>1</sup> In accordance with the European supervisory authority EIOPA, which states explicitly in its 'Recommendations for the insurance sector in light of the UK withdrawing from the EU' dated 19 February 2019 that the Insurance Distribution Directive continues to apply if the activities of intermediation are provided to policyholders based in the EU and if the risks are located in the EU.