



Belgian insurance intermediaries associated with a British insurance intermediary in the post-Brexit environment

Feedback statement

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1 Brexit and the end of the European passport under the IDD

After the withdrawal of the United Kingdom from the European Union (Brexit), which was followed by a transitional period until 31 December 2020, no agreement on the regulatory framework for the insurance sector was reached between the European Union and the United Kingdom.

A major consequence of Brexit for British insurance intermediaries¹ has been the loss of the European passport that is provided for in the Insurance Distribution Directive (IDD)². Since 1 January 2021, the United Kingdom is no longer considered a Member State of the European Economic Area but as a third country. British insurance intermediaries are therefore no longer authorized to carry on insurance distribution activities in Belgium if they have not obtained a prior registration/with the FSMA³.

Conversely, Belgian insurance intermediaries cannot carry out distribution activities in the United Kingdom under a European passport.

Focus: the European passport

The European passport allows Belgian insurance intermediaries to carry out their insurance distribution activities in another Member State of the European Economic Area (EEA) if they are enrolled in the register maintained by the FSMA. Prior registration in the other Member State is therefore not required. Belgian intermediaries must notify the FSMA of the other Member State in which they wish to carry out their activities.

2 A growing interest in Belgium

The FSMA has observed a growing interest in Belgium on the part of a number of British insurance intermediaries. Anticipating the effects of Brexit, they made arrangements for the groups to which they belong to be able to continue providing their services in the EEA after Brexit.

Companies governed by Belgian law were thus established or acquired by those groups. Generally, these are subsidiaries or sister companies of a British insurance intermediary. It is

¹ For this report, the concept of “insurance intermediaries” applies to both insurance intermediaries and reinsurance intermediaries. “Distribution activities” refer to the activities of insurance and reinsurance distribution.

² The IDD (Insurance Distribution Directive) is a European Directive that lays down the rules governing insurance distribution (Directive (EU) 2016/97 of 20 January 2016 on insurance distribution).

³ Register of insurance intermediaries and of ancillary insurance intermediaries.

the Belgian company which then submits the request for registration with the FSMA. They have expressed a particular interest in the registration category of “mandated underwriter”⁴.

The FSMA has also noticed that these Belgian insurance intermediaries wished to have a branch in the United Kingdom, given the presence in London of specialized insurance markets (such as aviation, marine, etc.). Since Brexit, such a branch can no longer carry out insurance distribution activities in the United Kingdom under the European passport regime.

Only the Belgian insurance intermediary, and it alone, is authorised to perform insurance distribution activities in Belgium and, where applicable, throughout the European Union on the basis of its registration with the FSMA. The effects of that registration cannot be transferred to the British intermediary, even if it is the parent company or part of the same group as the registered Belgian intermediary in question.

3 Prohibition against using the services of unregistered intermediaries

Article 259, § 2 of the Law of 4 April 2014 on insurance (hereinafter: “the Law of 4 April 2014”) provides that distributors of insurance or reinsurance products that are established in Belgium or that carry out their activities here without being established here may not, pursuant to Article 259, § 1, use the services of an insurance, reinsurance, or ancillary insurance intermediary that is not registered or whose registration has been suspended. This provision transposes into Belgian law Article 16 of the IDD.

On 19 February 2019, EIOPA⁵ published a set of Recommendations for the Insurance Sector in Light of the United Kingdom Withdrawing from the European Union. Recommendation 9 states that “competent authorities should ensure that intermediaries which are legal persons and are established and registered in the Union demonstrate an appropriate level of corporate substance, proportionate to the nature, scale and complexity of their business.” These intermediaries should not display the characteristics of an empty shell.

Belgian intermediaries are not authorized to use, for purposes of their insurance distribution activities, the services of a British insurance intermediary that is not registered in accordance with the applicable Belgian legislation, even if that intermediary is the parent company or belongs to the same group.

A company governed by Belgian law that was established by (or is linked to) a British insurance intermediary and that was registered as a Belgian insurance intermediary in the

⁴ This relatively new category of insurance intermediary was introduced into the Belgian regulatory framework in 2019, inspired among other things by the existence of this type of activity on the British market.

⁵ European Insurance and Occupational Pensions Authority.

FSMA's register with view to Brexit, is directly concerned by Article 259, § 2, and Article 16 of the IDD, given their close ties with the British intermediary to which it is linked. When a Belgian company was registered with the FSMA, the latter drew its attention expressly to the consequences of Brexit and to the implications of Recommendation 9.

4 Compliance with European and Belgian legislation and regulations

The FSMA has identified the Belgian insurance intermediaries that are associated with or linked to a British insurance intermediary. The FSMA sought to fulfil the objectives of Article 16 of the IDD and Recommendation 9 by drawing up a risk model based on a limited sample of these Belgian insurance intermediaries. The FSMA identified the main risks (in particular, those of a shell company and of using the services of a British intermediary that has not been registered in compliance with the applicable Belgian legislation) by drawing on the information contained in the registration files and on public information⁶.

Next, the FSMA identified six intermediaries to whom it sent a questionnaire in April 2022. The questionnaire had a threefold objective:

- to verify the capacity of the intermediaries in question to reply to correspondence from the FSMA, in particular if they are sent to their head office in Belgium. Should an intermediary not be able to receive a registered letter, this could be an indication of the absence of any substantial presence in Belgium;
- to verify the nature of the relationship between the Belgian intermediary and their public-facing staff (known as PCPs). There is a risk that if a Belgian company is a shell company without any staff, it may use the services, for its distribution activities under the IDD, of staff who are acting in the name of and on behalf of the British intermediary, which is by definition not registered in Belgium. This would be an infringement of the prohibition referred to above;
- to verify the theoretical knowledge of the public-facing staff. There is a risk that the group has not taken any steps other than creating the Belgian company and registering it with the FSMA as an insurance intermediary, and that the staff who are directly involved in distributing insurance products do not have the necessary knowledge.

The questionnaire also enabled the FSMA to ensure that the intermediaries surveyed are in compliance with the applicable Belgian legal framework.

⁶ For example, the FSMA consulted the companies' published annual accounts.

5 Observations following the verification and points requiring attention

The responses we received indicate that:

- all the intermediaries that received the questionnaire **responded** and were able to answer the FSMA's questions;
- The **PCPs already have the requisite theoretical knowledge** or are PCPs in training, in which case they must acquire the theoretical knowledge within the year following their first designation as PCPs in training;
- all the intermediaries that received the questionnaire make use of **secondment contracts**. This type of contract, originating under British law, provides for the Belgian intermediary to take on internally staff from the British intermediary ("secondees").

The use of a secondment-type structure would comply with the regulatory framework supervised by the FSMA only if there is a **clear separation of the activities** carried out by each intermediary active within the group, and if the following **conditions** are met:

- the secondment contract must be considered as equivalent to a relationship between an employee and his or her employer, in so far as it means that the Belgian insurance intermediary exercises significant oversight, supervision and monitoring of the work of the secondees. If this is not the case, the insurance distribution activities cannot be considered as being carried out by the Belgian intermediary;
- the insurance distribution activities performed by the secondees are carried out in the name and on behalf of the Belgian intermediary and under its full responsibility;
- the British intermediary with which the Belgian intermediary is associated or linked is neither responsible for nor involved in the insurance distribution activities of the secondees.

If these conditions are not met, the FSMA may, in particular:

- determine, vis-à-vis the Belgian intermediary, that it is using the services of an entity not registered for insurance distribution, and may take measures which could ultimately lead to the intermediary's removal from the register;
- proceed, vis-à-vis the senior management of the Belgian intermediary, to reassess their professional fitness and propriety;
- to publish, vis-à-vis the British intermediary, a warning by name and forward the findings to the prosecutor's office with a view to imposing penal sanctions.

Given the time lapsed since the end of the transition period for Brexit, the FSMA will be particularly attentive to ensuring that those Belgian insurance intermediaries that are associated with British insurance intermediaries have by now developed an appropriate

level of corporate substance, proportionate to the nature, scale and complexity of their insurance activities in the EEA.

To this end, the FSMA may, for example, exercise its power to conduct inspections at the registered office of Belgian insurance intermediaries.

6 Development of the regulatory framework

As a supervisory authority, the FSMA is required to see to it that the rules governing insurance distribution within a European context are complied with.

A uniform application of European legislation and regulations is thus of primordial importance.

The regulatory framework may develop further in the near or more distant future, not only through new legislative initiatives⁷ but also by the interpretations given by the FSMA or by the European institutions⁸.

Such developments are likely to have an impact on the organization of these intermediaries and their business model or that of the intermediaries with whom they collaborate.

Where new positions are adopted or new interpretations are handed down by European authorities, and provided the regulatory framework allows it to do so, the FSMA will grant a reasonable period of time in which to address the repercussions of these developments for the organization of the intermediaries concerned. The FSMA will, in so doing, take into account the effects of these developments and the scale of the organizational adaptations they may require.

⁷ In particular, the positions adopted toward activities relating (in one way or another) to insurance distribution in the EU carried out from a third country (or by a third party with which the intermediary registered by a Member State works, or by even by the intermediary via an establishment outside the EU).

⁸ The European Commission or EIOPA, for example.