



## Regulatory Newsflash

### FSMA consults on IDD transposition of rules of conduct and information requirements

On 31 March the Financial Services and Markets Authority (FSMA) issued a consultation on the transposition of chapters V and VI of the [Insurance Distribution Directive](#) (IDD) into Belgian law. Underlying the consultation is [a preliminary draft act](#) (hereafter: the Draft Act) and a [related explanatory memorandum](#). Please note that this Draft Act does not apply to second pillar insurance products; the transposition of IDD for these products will occur through a separate legislation which is currently being drafted.

Comments to the consultation are welcomed on the website of the FSMA ([link](#)) until 2 May 2017.

## Introduction

The Draft Act only transposes two chapters of IDD and is limited to the rules of conduct and information requirements. In Belgium these areas are already regulated under the AssurMiFID regime which on some points provides a higher level of investor protection than IDD.

With the Draft Act the Belgian legislator aims to:

- 1) **maintain the high level of investor protection** as included in the existing regulatory regime, supported by the minimal harmonization character of IDD.
- 2) create a **level playing field** between the banking and the insurance sector, meaning that to the extent possible, both will be subject to very similar rules of conduct and information requirements.
- 3) not goldplate the IDD requirements, except where necessary to either maintain a high level of investor protection or preserve the level playing field.
- 4) **deviate as little as possible from IDD**, improving consistency in the interpretation of Belgian rules and European (implementing) measures.
- 5) ensure that the new regulatory regime provides a **clear and simplified framework** for the insurance sector.

To this end, **rules of conduct and information requirements** applicable to the insurance sector will be **consolidated in the Draft Act**, which is set

to be incorporated in the [Act of 4 April 2014](#) (hereafter: Insurance Act). Currently, these requirements are scattered across the Insurance Act, the [Act of 2 August 2002](#) and several Royal Decrees. The entry into force of the Draft Act would be accompanied by legislation repealing all concurrent provisions in other texts, eliminating any confusion.

Below we provide a brief overview of some of the key elements of the Draft Act, taking into account the above point of view.

## “Maintien l’acquis”

Taking into account the objective to ensure a coherent regulatory framework and a level playing field between all different actors in the financial sector, the Belgian legislator has opted to enlarge the scope of a number of rules of conduct to all insurance products (and not only to insurance based investment products – IBIPs – as in the case in IDD). We want to emphasise, however, that this was under AssurMiFID already the case. Also a number of existing AssurMiFID requirements have been included in the Draft Act.

### a) Inducements

The Draft Act confirms the position of the Belgian regulator to impose the stricter MiFID framework also for inducements related to insurance distribution. In the explanatory memorandum reference is even made to MiFID II. In other words, inducements are only acceptable if they fulfil the condition of **enhanced quality of the provided service** (positive condition), whereas IDD only requires the inducement having “no detrimental impact” on the quality of the provided service (negative condition). In addition, the inducements rules are **applicable to all insurance products** (and not only IBIPs).

### b) Other rules of conduct

Also the IDD rules of conduct related to conflicts of interest, information requirements, reporting, client file, record keeping etc. have been transposed both in terms of requirements as in scope (applicable to all insurance products and not only IBIPs) in line with the existing rules as already applicable under AssurMiFID.

## Newly introduced

### a) Client classification

The Draft Act introduces, in line with the decision of the Constitutional Court of June 2016<sup>1</sup>, a **distinction between professional and non-professional clients** (based on the MiFID II definition of “per se” professional clients). Although professional clients may ask to be treated as non-professional clients the other way around (opt-in) is not foreseen. The Draft Act requires for professional clients, in line with IDD, fewer information requirements (e.g. no information needs to be provided on inducements, cost & charges, suitability statement, etc.).

### b) Independent advice

The Draft Act foresees that all brokers declaring to provide “advice on the basis of a fair and personal analysis” equally need to comply with the condition of independent advice. This implies amongst other that they need to assess a sufficiently large number of sufficiently diversified products. By structurally combining both conditions, the legislator tries to assure that services provided by brokers are in line with the client’s expectations of being served by an independent and impartial party.

### c) Other

The Draft Act equally includes an **execution-only** regime for non-complex insurance products (in line with the AssurMiFID decision of the Constitutional Court of June 2016<sup>1</sup>), provides the possibility to introduce additional supervisory measures and makes the conclusion of written agreements mandatory.

<sup>1</sup> Decision of the Constitutional Court of 9 June 2016, Role number 6078, Arrest nr. 89/2016

# No goldplating

In the view of maintaining a level playing field, a number of options provided for in the Insurance Distribution Directive have not been exercised. The Belgian legislator did not make the provision of advice mandatory, nor was a ban on inducements introduced in relation to distribution in general, or more particularly in relation to the provision of advice.

## Contact

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