



Regulatory Newsflash

FSMA consults again on the IDD transposition – this time on “Status - Conditions for access to the profession”

On 5 July 2017, the Financials Services and Markets authority (FSMA) issued a consultation ([NL/FR](#)) on the transposition of chapters I to IV 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. Important to note is that the Draft Act allows to further define, by Royal Decree, the knowledge requirements that (re)insurance intermediaries, their employees and employees of (re)insurance undertakings will have to comply with.

Comments to the consultation are welcomed on the website of the FSMA until 31 August 2017 ([NL/FR](#)).

Introduction

The [Draft Act](#) transposes the four first chapters of the IDD (chapters V and VI were already part of another consultation published on March 31, 2017, for more details we refer to our [previous newsflash](#)) related to the status of intermediaries (conditions of registration, European passport, etc.), freedom to provide services, professional and organizational requirements imposed on insurance and reinsurance undertakings, etc.

With the Draft Act the Belgian legislator again aims to:

- **Not goldplate** the IDD requirements, except where deemed necessary (investor protection or level playing field)
- **Deviate as little as possible from the IDD**
- Create a **clear and simplified framework** for the insurance sector
- **Harmonize** as much as possible the status of insurance intermediaries with that of intermediaries in credit and in banking and investment services
- **Maintain the high level of investor protection** as included in the existing regulatory regime

Purpose is that these requirements will be incorporated in the Act of the 4 April 2014 (hereafter the "[Insurance Act](#)").

Below we provide a high level overview of some of the key elements introduced by the Draft Act. For a full overview we refer to the [Explanatory Memorandum](#) or the FSMA summary ([NL/FR](#)).

Key elements introduced by the Draft Act

Risks outside the EU territory

The Belgian regulator has decided (again) not to transpose the restriction of scope provided for in the IDD i.e. that the Directive shall not apply to insurance and reinsurance distribution activities in relation to risks and commitments located outside the Union (art 1, §6 of the IDD). The reasoning behind this position is that the regulator considers that customers deserve the same level of protection when insuring their risks situated abroad, than when insuring risks situated in Belgium. This position was already taken by the Belgian regulator in the transposition of IMD¹.

Registration procedure

The most important change in the Draft Act in this respect entails that an insurance intermediary, at the time of his application for registration, will no longer have to indicate the insurance branches he will be active in, but rather the groups of insurance risks. The latter is consistent with Annex I of the IDD. The FSMA, however, intends to ask intermediaries on an annual basis in which insurance branches they are active in.

The current provision which provides the possibility for candidates to submit their application for registration collectively, is no longer maintained in the draft transposition text. For those intermediaries that currently hold a collective registration, a transitional phase of around 24 months is being considered.

Professional and organisational requirements

The Draft Act stipulates, in line with the IDD, that all persons involved in insurance and reinsurance distribution activities need to be able to demonstrate the appropriate knowledge and ability for the performance of their duties (this equally goes for employees of intermediaries or (re)insurance undertakings). To ensure compliance with these requirements, (re)insurance undertakings will need to take the necessary organisational measures (internal policies and procedures, dedicated function, keep up to date records, etc.).

The Draft Act sets out additional registration requirements for an intermediary that takes the form of a legal person. The persons responsible for effective management, who have de facto responsibility for the insurance or reinsurance distribution activity, must have the required professional knowledge.

Continuous professional development

The IDD establishes in Annex I the relevant minimum knowledge and competence requirements that (re)insurance intermediaries need to comply with. Whereas IMD I was all about the compliance with the professional requirements, the IDD is much more focused on keeping the knowledge and competences up to date through continuous professional education and training (at least 15h of training per intermediary per year). As this is all very different from the existing regime in Belgium, the Belgian legislator decided to not yet include a proposition in this consultation paper, but amend these professional requirements consistently among all types of intermediaries in Belgium (credit, banking, insurance, etc.).

¹ Directive 2002/92/EC of 9 December 2002 on insurance mediation

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