

Conduct of business rules in the Belgian insurance sector

From AssurMiFID to the Insurance Distribution Directive

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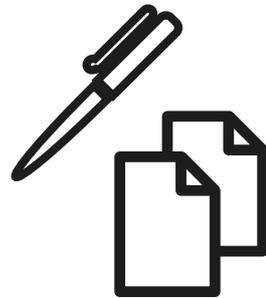
The Belgian insurance sector has been subject to the MiFID I¹ conduct of business rules since 1 May 2015.

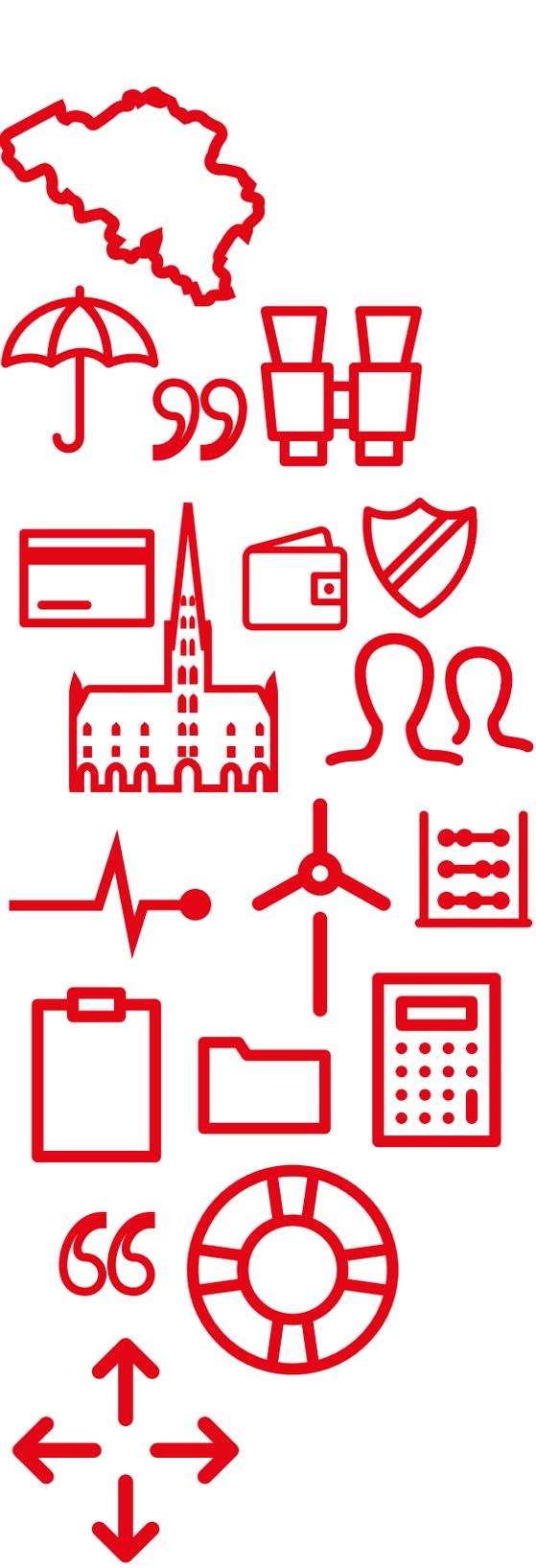
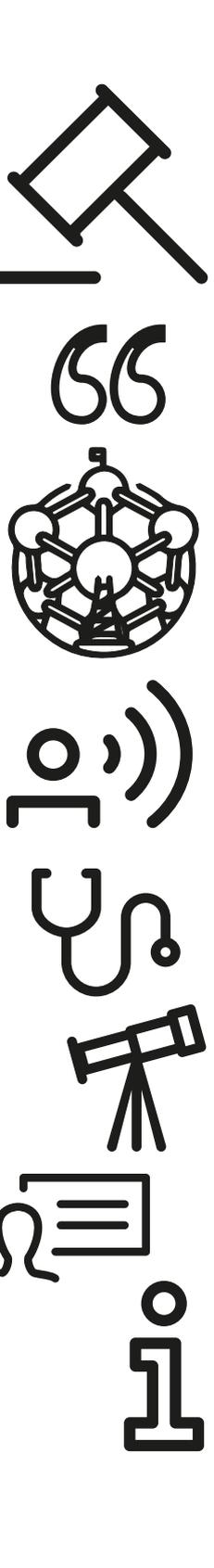
This roll-out of MiFID to the insurance sector, commonly known as AssurMiFID, was one of the objectives of the Twin Peaks II Law of 30 July 2013, by which the Belgian legislator wanted to create a level playing field for the selling practices of all investment products and for consumer protection rules. As such, the Law of 2013 and its implementing Royal Decrees (see text box), expand the scope of the MiFID I conduct of business requirements to insurance companies (including their tied agents) and insurance intermediaries acting in Belgium.

It was clear from the start that the impact of this legislation on the strategy, products and operations of insurance companies and intermediaries would be very high (see further). The impact in practice was increased by the very challenging timeline through which the new regulatory framework was imposed on the insurance sector (i.e. implementation of the new framework by 30 April 2014, merely a couple of months following the publication of the Royal Decrees). This also led to a decision² of the Constitutional Court delaying the entry into force with one year (to 1 May 2015). ➔

¹ Directive 2004/39/EC of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC and repealing Council Directive 93/22/EEC

² Decision of the Constitutional Court of 11 June 2015, Role number 5871, Arrest nr. 86/2015





The AssurMiFID regulatory framework:

- The Twin Peaks II law (TP II), dated 30 July 2013
- Part IV of the Insurance Law of 2014
- The three implementing Royal Decrees, dated 21 February 2014
- The Circular Letter of the Financial Services and Markets Authority (FSMA), dated 16th of April 2014, and revised in September 2015, to include additional guidelines with regard to record keeping requirements.

Following an appeal of a sector association against the AssurMiFID regulation, the Constitutional Court delayed the entry into force with one year to 1 May 2015.

On the date of this article, we are awaiting the finalisation of the regulatory framework, as certain aspects, included in AssurMiFID, relating to reporting and cost and charges transparency, still have to be implemented further. For these areas, the legislator aims to align with other European regulatory initiatives like PRIIPs.

AssurMiFID rules of conduct are based on MiFID I

Scope

All insurance companies (including their tied agents) and independent insurance intermediaries, i.e. brokers and non-tied agents acting in Belgium, need to comply with the AssurMiFID rules. Insurance companies are fully and unconditionally responsible for their "tied" agents, as is also the case for insurance agents and insurance brokers working with sub agents.

Application of the rules

The extent to which the different rules of conduct apply, depends only on the type of insurance products and services offered:

Products



The MiFID suitability and appropriateness regime only applies to life savings and investments contracts. Some partial exemptions exist e.g. for large risks. Pillar 2 (occupational) pension plans are not in scope of AssurMiFID.

Services



The duty to care obligations differ depending on the nature of the service i.e. whether advice is being provided to the client or not. The execution only regime, included in MiFID, can however not be applied under AssurMiFID.

Intermediaries



No derogations from or tailoring of the rules for (specific types of) insurance intermediaries are foreseen. Some proportionality principles are however taken into account by the regulator in relation to the practical application of the rules.

Clients



Unlike MiFID, AssurMiFID does not make a difference between retail clients/professional clients or eligible counterparties. All requirements apply to all clients in the same way.

	General loyalty duty	Inducements & conflicts of interest	Assessment of client's needs	Suitability & appropriateness	Inform Your Customer	Reporting obligations	Record-keeping (incl. client file)
Life insurance contracts, savings and investments							
Life insurance contracts, 2 nd pillar							
Life insurance contracts, other							
Non life insurance contracts, small risks							
Non life insurance contracts, large risks							

Fully applicable
 Partially applicable
 Not applicable

Conduct of business rules

The MiFID I rules on inducements and conflicts of interest have been copied into AssurMiFID and apply to all types of insurance contracts and insurance distribution services. As such, the conditions for inducements paid by or to a third party other than the client, include the application of the enhancement test and transparency towards clients. Inducements are only allowed if they enhance the quality of the service to the client and the client must receive upfront full disclosure of the inducements paid or received (i.e. type, circumstances, calculation methodology and, if known, the amount).

The conflicts of interest rules require insurance companies and intermediaries to identify all potential conflicts of interests, and put in place adequate mitigating measures to prevent and/or manage these

conflicts. Clients have to be informed upfront of the nature and the sources of conflicts of interest and the mitigating measures taken. A register of conflicts of interest has to be kept (usually by the compliance officer).

The AssurMiFID suitability and appropriateness requirements are based on the MiFID I requirements, but tailored to the insurance context. These requirements come on top of the existing obligation – arising from IMD³ - to assess the needs of clients. As already mentioned, the MiFID execution only regime has not been copied into AssurMiFID. The suitability and appropriateness rules only apply to life savings and investments contracts, including 3rd pillar pension products (life insurance contracts that under Belgian law are recognized as having a primary purpose of providing for an income at retirement). ➔

It was clear from the start that the impact of this legislation on the strategy, products and operations of insurance companies and intermediaries would be very high.

The MiFID I information and reporting requirements have also been tailored to the insurance sector. The information requirements are largely the same for all types of insurance contracts, with some exemptions for insurance contracts related to large risks. Further regulatory guidance is expected in relation to information on costs and charges. For life savings and investment contracts, reference will most likely be made to the PRIIPs regulation, whereas for insurance contracts other than life savings and investment contracts, a proposal is being discussed that aims to align the level of transparency with the rules that currently apply to mandatory mobility insurance contracts.

With reference to reporting requirements, the FSMA announced that in the course of 2016 a regulation, detailing the reporting requirements, would be finalised. Finally, under AssurMiFID, insurance companies and intermediaries are also required to maintain a client file. This client file must include all documents that contain the rights and obligations of both parties, such as the contract, and the terms and conditions under which services will be provided to the client as well as all other information provided to the client.

AssurMiFID impacts on the Belgian insurance sector

Given the relatively recent date of the regulatory framework, Belgian insurance companies and intermediaries are still learning from the day to day practical application of AssurMiFID and are fine tuning processes, procedures and controls. This exercise will certainly continue until the regulatory framework has been fully stabilized (i.e. the sector is awaiting further guidance and regulation, as well as possible changes might arise due to decisions in relation to appeals filed with the Constitutional Court⁴). Further clarification on concepts and obligations is also expected from a feedback report that the FSMA will publish in the near future on the recent awareness reviews that it has performed.

The conflicts of interest and inducement requirements have significantly impacted the remuneration flows and hence, the business model, of insurance companies and (non-tied) intermediaries. Together with other drivers like margin pressure, digitalisation and other challenges, insurance companies are fundamentally rethinking their way of doing business. The Belgian insurance distribution landscape has also changed. The number of intermediaries has substantially decreased in the Belgian market (over the last 2 years, minus 10% per year). Without any doubt, AssurMiFID has contributed to this decrease.

The conflicts of interest and inducement requirements have significantly impacted the remuneration flows.

Another tough nut to crack was finding the right solution to fulfil the record keeping requirements. This solution obviously depends on the existing operating model, but a lot of organisations were still operating in a highly paper driven way, with often decentralized archiving. Not all organizations already had a sophisticated scanning and archiving solution in place, linked to a central CRM system.

Comparison with IDD

AssurMiFID – a forerunner of IDD?

The Belgian legislator had every intention of moving ahead of the European legislation, when introducing AssurMiFID. AssurMiFID entered into force, with a one year delay, on 1 May 2015, whereas the Insurance Distribution Directive (IDD⁵) was only adopted on 20 January 2016 with implementation date 23 February 2018. ➔

4 (1) The pending regulations relating to reporting and cost and charges have not yet been published. The FSMA is also reviewing the insurance distribution landscape (definition of intermediaries, possible collaborations between intermediaries, etc.). (2) A recent decision of the Constitutional Court (of 9 June 2016, Role number 6078, Arrest nr. 89/2016) concluded that the difference in approach between AssurMiFID and MiFID I in the field of client categorisation and execution only are not in favour of the aimed level playing field

5 Directive (EU) 2016/97 of 20 January 2016 on insurance distribution (recast)

In the table we recap the most important differences between the AssurMiFID framework and IDD:

Applicability	All insurance products	Only life savings and investment products	Non-life insurance products	Insurance-based investment products	Comment
Needs analysis	 				<p>(+) Provide client with a personalised recommendation</p>
Suitability and appropriateness regime					<p>No execution only - always appropriateness test</p> <p>(+) Execution-only regime foreseen including definition of "non-complex" products</p> <p>(+) Suitability statement on advice given</p>
Conflicts of interest					<p>Full MiFID I regime for all insurance products</p> <p>(-) MiFID I regime only for insurance-based investment products</p>
Inducements	 				<p>Strict regime from MiFID I applicable with enhancement test and full pre-contractual transparency</p> <p>(-) General transparency (nature) - No amount/calculation method</p> <p>(-) Lighter regime (detrimental impact) - No enhancement test</p>
Information to clients					<p>Detailed guidance will be tailored</p> <p>(+) Product Information Document</p> <p>(+) Whether a periodic suitability assessment is provided</p> <p>(+) All costs and associated charges</p> <p>(+) Guidance on and warnings of the risks</p>

 AssurMiFID

 IDD

The insurance sector will need to comply with the enhanced product oversight and governance requirements

When comparing the AssurMiFID regulations – and as such the MiFID I rules - with the IDD, it appears that some IDD rules are less strict. Mostly in the field of conflicts of interest and inducements, the

final IDD text seems to be softened when compared to the MiFID I/AssurMiFID regulatory framework.

The MiFID I specific conflicts of interest regime under IDD only applies in relation to insurance based investment products whereas the Belgian legislator has made it applicable also for non-life insurance products⁶.

With respect to inducements, the pre-contractual transparency requirements applicable to all products are limited to a general disclosure of the nature of the remuneration (no amount – no calculation methodology).

The additional inducement criteria only apply to insurance based investment products. An important difference is also that the enhancement test under IDD has been transformed into a lighter enhancement check, i.e. verify that the inducement does not have a detrimental impact on the quality of the service. It remains to be seen how this verification will be further defined in the final Level 2 rules to come.

Required catch up

Given the AssurMiFID existing regulatory framework, the impact of IDD on the Belgian market will most likely be more limited than in some other Member States; nevertheless with IDD, a number of important additional requirements will become applicable. The insurance sector will need to comply with the enhanced product oversight and governance requirements (e.g. the identified target market) and produce a “Product

Information Document” for non-life insurance contracts, in order to provide clients with relevant information about the insurance product (to be compared with the KID for PRIIPs).

Also several new requirements, inspired by MiFID II, have been introduced in IDD applying to insurance based investment products. Insurance companies or intermediaries will need to provide clients with a pre-contractual suitability statement when providing advice, specifying their advice and how it meets the client’s needs. Additional information will need to be given when a periodic suitability assessment is offered. Clients will also need to receive appropriate guidance on and warnings of the associated risks, as well as information on costs and associated charges, including information on the cost of distribution (if not already included in the key information document).

Not withheld from MiFID II is the stricter inducement regime with reference to independent advice, i.e. the ban on inducements. However, IDD explicitly allows Member States to impose stricter inducements requirements. ●

To the point:

- Belgium has moved ahead of European Insurance Conduct legislation
- Non-finalized regulatory framework and future alignment with IDD and MiFID II currently not yet clear
- Level playing field remains difficult
- Strong decrease in the number of insurance intermediaries

6 Without prejudice to the general conflict of interest rules as determined by the Solvency II framework