

CAA GUIDANCE NOTE ON THE NOTION OF INSURANCE INTERMEDIARY IN THE CONTEXT OF COLLECTIVE INSURANCE CONTRACTS

On 24 January 2024, the Luxembourg insurance sector supervisory authority *Commissariat aux assurances* ("**CAA**") published its Information Note 24/1 (the "**Information Note**") which clarifies the notion of insurance intermediary in the context of collective insurance contracts.

CONTEXT

The Information Note follows up on decision C-633/20 of 29 September 2022 by the Court of Justice of the European Union ("**CJEU**") specifying the notion of insurance intermediary under the EU's Insurance Distribution Directive (EU) 2016/97 ("**IDD**") in a context where a German operator (TC Medical Air Ambulance Agency) permitted to consumers to adhere to group insurance subscribed by the operator and to give them the possibility to benefit from the insurance.

In its decision, the CJEU considered that *"the concept of 'insurance intermediary' and, therefore, that of a 'distributor of insurance products' [...] covers a legal person whose activity consists in offering its customers membership on a voluntary basis, in return for a payment that it receives from them, of a group insurance policy to which it has subscribed previously, where that membership entitles those customers to insurance benefits [...]"*.

In its Information Note, the CAA provides guidance on how this decision should apply in a Luxembourg context and confirms that a subscriber of a collective insurance contract ("**sponsor**") may qualify as 'intermediary' additionally to being the policyholder of such contract in relation to the insurance undertaking.

NOTION OF INSURANCE INTERMEDIARY IN THE CONTEXT OF COLLECTIVE INSURANCE CONTRACTS

The Information Note requests sponsors to analyse their specific situation and assess, on a case-by-case basis, whether their activities fall within the scope of insurance distribution, as defined under Title 3, Chapter 3 of the Law of 7 December 2015 on the Insurance Sector.

Key issues

- Clarifications in relation to the notion of 'insurance intermediary' in the context of collective insurance policies, providing factors to be considered when determining whether a holder of such type of policy (sponsor) qualifies as 'insurance intermediary'
- Obligation for the sponsor to identify and assess, on a case-by-case basis, whether it qualifies as 'insurance intermediary' and in the affirmative, to obtain authorisation or registration where required and to comply with the resulting IDD regime, including conduct of business rules
- Obligation for insurance undertakings concerned to only use the services of intermediaries which are duly authorised or registered where required
- CAA expectation of a proactive approach to be applied by insurance undertakings offering collective insurance contracts and sponsors concerned
- CAA availability if sponsors or insurance undertakings wish to present their analysis

When assessing their situation, sponsors should consider the non-exhaustive list of factors provided for in the Information Note. Sponsors should, *inter alia*, consider the following factors:

Whether the insurance cover is optional or mandatory

'Intermediation' implies that there is a genuine accession by the customer of the sponsor (the "Acceding Party") to the group insurance contract. Thus, if the Acceding Party has the choice of acceding to the insurance policy or not, or to choose amongst different products available via the sponsor, the sponsor will probably be considered as an insurance intermediary. In contrast, where the accession is compulsory or automatic, it will be less likely that the activity of the sponsor would qualify as insurance intermediation.

The role and responsibilities of the sponsor

The sponsor should also verify whether its role is limited to the subscription of the insurance contract or if it offers additional services linked to the management of such contract. The more services the sponsor would provide in this context, the more the sponsor is likely to be considered as an insurance intermediary.

The insurance interest

If the Acceding Party has no or few interest in the insurance contract and this interest only or mainly resides with the sponsor, the sponsor is less likely to be considered as an insurance intermediary.

The importance of the insurance contract within the range of products or services provided by the sponsor

The question is whether the insurance contract is an important or essential component of the products or services provided by the sponsor to the Acceding Party. If this is the case, then the sponsor is more likely to be considered as an insurance intermediary.

The qualification of the Acceding Party under the insurance contract

If the Acceding Party is appointed as the insurance beneficiary under the insurance contract, the sponsor offering the cover is more likely to be qualified as an insurance intermediary.

REQUIRED ACTIONS FOR SPONSORS AND INSURANCE UNDERTAKINGS

Sponsors

As mentioned above, sponsors are requested to assess whether they qualify as 'intermediary' on the basis of the abovementioned non-exhaustive criteria.

If a sponsor concludes to fall within the notion of insurance intermediary, then the sponsor must obtain the required licence and/or registration and comply

with the resulting IDD regime, such as applying conduct of business rules vis-à-vis the Acceding Parties. The CAA reminds in this context the existence of the category of an ancillary insurance intermediary (*intermédiaire d'assurance à titre accessoire*). Such category may be particularly appropriate for sponsors concerned, provided the conditions to fall within such category can be met.

The CAA indicates that it is available to sponsors or insurance undertakings who wish to present their analysis to the CAA.

Insurance undertakings

The CAA informs that it has carried out a first investigation on collective insurance contracts with insurance undertakings most active on the Luxembourg market and that could be affected by the Information Note. The CAA emphasizes the legal obligation of insurance undertakings to cooperate with intermediaries who are registered or licensed and that the CAA therefore expects a proactive approach from insurance undertakings. Insurance undertakings should therefore make sure that their existing or future partners respect the CJEU decision and cooperate with sponsors who are licensed or registered where required.

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