

# Interpretation of the judgment of the Court of Justice of the European Union in the matter of group insurance

**In short** A ruling by the European Court of Justice may have consequences for policyholders of group insurance policies. In certain cases, a permit is required. With this interpretation, the AFM informs the sector of financial service providers in which case there is an intermediary in financial products and/or services in group insurance. If a permit is required, this must be complied with before 1 October 2025.

## 1. Introduction

A recent judgment by the Court of Justice of the European Union (**European Court of Justice**)<sup>1</sup> set out criteria for determining in which situations insurance mediation takes place and hence a licence requirement applies in the case of group policies. This judgment does not relate to group contracts, instead concerning group insurance policies specifically.

In light of this judgment, the AFM wishes to provide clarity to the financial services sector as well as other sectors that carry out activities related to group insurance concerning in which situations insurance mediation subject to a licence requirement takes place in the case of group policies and when exceptions to the licence requirement apply in respect of group policies. Where a licence requirement applies, this must be met by no later than 1 October 2025.

## 2. Insurance group policies

In the case of group policies, the AFM makes a distinction in this interpretation between group contracts and group insurance policies.

### 2.1 Group contracts

The AFM considers a group contract to be a group policy, not constituting an insurance contract, concluded between a group policy holder and an insurer for the benefit of third parties on the basis of which those third parties can obtain coverage at the (more) favourable terms specified in the group contract. A group policy holder arranges the (substantive) terms of insurance for a specific group of insured persons, who then make individual use of the agreed terms when taking out insurance cover.

#### Example

An employer concludes a group contract with an insurer which enables it, in its role as employer, to offer its employees group health insurance providing a wide array of choices, for example, and/or special cover related to the work to be performed.

<sup>1</sup> [Judgment of the European Court of Justice, 29 September 2022](#)

It follows from court case law that activities carried out by a party related to the conclusion of a group contract by the group policy holder and an insurer can also qualify as insurance mediation within the meaning of the Financial Supervision Act (Wet op het financieel toezicht, **Wft**). It will be necessary to determine on a case-by-case basis whether these activities for the purpose of concluding a group contract can be classified as activities that relate to 'assisting in the administration and performance of an insurance contract'.<sup>2</sup>

The conclusion of a group contract and the possible associated licence requirement are not considered in this interpretation. This interpretation only seeks to address the judgment of the European Court of Justice.

## 2.2 Group insurance

Group insurance refers to an insurance contract within the meaning of Section 7:925 of the Dutch Civil Code between a policyholder and an insurer, where the policy may cover one or more third persons as insured parties. Activities that take place when insured persons join a group insurance are:

- The policyholder registers the insured individual with the insurer at the individual's request, specifying their characteristics;
- The insured individual is charged the insurance premium (with or without a profit mark-up) by the policyholder.

An insured person can join a group insurance policy either automatically or after having chosen to do so (non-automatic group insurance).

## 3. When does a licence requirement apply in respect of group insurance?

In its judgment, the European Court of Justice held that insurance mediation takes place in relation to group insurance (as in the case before it) where the following two conditions are *cumulatively* met:

1. optional choice; and
2. remuneration.

In addition to the above two conditions, the European Court of Justice has assumed that the characteristic of an insurance policy, that there is an entitlement to an 'insurance benefit', is met at all times. This condition is accepted as a given by the AFM and is therefore not discussed further in this interpretation.

The two conditions that must be met are discussed in further detail below. It is important to note that the facts and circumstances of each case will determine whether insurance mediation (subject to a licence requirement) takes place.

### 3.1 Optional choice

The European Court of Justice highlights the criterion of choice for determining whether insurance mediation in relation to group insurance takes place. In other words, whether membership of a group insurance policy is automatic or non-automatic. This condition is discussed below.

---

<sup>2</sup> Ruling of Arnhem-Leeuwarden Court of Appeal, 2 February 2016, [ECLI:NL:GHARL:2016:621](#)

**Automatic**

Where there is no option to choose, membership of a group insurance policy is deemed automatic. In that case, the insured persons have not instructed the policyholder to include them in the policy. In the case of automatic group insurance, *no* choice exists if the following conditions are met *cumulatively*:

- No choice of specific insurance cover; and
- No choice of insured sum; and
- No choice between different policies; and
- No choice of provider/insurer.

In the AFM's view, the policyholder does not in that case qualify as an intermediary subject to a licence requirement. It should also be noted that the policyholder may in that circumstance not fulfil an advisory role toward the insured persons and/or third parties.

Importantly, the rules on cross-selling previously published by the AFM remain in full force. The Cross-Selling Fact Sheet also addresses group insurance in further detail.<sup>3</sup>

Where there is no option to choose and third persons qualify as insured under the group insurance on joining, membership of a group insurance policy is deemed automatic. In that case, the insured persons have not instructed the policyholder to arrange insurance cover for them.

*Examples of mandatory insurance in which insurance mediation subject to a licence requirement does not occur, in the AFM's view*

When parents register their child at a school, their child will automatically be insured under the school's accident insurance policy. The parents have no choice in the matter.

Membership of a sports club or association includes mandatory coverage under the accident insurance taken out by the club or association, possibly through an umbrella sports federation. It is not possible to be a member without this coverage.

**Non-automatic**

According to the judgment of the European Court of Justice, there are activities which are comparable in nature to those of insurance intermediaries where the customer has the choice to join the insurance contract. In such a case, insurance mediation will occur, consequently giving rise to a licence requirement.

If a policyholder offers an option to choose to an insured person, it is for that person to decide whether or not to take up the offer to take out insurance cover in addition to obtaining the service or good from the policyholder.

The AFM is of the view that a licence requirement exists if insured individuals are directly or indirectly given the choice by the policyholder to join that policy. The policyholder offering this option to choose is, in effect, asking for an instruction from those other persons to carry out activities aimed at concluding an insurance contract. In the AFM's view, this situation is comparable in nature to the normal/typical situation where a client instructs an insurance intermediary to arrange insurance for them.

<sup>3</sup> See also '[Cross-Selling Fact Sheet](#)' (in Dutch) and the FAQ Group Policies for group insurance.

*Examples of insurance with an option to choose in which insurance mediation subject to a licence requirement occurs, in the AFM's view*

A removal company offers its customer the option of taking out insurance against damage to their household contents for the moving day.

A transport company offers insurance when transporting goods, with the insured able to choose from among various insurance options.

### 3.2 Remuneration

In its judgment, the European Court of Justice also held that there are activities akin in nature to those of insurance intermediaries where the policyholder receives remuneration in connection with the service or services provided. This condition is discussed below.

The Court has defined the concept of 'remuneration' as follows: *'Any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities'*.<sup>4</sup>

The Court explained that the condition relating to the existence of remuneration can be regarded as satisfied where every membership of a customer of the group insurance contract and who consequently pays insurance premiums to the insurance company gives rise to a payment to the policyholder.

According to the Court, the prospect of that remuneration constitutes *"an economic interest of its own for the policyholder, distinct from the interest of the insured in obtaining insurance cover under the contract in question, which is such as to encourage it, in view of the optional nature of joining that contract, to gain a large number of members [...]"*.<sup>5</sup>

The AFM is of the view that remuneration may be deemed to exist if a financial advantage is obtained by the policyholder. The AFM does not consider the passing on of premium and (administration) charges, for example, as constituting remuneration.

The AFM understands that many group insurance policies are offered as a 'service' to customers. The AFM is of the view that there is no remuneration if the 'service' is offered without any financial advantage. The case considered by the European Court of Justice shows that a clear financial advantage accrued to the policyholder.

#### Remuneration, but no choice

If one of the criteria is satisfied, for example remuneration, but no choice, then there is no licence requirement. However, the AFM considers it undesirable for insurance policies to be offered which are automatically concluded and which involve remuneration for the policyholder, potentially resulting in a personal benefit for them. In light of the fact in particular that many insurance policies are offered as a 'service', the AFM does not consider it appropriate that this should result in a financial advantage for the policyholder.

<sup>4</sup> The Court refers in this regard to the Insurance Distribution Directive, Directive (EU) 2016/97, Article 2(1)(9)

<sup>5</sup> Paragraph 41 of the Judgment of the European Court of Justice, 29 September 2022, ECLI:EU:C:2022:733

### 3.3 Ancillary insurance intermediary; exemption in Article 7 of the Exemption Regulation under the Financial Supervision Act

Article 7 of the Exemption Regulation under the Financial Supervision Act (Vrijstellingsregeling Wft) provides that, under certain circumstances, persons who practise insurance mediation complementary to the supply of a product or service, i.e. ancillary insurance intermediaries, are largely exempt from the Financial Supervision Act (Wft). The conditions to qualify for this exemption are that (i) the insurance should cover the risk of breakdown, loss of or damage to the product supplied by the ancillary insurance intermediary or (ii) the non-use of a service supplied by the ancillary insurance intermediary. The premium may not exceed €600 on a pro rata basis per year in the cases mentioned under i) and ii), or in case it is complementary to a service and the duration of the service is equal to or less than three months, the premium may not exceed €200 per person.

If a policyholder of a group insurance plan can demonstrate that *an insurance product for an insured individual* within a group insurance plan meets the conditions applicable to the exemption for ancillary insurance intermediaries then the policyholder may take advantage of that exemption and, additionally, no licence requirement applies.

This means that any potential licence requirement in light of the judgment of the European Court of Justice will not apply if the requirements of Article 7 of the Exemption Regulation under the Financial Supervision Act are met.

Further information on applying for a licence (in Dutch) can be found at: [Vergunningen en regels \(afm.nl\)](https://www.afm.nl/vergunningen-en-regels)

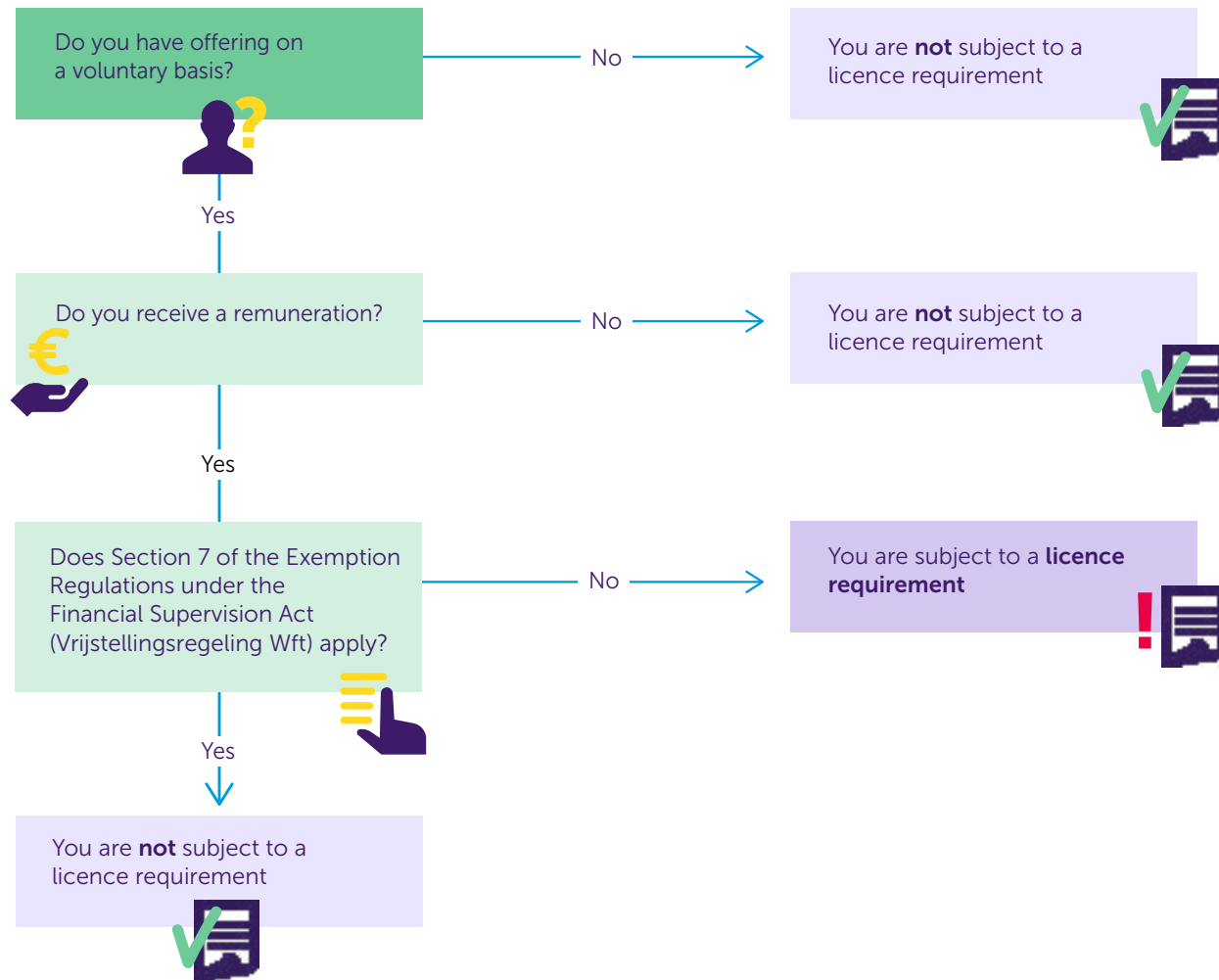
## 4. Market implications

The AFM is aware that its interpretation of this judgment by the European Court of Justice may have implications for market participants who do not currently have a licence for their (mediation) activities in relation to group insurance. It is necessary to determine on a case-by-case basis whether their activities fall under the licence requirement. Market participants can use the decision tree below to help them determine whether they are subject to a licence requirement and, if so, what action they should take to comply with this requirement. For the sake of completeness, the AFM notes that it is necessary to determine for each group insurance individually whether insurance mediation subject to a licence requirement is applicable.

### 4.1 Making a licence application

The AFM makes it possible for market participants who carry out activities subject to a licence requirement in relation to group insurance to apply for a licence to do so. 1 October 2025 is the deadline for having the necessary licence. Information on how to apply for a licence and the associated costs is available on [the AFM website](https://www.afm.nl). Please note that it may take at least 13 weeks to complete the licence application process. The AFM advises you to submit your application for a licence well before this date if you wish to be sure of having a licence by 1 October 2025.

Figure 1. Decision tree



## Annex 1 Terms and concepts used

- group policy holder; the individual who concludes a group contract with an insurer as a counterparty on behalf of third parties;
- ancillary insurance intermediary; an ancillary insurance intermediary is any natural or legal person who i) for remuneration, ii) on an ancillary basis iii) takes up or pursues the activity of insurance distribution and iv) the person whose principal professional activity is other than insurance distribution, v) only distributes certain insurance products that are complementary to a good or service and vi) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the ancillary intermediary provides as its principal professional activity.<sup>6</sup> Ancillary insurance intermediaries are also referred to as *'other market participants who sell insurance products on an ancillary basis, such as travel agents and car rental companies'* or *'persons practising insurance distribution as an ancillary activity'*.<sup>7</sup>
- insurance intermediary; insurance intermediaries include advisers, insurance brokers, reinsurance brokers, authorised agents and authorised sub-agents<sup>8</sup>;
- group policy: a group insurance policy or group contract; group insurance: an insurance contract within the meaning of Section 7:925 of the Dutch Civil Code between a policyholder and an insurer, where the policy may cover one or more third persons as insured persons;
- automatic group insurance: a group insurance policy that covers one or more third persons as insured persons without requiring any additional action on their part, other than the potential exercise of their rights as insured persons under the policy;
- non-automatic group insurance: a group insurance policy where one or more individuals are not considered insured parties until they actively indicate their intention to join the insurance policy;

<sup>6</sup> Article 2(4) of the Insurance Distribution Directive.

<sup>7</sup> Recitals 8 and 15 of the Insurance Distribution Directive.

<sup>8</sup> Parliamentary Papers II 2016-2017, [34 770](#), no. 3, p. 4.