

Bill on Inactive Accounts, Inactive Safes and Unclaimed Insurance Contracts



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On 6 August 2018, Bill No. 7348 on inactive accounts, inactive safes and unclaimed insurance contracts (the 'Bill') was submitted to the Luxembourg Chamber of Deputies (Chambre des Députés). The Chamber of Commerce (Chambre de Commerce) and the National Commission for Data Protection (Commission Nationale pour la Protection des Données), as well as the Council of State (Conseil d'État), provided comments on the Bill on 21 May 2019. It is expected that the legislative procedure will now continue after the summer break, and the comments from the aforementioned institutions will be considered.

The legal framework with respect to inactive accounts and safes and insurance contracts that have become unclaimed is currently very limited in the Grand-Duchy of Luxembourg. At the present time, such accounts, safes and insurance contracts are only governed by civil law and the applicable contractual provisions. This has led to several questions and legal insecurity. The Bill aims to introduce a completely new legal framework that will strengthen the protection of clients by establishing professional obligations for banks (the 'Banks') and insurers (the 'Insurers').

The Bill has three main legal dimensions, which can be summarised as follows:

- prevention, which implies a series of measures that aim to prevent inactivity;
- consignment at the Caisse de Consignation (the 'Caisse de Consignation'), which defines the obligation to consign assets after prolonged inactivity;
- restitution, which includes provisions regarding the return of deposited assets.

According to the Bill, the starting point of inactivity is:

- for accounts, the day from which the account holder has not carried out any transactions in respect of the account;
- for safes, the day from which there has been no activity in respect of the safe, in any form

- whatsoever, by the holder of the safe at the entity that is in charge of the safe;
- for insurance contracts, the day from which the insurance undertaking becomes aware of the obligation to pay an insurance benefit under an insurance contract and for which no beneficiary has claimed the right to those insurance benefits.

Bank accounts or safes opened with a credit institution are defined as inactive if no activity is recorded over a period of six years. There may be several reasons for such a situation (e.g. the death of the account holder and the ignorance of his/her heirs about the existence of the account). The same definition applies to insurance contracts, but the period before they become unclaimed is two years.

In a nutshell, common obligations are emerging from the Bill regarding bank accounts, safes and insurance contracts. Indeed, after the identification of the inactivity, the Bank or Insurer will be required to inform the holder or the beneficial owner(s). A lack of response will require further research where possible to contact the respective stakeholder. In the case of a safe, it will be opened in accordance with the conditions set out in the Bill.

If the inactivity persists, the Bank or the Insurer will be required to request, at the Caisse de Consignation, the consignment of the unclaimed assets registered in the account or deposited in the safe or an amount equivalent to the insurance benefits unclaimed by a beneficiary.

According to the Bill, any person with a right to the consigned assets may submit to the Caisse de Consignation, by electronic or postal means, a request for restitution. Banks and insurance companies will be required to cooperate with the Caisse de Consignation to enable the latter to identify and analyse the rights of the claimant for restitution.

It has to be noted as well that Banks and Insurers will be required to identify inactive accounts or safes and unclaimed insurance contracts. This information will need to be provided on an annual basis to the Luxembourg supervisory authority for the financial sector (Commission de Surveillance du Secteur Financier) or the Luxembourg insurance supervisory authority (Commissariat aux Assurances) as well as to the tax administration.

As mentioned above, on 21 May 2019, the Council of State issued its opinion on the Bill. While generally agreeing with the objectives and wording, the Council of State nevertheless emphasised certain inconsistencies in the draft Bill (for instance, with regard to the definition of 'inactivity') and also noted certain incompatibilities, such as the new provisions regarding the obligation of consignment and the option given to the Caisse de Consignation to refuse such consignments. The Council of State also maintained that an indication of the number of inactive bank accounts, safes or insurance contracts would have been welcome.

It is expected that the legislative procedure will now continue, and the comments, in particular those of the Council of State, will be considered. Considerable developments regarding the rules governing inactive bank accounts and safes and unclaimed insurance contracts are therefore

expected over the course of the next few months due to this upcoming legislation, if adopted. The new legal framework aims at being complete, consolidated and mandatory with respect to this subject matter so as to bring legal certainty to all relevant stakeholders.