

Background

I. Presentation of the company, the group and its supervision

1. Information about FWU Life Insurance Lux S.A. (“FLL”)

FLL is an insurance company with its registered office in Luxembourg. FLL is a subsidiary of the FWU Group (“FWU Group”), whose sole shareholder is FWU AG (“FWU AG”).

2. Information about FWU AG and the FWU Group

The FWU Group is a group of companies owned by FWU AG.

FWU AG is a commercial company with its registered office in Germany. FWU AG is the parent company of a number of companies, two of which are life insurance undertakings authorised in the European Union (“EU”):

- FLL, supervised in Luxembourg by the *Commissariat aux Assurances* (“CAA”); and
- FWU Life Insurance Austria AG (“FLA”), supervised by the Austrian supervisory authority, the *Finanzmarktaufsicht* (“FMA”).

FWU AG is neither authorised as an insurance undertaking nor as an insurance intermediary. FWU AG cannot therefore distribute insurance products and is not supervised in this capacity by the German supervisory authority, the *Bundesanstalt für Finanzdienstleistungsaufsicht* (“BaFin”).

Since the end of 2023, FWU AG has been supervised at EU level as the insurance holding company of the FWU Group by a College of Supervisors (“College”). The College is chaired by the CAA and includes other supervisory authorities¹.

3. Relationship between FLL and FWU AG

FLL is a legal entity independent of FWU AG and has its own assets and administration separate from that of FWU AG. FLL therefore has its own assets and liabilities, which do not belong to and are not owed by FWU AG. In addition, the management of the two companies is distinct.

Nevertheless, there are commercial and financial relationships between FWU AG and FLL, which explain the existence of financial flows which exist between these two entities.

In this context, it is important for the CAA to emphasise that publications and information provided by FWU AG are to be distinguished from publications and information provided by FLL, as these are two legally distinct entities.

The CAA warns you against communications that use only the brand name “Forward You” or the logo “FWU Forward U” and for which it is difficult to identify the author.

¹ The CAA, the FMA and the European Insurance and Occupational Pensions Authority (“EIOPA”) are members of this College. In addition, the Italian insurance supervisory authority, *Istituto per la vigilanza sulle assicurazioni* (“IVASS”) and the BaFin participate or have participated in this College. IVASS participates in the College to ensure an efficient exchange of information due to the presence of a major branch of FLL in Italy.

4. Information concerning FLL monitoring

a. Activities in Luxembourg

FLL is supervised by the CAA in Luxembourg. The CAA is a public institution, which is the competent supervisory authority for the insurance sector in Luxembourg. Until its run-off at the beginning of July 2024, FLL was authorised to distribute life insurance contracts in Luxembourg.

b. Activities in the EU

Outside Luxembourg, until its run-off at the beginning of July 2024, FLL was authorised to distribute life insurance policies within the EU. Within this framework, FLL distributed life insurance policies, in particular in Germany, Belgium, Spain, France and Italy, via branches or under the freedom to provide services. FLL's life insurance policies were distributed in these countries through local intermediaries (e.g. brokers).

c. Sharing of supervisory duties between supervisory authorities in the EU

The financial supervision of FLL, including its activities carried out through its branches or under the freedom to provide services, falls within the exclusive competence of the CAA.

However, the CAA's foreign counterparts, i.e. the insurance supervisory authorities of the host countries², cooperate and exchange information with the CAA. However, the CAA's foreign counterparts, i.e. the insurance supervisory authorities of the host countries³, cooperate and exchange information with the CAA. These authorities are also responsible for the supervision of intermediaries who distribute FLL's life insurance policies in their respective countries.

II. Recent developments

5. Information regarding FLL's insolvency (see CAA press release dated 19 July 2024)

The CAA was informed by FLL on 19 July 2024 that it no longer met the Solvency Capital Requirement (“**SCR**”) nor the Minimum Capital Requirement (“**MCR**”), for which reason the CAA disclosed FLL's insolvency on its website.

These ratios are prudential ratios:

- The SCR corresponds to the level of eligible core capital required to enable FLL to absorb unforeseen losses arising from the materialisation of certain risks to which FLL may be exposed;
- The MCR corresponds to an amount of eligible basic own funds below which FLL's policyholders and beneficiaries would be exposed to an unacceptable level of risk if FLL were authorised to continue its business.

6. Information concerning the insolvency of the FWU Group

² These include IVASS in Italy, the *Autorité de contrôle prudentiel et de résolution* (“**ACPR**”) in France, the *Dirección General de Seguros y Fondos de Pensiones* (“**DGSFP**”) in Spain, the *Autorité des services et marchés financiers* (“**FSMA**”) in Belgium, and the BaFin in Germany.

³ These include IVASS in Italy, the *Autorité de contrôle prudentiel et de résolution* (“**ACPR**”) in France, the *Dirección General de Seguros y Fondos de Pensiones* (“**DGSFP**”) in Spain, the *Autorité des services et marchés financiers* (“**FSMA**”) in Belgium, and the BaFin in Germany.

The CAA, controller of the FWU Group, was also informed on 18 July 2024 of the FWU Group's non-compliance with the SCR requirements.

7. Opening of the provisional insolvency phase of FWU AG

FWU AG filed for insolvency with the Munich District Court on 19 July 2024. On this date, FWU AG was granted the opening of a provisional insolvency phase. An *Insolvenzverwalter* (Rechtsanwalt Ivo-Meinert Willrodt, PLUTA Rechtsanwalts GmbH) was appointed by the Munich District Court.

8. Information concerning the freezing of the representative assets of FLL (see CAA press release dated 19 July 2024)

a. Decision to freeze the representative assets

In its capacity as supervisory authority, the CAA decided on 23 July 2024 to freeze the assets representing the technical reserves which are deposited at banks, known as custodian banks, in order to protect the interests of FLL's policyholders and beneficiaries.

b. Explanations of the concept of representative assets and the policyholder preferential claim

When FLL's policyholders have entered into an insurance contract and paid premiums, FLL has established technical reserves, corresponding to their premiums net of expenses and risk premiums. FLL has invested in assets representing these technical reserves.

These representative assets have been deposited with custodian banks that have signed a tripartite deposit agreement. This way, they have been segregated from FLL's own assets in order to distinguish between the assets of policyholders and beneficiaries and those of FLL.

These assets, which represent the technical reserves and over which FLL's policyholders and beneficiaries have a preferential claim, have been frozen by the CAA to ensure that they can only be used for the benefit of FLL's policyholders and beneficiaries.

9. Information concerning FLL's suspension of payment (*sursis de paiement*) (see CAA press release dated 2 August 2024)

a. Proceedings before the court

On 24 July 2024, FLL submitted a request to the District Court of and in Luxembourg for a suspension of payment (*sursis de paiement*). The request was deemed admissible and well-founded on 2 August 2024 on the grounds that FLL was in a situation of credit crunch (*ébranlement de crédit*) and liquidity impasse.

A supervisory commissioner (*commissaire de surveillance*), Maître Yann Baden, *avocat à la Cour*, was appointed to monitor the management of FLL's assets on 2 August 2024. The supervisory commissioner (*commissaire de surveillance*) is a person independent of FLL who was appointed by the judge who ruled on the suspension of payment (*sursis de paiement*).

It is important to note that FLL's supervisory commissioner (*commissaire de surveillance*) is independent of FWU AG's *Insolvenzverwalter* (mentioned under point 7 of this note).

b. Duration and effects of the suspension of payment (*sursis de paiement*)

The suspension of payment (*sursis de paiement*) procedure may last a maximum of six months.

The effect of the suspension of payment (*sursis de paiement*) is to suspend all payments. All payments due prior to the date of the judgment are suspended with immediate effect, while payments relating to debts arising after the court's decision are subject to the approval of the appointed supervisory commissioner (*commissaire de surveillance*). The supervisory commissioner's (*commissaire de surveillance*) powers include the approving payments that are essential for FLL to remain in business and operate smoothly (such as the payment of salaries or rent for the company's premises).

Consequently, during the period of this suspension of payment (*sursis de paiement*), no payment will be made by FLL to its policyholders unless ordered or authorised by the court in a new decision.

c. Follow-up to the suspension of payment (*sursis de paiement*)

If the suspension of payment (*sursis de paiement*) does not enable the situation which justified it to be remedied or if FLL's situation is undermined to such an extent that it will no longer be able to meet its commitments, a petition for judicial liquidation may be filed by the CAA or the State Prosecutor.

If a judicial liquidation is ordered, a bankruptcy judge (*juge-commissaire*) and one or more liquidators will be appointed. The bankruptcy judge (*juge-commissaire*) would be a judge appointed by the court in charge of opening the judicial liquidation. He or she would be responsible for overseeing the liquidation process. The task of the liquidator(s) would be to list all the assets and liabilities of the company in judicial liquidation and to settle the liabilities.

10. Information concerning the FWU Protection Fund SICAV (see CAA press release of 19 July 2024)

FLL's policyholder premiums have been invested in transferable securities (such as shares, bonds, investment funds) including, for certain life insurance contracts, units in the FWU Protection Fund SICAV.

a. Temporary suspension of the FWU Protection Fund SICAV

On 19 July 2024, the board of the FWU Protection Fund SICAV decided to temporarily suspend certain sub-funds of this investment fund.

b. Impact on FLL of the temporary suspension of FWU Protection Fund SICAV

FLL will therefore be unable to invest (new premiums) or divest in the temporarily suspended sub-funds of this investment fund.

For more practical information, we recommend that you consult the questions and answers (“FAQ”) on the page dedicated to the insolvency of FWU Life Insurance Lux S.A. on CAA’s website.