

## Supervision of insurance companies

# Comparis must be classified as an insurance intermediary

Par Alexia Raetzo le 21 August 2024

The Federal Administrative Court (FAT) has confirmed that comparis.ch AG (Comparis) qualifies as an insurance intermediary within the meaning of Art. 40 para. 1 ISA on the basis of the services it offers and must therefore be entered in FINMA's public register of unrelated intermediaries (ruling B-5886/2023 of 5 July 2024).

In September 2023, FINMA decided that Comparis was an insurance intermediary within the meaning of Art. 40 ISA and ordered it to be entered in the register of non-related insurance intermediaries. Comparis appealed to the Federal Administrative Court, which rejected the appeal and confirmed FINMA's decision.

After pointing out that the ISA and the Supervision Ordinance (SO) in the version in force since 1 January 2024 applied to the case in question, the FAT recalled that, according to art. 40 para. 1 ISA, an insurance intermediary is any person who, irrespective of his or her designation, offers or concludes an insurance contract in the interest of an insurance undertaking or another person. This definition is further specified in art. 182a OS.

The TAF considers, with reference to the doctrine, that when an online comparison platform draws up a comparison of products on the basis of individualised information and also allows users to obtain information from the insurers evaluated by means of indicated links, it is, in any case, accepted that this activity must be considered as insurance mediation. It must therefore be assumed that the provisions of Art. 182a para. 1 and para. 2 let. a OS merely give concrete form to what, according to the majority of legal writers, follows from the interpretation of Art. 40 para. 1 ISA.

From a factual point of view, it is not disputed that users of the Comparis website can compare insurance solutions. Prior to 1 July 2023, they were also able to request quotes from insurers, provided the latter had concluded a corresponding contract with Comparis. Since 1 July 2023, the request for an offer must be made via Optimatis SA, Comparis' sister company, on a "visually separate area" labelled "provided by optimatis.ch", but always on the Comparis website.

The FAT noted that an activity subject to authorisation can also be carried out as part of a group : according to the case law (BGE 136 II 43), group action exists in particular if the participants present themselves as a unit to the outside world or if the circumstances allow it to be assumed that they are carrying out – expressly or tacitly – a joint activity within the meaning

of supervisory law in a coordinated manner.

In the case in point, the Federal Administrative Court considers that such coordinated behaviour clearly exists. Optimatis AG is a sister company of the Comparis Group and is controlled by the same persons as Comparis. Optimatis AG also has its registered office at the same address as Comparis and the activities of the two companies are economically dependent on each other. Optimatis AG is only able to offer users the possibility of requesting insurance offers if Comparis has aroused interest in advance via its comparison portal. Only if users order offers from insurers via the Optimatis AG link are the commissions contractually agreed with the insurers due. Optimatis AG transfers the commissions to Comparis only in part and under a different name. However, from the point of view of the group, these commissions represent a significant part of the profit from Comparis' business activities. FINMA was therefore right to classify Comparis as an insurance intermediary within the meaning of art. 40 para. 1 ISA.

Finally, the Federal Administrative Court noted that Comparis did not openly inform users of its website that it had links to specific insurance companies. It gives the impression that it provides its services neutrally and without any connection to them. The provisions on unrelated insurance intermediaries (art. 40 para. 2 ISA and art. 182b SO) therefore apply and Comparis must therefore be entered in the register provided for in art. 42 ISA.

To our knowledge, this is the first time that a ruling has provided criteria for determining whether the activity of a company providing online insurance comparison platforms should be classified as an insurance intermediary within the meaning of art. 40 ISA and art. 182a para. 1 and para. 2 let. a OS. The ruling also serves as a reminder of the requirements for financial market supervision, particularly when the activities are carried out within a group of companies : depending on the circumstances, in particular where there are close organisational or personal economic links between the various companies, only a global approach may appear reasonably suitable for meeting these requirements.

With regard to the restrictions provided for by supervisory law, it should be noted that on 14 August 2024 the Federal Council adopted the Ordinance on the Regulation of the Activities of Insurance Intermediaries, which, together with the Federal Act on the Regulation of the Activities of Insurance Intermediaries, will come into force on 1 September 2024. This ordinance aims to provide a better framework for the activities of insurance intermediaries and makes certain points of the industry agreement binding, particularly with regard to limiting remuneration for the activities of insurance intermediaries.

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