



# ALJB-AIDA Conference:

## Law of 30 March 2022

New legal regime applicable to inactive accounts, inactive safes and dormant insurance contracts

Luxembourg – 15/06/2022

Auditorium Banque de Luxembourg



# GENERALITIES

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- Common text for bank accounts, safes and insurance contracts
- Inspired by the Belgian and French regimes
- 3 parts:
  - prevention
  - consignment
  - restitutionControl by the CSSF and the CAA





## SCOPE OF APPLICATION : ACCOUNTS AND SAFES

(art. 1)

### 1. Unclaimed assets in relation to:

- **All type of accounts** (cash accounts, securities accounts, deposit accounts, fiduciary accounts, etc.) **except electronic money accounts**;
- **Safes** (safes, compartments of safes, secured storage facilities).

### 2. Held by or opened with:

- **Credit institutions** authorised in **Luxembourg**;
- **Luxembourg branches** of foreign credit institutions;
- Post.

# SCOPE OF APPLICATION : INSURANCE

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- Insurance companies licensed in Luxembourg and Luxembourg branches of foreign companies

-> Regardless of the place of residence of the policyholder and regardless of the law applicable to the contract

["foreign" companies = non-Luxembourgish]

[what about foreign branches of Luxembourgish insurance companies?]

- "Insurance contract" means an insurance contract within the meaning of Article 1, point A, of the amended law of 27 July 1997 on insurance contracts

[Reference to "point A" -> intention to include all capitalization operations]



# SCOPE OF APPLICATION: INSURANCE

- Only for insurances falling under the scope of Annex II to the law of 15/12/2015 -> "life" insurance in the broad sense (not applicable to non-life insurances) :

Life insurance, death insurance, endowment insurance, annuity insurance, nuptial/birth insurance, permanent health insurance, "tontine" operations, capitalization operations, management operations of collective pension funds

 and all insurance or capitalization contracts qualified as such according to the law applicable to the contract

- Definitions of "**policyholder**", "**insured person**" and "**beneficiary**", aligned with the Luxembourg law 27/7/1997 (insurance contract), but autonomous in view of the application of the law beyond contracts subject to Luxembourg law

Broad definition of "beneficiary" that is intended to also include capitalization contracts that do not have a beneficiary





# IMPLEMENTATION OF STEPS PREVENTING INACTIVE ACCOUNTS (art. 4 and 19)

1. **Banks (B)** shall maintain **regular contact** with the accountholder(s) and remain vigilant to prevent account(s) to become inactive / **Insurance companies (IC)** shall apply **vigilance measures** and identify when capitals become due
2. **B/IC:** Internal organisation to be set up by **enacting internal procedures** to **identify accounts/safes/contracts** likely to become inactive and to ensure **appropriate follow-up**
3. **B:** Specific **attention** to **operation(s) initiated on inactive account(s)** and update of client relationship
4. **IC:** Appropriate measures during the **whole duration of the contract** in order to facilitate vigilance and research obligations





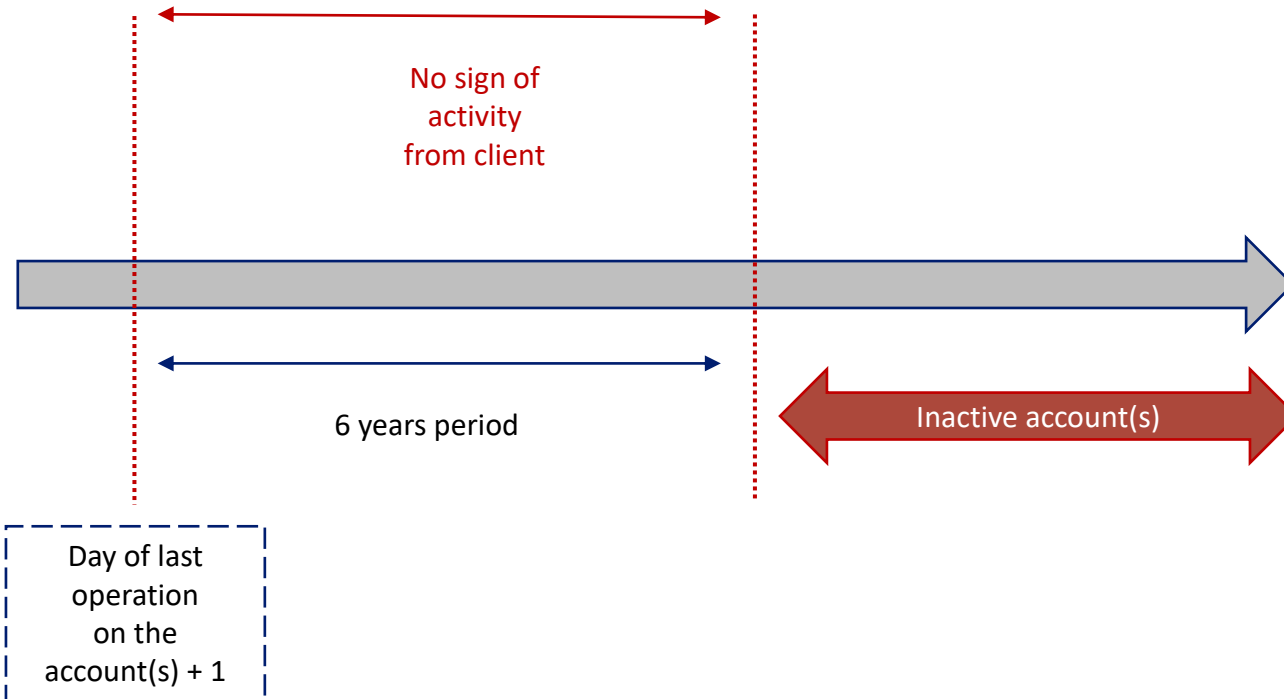
## INACTIVE ACCOUNTS AND RELEVANT INACTIVITY PERIOD (II)

1. An **account** is considered as **inactive** after an **inactivity period of six (6) years**. (art. 7)
2. The **inactivity period** of an account **starts from the first day where the accountholder has not initiated any operation** in relation to the bank account(s) and **no sign of activity** of the accountholder in any form has been received or noticed by the bank with whom the accounts are opened. (art. 2)
3. **Closed accounts with no activity for more than six (6) years** and where the banks remains depository of unclaimed assets are **considered as inactive** accounts. (art. 1 5°)



# INACTIVE ACCOUNTS AND RELEVANT INACTIVITY PERIOD (II)

Timeline:







# OBLIGATIONS RESULTING FROM INACTIVE ACCOUNTS (I)

## 1. Initial information obligation (art. 5) :

- If account(s) **remain inactive for a period of three (3) years**, the bank **shall inform** the accountholder or the beneficiaries of the consequences of the account(s) remaining inactive.
- **Information** be provided **within three (3) months** after the three year period and shall be **confirmed by a registered letter** sent with acknowledgement of receipt.

## 2. Additional searches obligation (art. 6) :

- If no operation on the account is initiated by the account holder within the three months after the sending of the registered letter, **additional searches have to be undertaken by the bank** to contact the accountholder.

## 3. Final information obligation (art. 8) :

- If account(s) **remain inactive for a period of nine (9) years**, the bank **shall inform again** the accountholder or the beneficiaries of the consequences of the account(s) remaining inactive.
- **Information** be provided **within three (3) months** after the nine year period and shall be **confirmed by a registered letter** sent with acknowledgement of receipt.



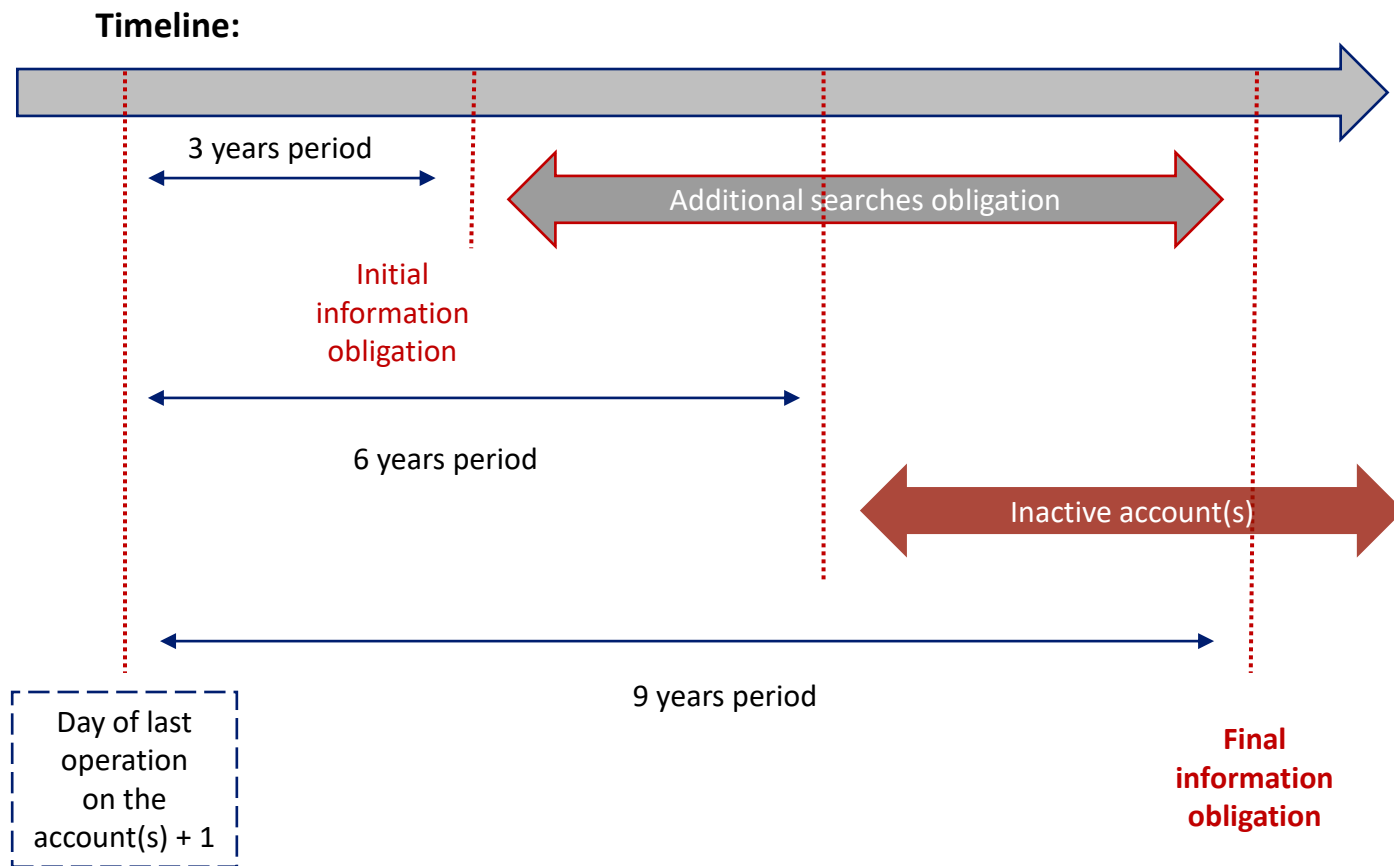
## OBLIGATIONS RESULTING FROM INACTIVE ACCOUNTS (II)

### **Additional searches obligation (art. 6) :**

1. to **contact accountholders** or to **identify and contact beneficiaries** (in case of succession or liquidation);
2. **search costs** can be **charged** (if information obligation complied within applicable time period) **but** must be **proportionate**;
3. search costs **cannot exceed 10%** of the deposited assets and are **capped at EUR 25,000**;
4. **does not apply** to accounts with balance below EUR 2,500;
5. **evidences** of searches undertaken shall be kept;
6. **third parties** bound by professional secrecy duty or confidentiality agreement can be used to perform the searches **without infringement of the banks professional secrecy duty**;
7. **ceases** when accountholders cannot be contacted or beneficiaries can neither be identified nor contacted or a consignment request is made.



# OBLIGATIONS RESULTING FROM INACTIVE ACCOUNTS (III)





## INACTIVE SAFE AND RELEVANT INACTIVITY PERIOD (I)

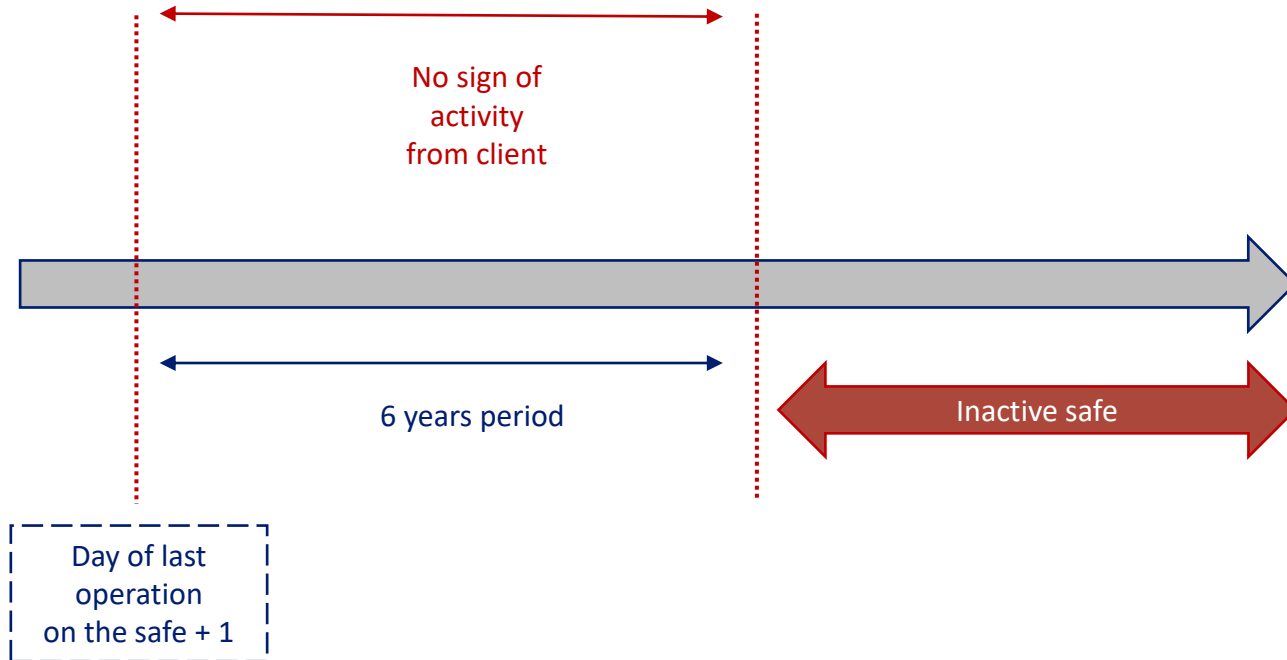
1. A **safe** is considered as **inactive** after an **inactivity period of six (6) years** when **no sign of activity of the safeholder** in any form has been received or noticed by the bank with whom the safe is held (art.12).
2. The **inactivity period** of a safe **starts from the first day where** no sign of activity of the accountholder in any form has been received or noticed by the bank with whom the safe is held (art. 2).

*Disclaimer: the obligations regarding an inactive safe may depend whether the safe is linked or not to an account – if the safe is linked to an account, the regime applicable to inactive accounts may prevail and/or have an impact on the rules applicable to an inactive safe.*



# INACTIVE SAFE AND RELEVANT INACTIVITY PERIOD (II)

Timeline:





## OBLIGATIONS RESULTING FROM INACTIVE SAFE (I)

### 1. Initial information obligation (art. 11) :

- If safe **remain inactive for a period of five (5) years**, the bank holding the safe **shall inform** the safeholder or the beneficiaries of the consequences of the safe remaining inactive as per applicable legal provisions

### 2. Additional searches obligation:

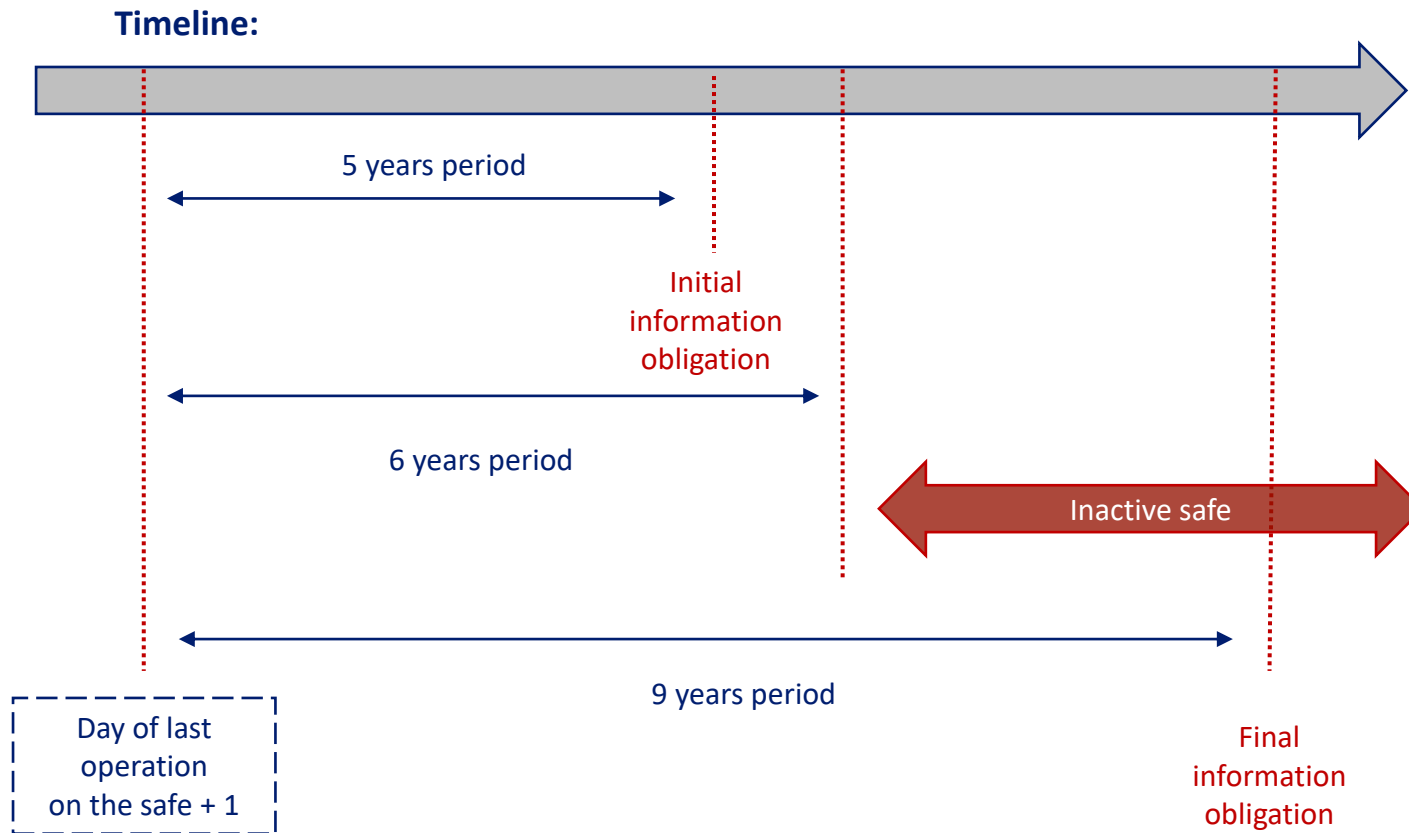
- **No obligations to perform additional searches** to be undertaken by the bank

### 3. Final information obligation (art. 13) :

- If the safe remains inactive for a period of nine (9) years, the bank with whom the safe is held shall inform again the safeholder or the beneficiaries of the consequences of the safe remaining inactive as per applicable legal provisions;



# OBLIGATIONS RESULTING FROM INACTIVE SAFE (II)



# PREVENTION FOR THE INSURANCE SECTOR

## INFORMATION OBLIGATION (art. 20)

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- **Important to keep in mind:**
  - "Inactivity" = no beneficiary has claimed benefits which are due (or presumed due)
  - vs. "dormant contract" = inactivity has lasted for 2 years
- **Which obligation?**
  - contacting the **insured person**
  - drawing the insured person's attention to the consequences of an inactivity
- **When?**
  - **Case 1:** "whole life" contracts or term >90 years:
    - **When the insured person reaches the age of 90**  
[if 2 insured persons: oldest if benefit on 1<sup>st</sup> death, youngest if benefit on 2<sup>nd</sup> death]
    - **and if:**
      - insurer had **no contact** "directly or indirectly" with the insured person for the **past 2 years**
  - > obligation to have a follow-up of the insured person's anniversary dates and a "tracing" of the contacts with the insured person.





# PREVENTION FOR THE INSURANCE SECTOR

## INFORMATION OBLIGATION (art. 20)

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- **Case 2:** Contracts with term  $\leq 90$  years and lifetime benefits: at the end of the contract
- **Case 3** for info : Contract with term  $\leq 90$  years and benefits only in case of death: no obligation
- **Deadline:** within 3 months (from 90 years [case 1] / from term [case 2])
- **Modalities:**
  - "by any means": mail, e-mail, telephone, private/professional, "web-banking", via "agent" [= broker]
  - on the basis of "data available" to the insurer, but possibility of contacting the policyholder for information on how to contact the insured person [also policyholder's successors or heirs?].
  - confirmed **by a registered letter sent with acknowledgement of receipt** to the last address
  - > special vigilance and tracing if sending is returned



# PREVENTION FOR THE INSURANCE SECTOR

## INFORMATION OBLIGATION (art. 20)

- **Consequences** (cases 1 et 2):

- if **no manifestation within 3 months** of the information [signature of the acknowledgement receipt=manifestation; execution of operations without client intervention ≠ manifestation]

**AND:**

- **no proof** that the insured person is **alive (case 1) or dead (case 2)**

**THEN:**

- insured event is presumed to have occurred [on which date? -> end of 3 months period]
  - **benefit presumed** due within 3 months [of the presumed realization of the insured event]
- > **starting point of the "inactivity" (art. 2)**

[inactivity ceases if any manifestation of the insured person subsequently occurs (art. 2)]

[for info: Consequences (case 3): if no "indication or evidence" of premature death THEN insured event presumed not realized ]



# PREVENTION FOR THE INSURANCE SECTOR

## INFORMATION OBLIGATION: quid capitalisation contracts?

- **No insured person** to contact or whose death or survival should be verified
- According to the authors of the bill of law: **only the term of the contract** to be considered
- No presumed due date for benefits (only the term of the contract)
- The **whole mechanism of article 20** [see above] **does not apply**:
  - If at the end of the contract no "beneficiary" (in the broad sense) comes forward
    - > term of the contract = starting point of "inactivity" (art. 2)
    - > direct application of article 21 [see below]



# PREVENTION FOR INSURANCE SECTOR

## 2<sup>ND</sup> INFORMATION OBLIGATION (further to inactivity) (art. 21)

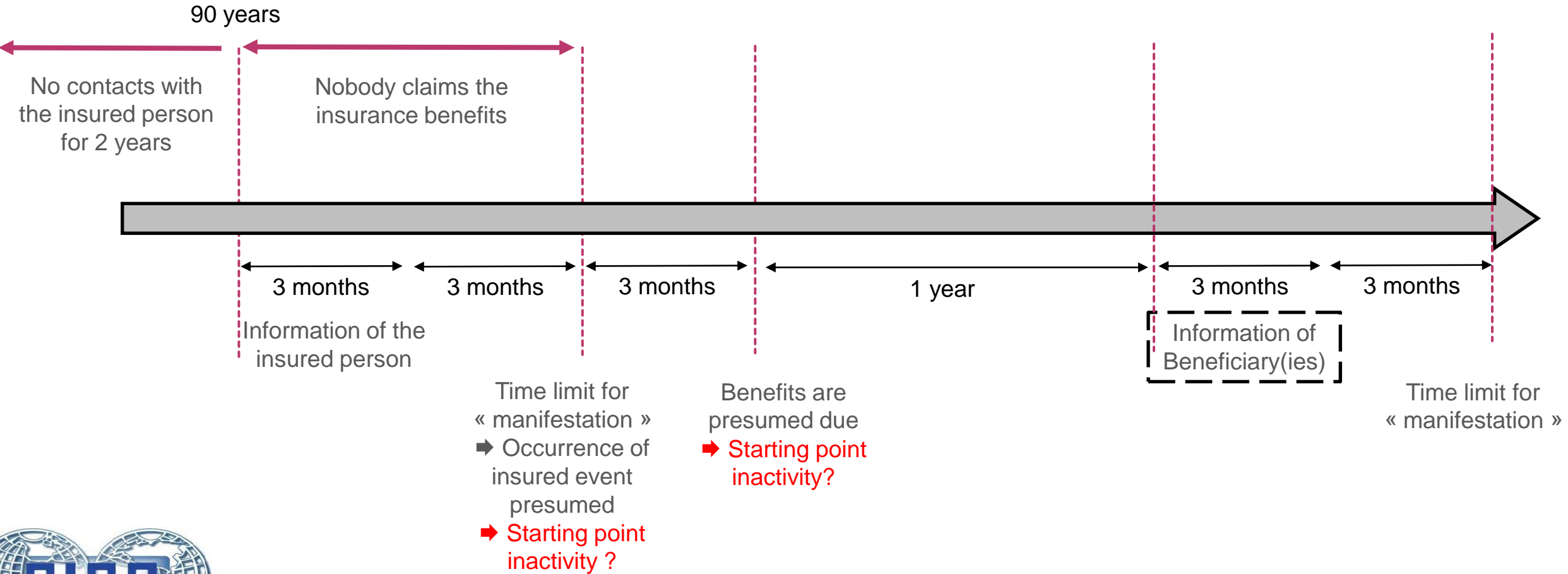
- **Starting point: Contract in situation of “inactivity”** (following the presumption of art. 20 or found otherwise)  
Reminder: Inactivity = no beneficiary has claimed benefits which are due (or presumed due)
- **2<sup>nd</sup> information obligation** (art. 21):
  - **When?** After **1 year of inactivity**
  - **Who?** Information of the "known" **beneficiary(ies)**
  - **Deadline:** within **3 months** (of the expiration of the year of inactivity)
  - **Modalities:** see above (according to available information and last known address)
- **Time limit of 3 months** for the beneficiaries to react -> **otherwise: 2<sup>nd</sup> step (research)**



# PREVENTION FOR INSURANCE SECTOR

## INFORMATION OBLIGATION (insurance contracts)

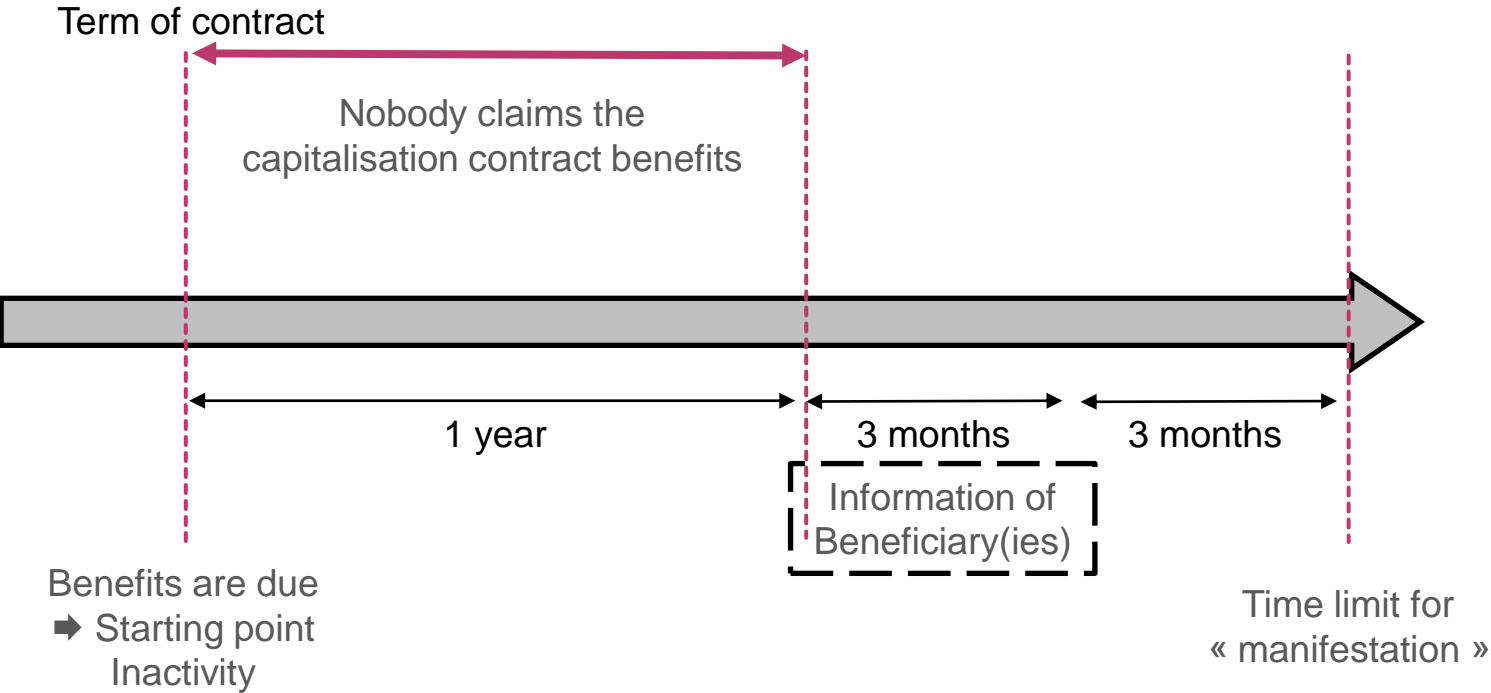
**Timeline:**



# PREVENTION FOR INSURANCE SECTOR

## INFORMATION OBLIGATION (capitalisation contracts)

Timeline:



# PREVENTION FOR INSURANCE SECTOR

## SEARCHES (art. 22)

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- **When?**
  - EITHER: no manifestation within 3 months of the information of the beneficiaries
  - OR: data available to the insurer does not allow the information of the beneficiaries
- **Exemption:** if benefits  $\leq 2.500$  €.
- **Purpose:** research in order to identify and then contact the beneficiary(ies)
- **Researches expenses** can be charged against the benefit
  - if prior information of the beneficiaries is provided
  - expenses actually incurred, but max. 10% of benefits and absolute max. of €25,000 [limit of expenses to be charged, but not a limit of expenses to be incurred].
  - necessity to keep receipts of the made expenses



# PREVENTION FOR INSURANCE SECTOR SEARCHES (art. 22)

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- **Modalities:**

- no forms prescribed (public data, Internet, ...)
- authorisation to contact the policyholder [what about other beneficiaries?]
- use of third parties (lawyers, bailiffs, genealogists, ...) is possible
  - if subject to a professional secrecy or a confidentiality agreement [example of parl. works: ok to contact the banker who distributed the insurance]
  - in that case: waiver of the insurer's professional secrecy, but only for the "strictly necessary information" communicated
  - subcontracting in terms of GDPR [and also in terms of Solvency II]
- principle of proportionality (adapted to the business relationship and the country of residence)





# PREVENTION FOR INSURANCE SECTOR

## SEARCHES (art. 22)

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- **End** of the obligation
  - if - despite research - it is clearly not possible to identify or contact the beneficiary(ies) [cf. principle of proportionality]
    - > to be documented in a report to be attached to the file
  - or if a consignment is requested



# DORMANT CONTRACTS

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- **If inactivity persists for 2 years -> “dormant” contract (art. 23)**

Possibly of partially dormant contracts -> internal procedures for payment to beneficiaries who have come forward [payment to those other beneficiaries only at that time?]

- **If inactivity persists for 5 years -> obligation of 3<sup>rd</sup> information (art. 24)**
  - Information of the known beneficiary(ies) (based on the result of the search)
  - Deadline: within 3 months (of the expiry of the 5 years of inactivity)
  - Form: see above



# DORMANT CONTRACTS

- If inactivity persists for **6 years** -> request for **consignment** (art. 25) with **prior liquidation of assets** (art. 26) (in conjunction with the new article 181-1 of the 2015 Law) if not already done at the time the benefits were presumed due:
  - Obligation to convert or liquidate all assets in a non-OECD currency (fees may be deducted)
  - Obligation to liquidate all assets traded on a regulated market (fees may be deducted)
  - Option to liquidate (and consign) assets not traded on a regulated market
    - fees can be deducted
    - company remains custodian of unliquidated assets
  - Insurance companies "cannot be held liable for the effects of the conversion or liquidation of assets"

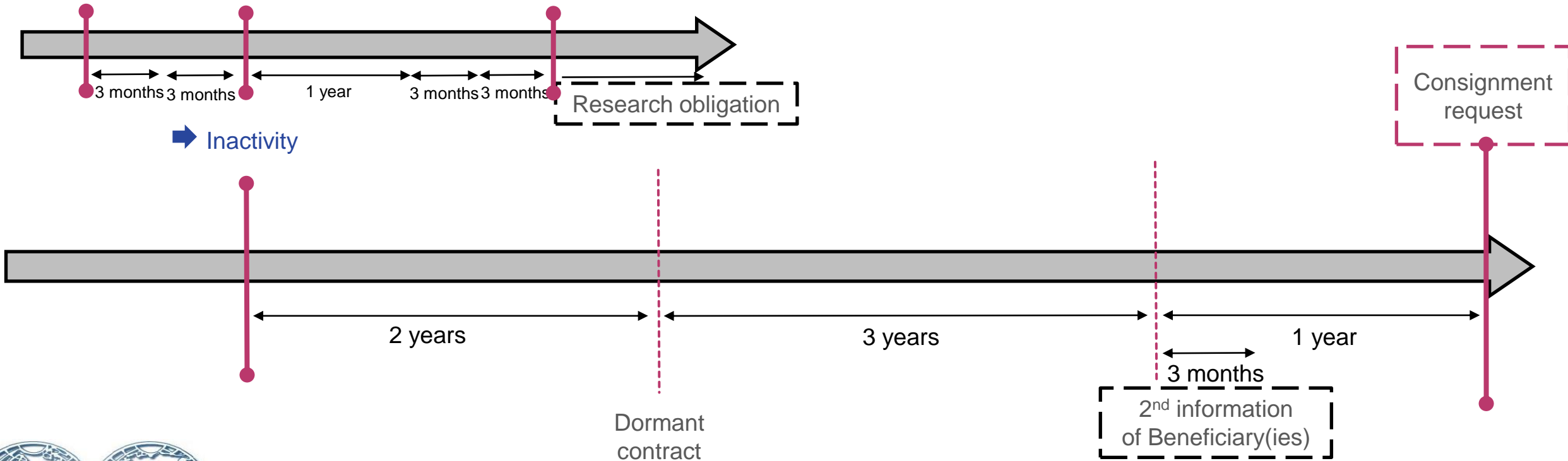


# DORMANT CONTRACTS

## Timeline:

Life insurance:  
90 years

Capitalisation:  
Term





# CONSIGNMENT OBLIGATION FOR INACTIVE ACCOUNTS (I)

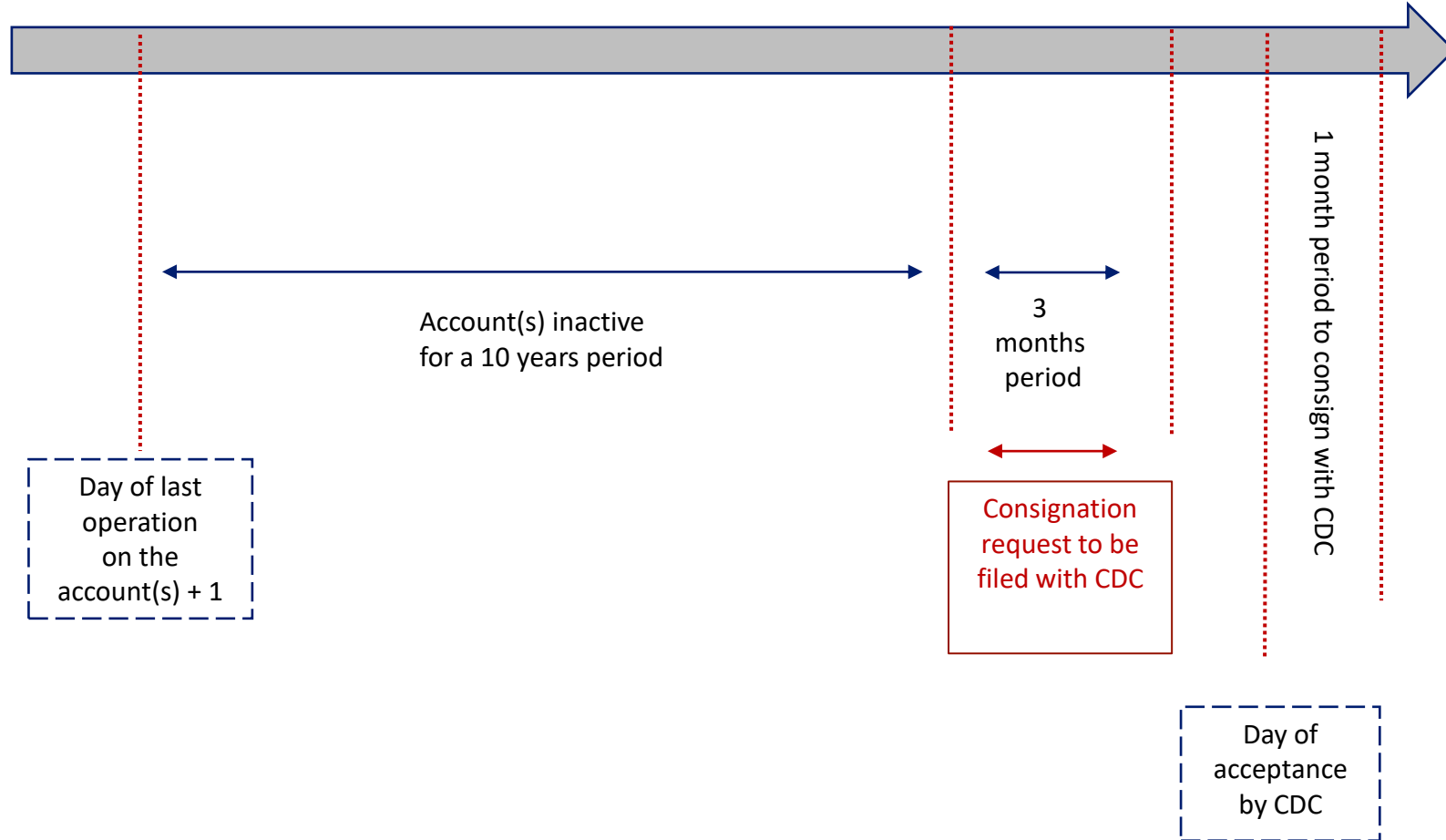
(art. 9 and 10)

1. Consignment request to **be filed with the Caisse de Consignation (CDC)** within a **three (3) months** period at the expiry of the ten (10) years period of inactivity of the account(s);
2. If consignment request is accepted by the CDC, consignment shall be made within **one (1) month** as from the day of acceptance by the CDC;
3. Consignment shall be made **in Euro or in an OECD currency** on an account to be specified by the CDC (amounts in other currencies shall be converted);
4. **Only cash** will be consigned – financial instruments will need to be liquidated; illiquid assets will remain deposited with the bank.



# CONSIGNMENT OBLIGATION FOR INACTIVE ACCOUNTS (II)

Timeline:





# OPENING OF SAFE AND CONSIGNMENT OBLIGATION (I)

(art. 14 and 15)

1. At the expiry of the **ten (10) years period of inactivity and within a period of three (3) months**, the safe shall be **opened by the bank** in the presence of a **bailiff** or a **notary public**, who shall make an **inventory** of the assets contained in the safe;
2. Banks can charge the safeholder for the unpaid rental fees and for opening costs (costs being capped at EUR 500)
3. Consignment request to be **filed with the CDC** within **three (3) months** following the three (3) months period to open the safe;
4. If consignment request is accepted by the CDC, **consignment** shall be made within **two (2) months** as from the day of acceptance by the CDC;
5. **All unclaimed assets** held in the inactive safe shall be **consigned at the same time** (separate consignment on written motivated request can be accepted by the CDC);
6. Consignment shall be made **in Euro or in an OECD currency** on an account to be specified by the CDC (amounts in other currencies shall be converted);



## OPENING OF SAFE AND CONSIGNMENT OBLIGATION (II)

(art. 15, 16 and 17)

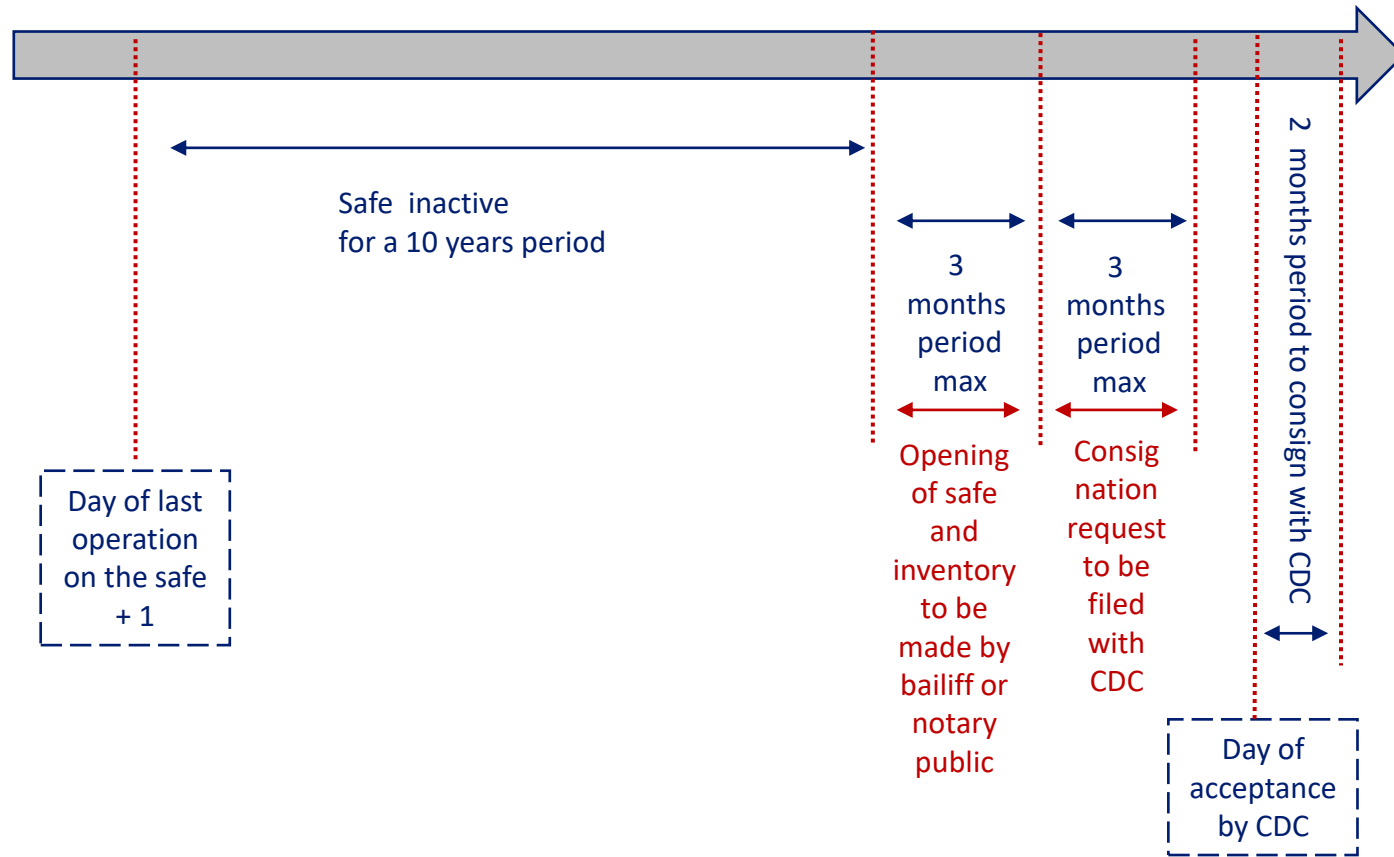
7. Banks shall credit on accounts or **convert or liquidate** the assets held in the inactive safe – **perishable assets will be destroyed** and **illicit or dangerous** ones will be transferred to relevant authorities;
8. **Only cash** will be consigned – assets which may not be converted or liquidated must be safekept by the bank in a **sealed envelop**;
9. The sealed envelop shall remain entrusted to the bank **for a period of fifty (50) years** starting from the last activity day of the safeholder;
10. The sealed envelop shall be consigned with the CDC within **two (2) months** as from the expiry of the fifty (50) years period mentioned hereabove;
11. **Banks cannot be held liable** for the **conversion, the destruction, the transfer** or the **liquidation** made in the consignment process;
12. Derogations are applicable regarding information and consignment obligations if the same holder holds safe(s) and account(s) with the same bank.





# OPENING OF SAFE AND CONSIGNMENT OBLIGATION (III)

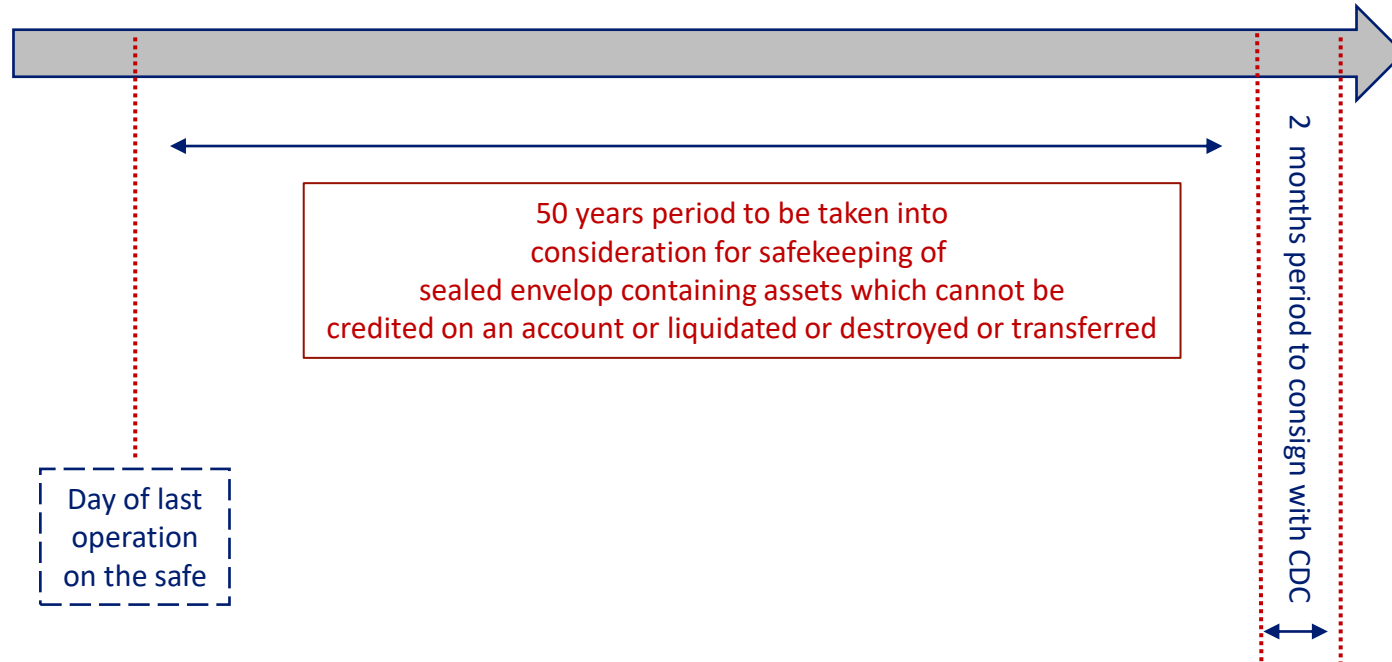
Timeline:





# OPENING OF SAFE AND CONSIGNMENT OBLIGATION (IV)

Timeline:





# CONSIGNMENT REGIME (I)

(art. 28)

## Transmission and checking of the consignment request :

1. **Banks (B) / Insurance companies (IC)** shall transmit the consignment request and all additional evidence or information requested by the CDC **via an electronic secured platform (i.e. MyGuichet.lu)**;
2. The CDC **may request additional evidence** or information to examine the request CDC shall issue a **motivated decision** regarding the request and notify it to the establishment **within six months** from the reception of the consignment request or if the request is incomplete within six months from the reception of the additional information;
3. **Failure by the CDC to issue a decision** within the six months period shall be **deemed to be a refusal decision** from the CDC;
4. If the CDC gives its consent to the consignment request, it will issue an **acknowledgement of receipt** specifying the nature and amount of the consigned assets;
5. **CDC costs for a consignment request shall be set at EUR 50 per file for a simple request and to EUR 100 per file for a complex request.**





## CONSIGNMENT REGIME (II)

(art. 29 and Annex 3)

### Effects of consignment:

1. The consignment with the CDC has for consequence the **closure of the relevant account(s) and safe(s) / the end of the insurance contract;**
2. To enable the CDC to examine information request regarding the consigned assets, **B/IC shall keep information and evidence pertaining to those assets for a period of five years starting at the end of the consignment period** (i.e. 30+5 years for account/policy information, 50+5 years for safe information);
3. Information and evidence to be kept by B/IC shall inter alia be in relation to:
  - i. the opening of the account or safe, the insurance contract;
  - ii. the computation of the relevant time periods (i.e. last operation initiated by the account or safe holder / knowledge that the benefits are due);
  - iii. the identification of beneficiaries (including the information required pursuant to anti-money laundering legislation);
  - iv. the amounts and assets consigned;
  - v. the conversion or liquidation of the assets consigned as the case may be;
  - vi. the searches performed in accordance with the law;
  - vii. the account closure.





# CONSIGNMENT REGIME (III)

(art. 29, 30 and 31)

## Effects of consignment (continued):

4. Except in case of gross negligence and fraud, consignment made in compliance with the law will **release B/IC from all obligations vis-à-vis accountholders and safeholders and beneficiaries**, except from obligations arising from the consignment process – that release does not apply to wrongdoings done before the consignment process;
5. When **cash or financial instruments in an account** are unavailable as a result of legal, contractual provisions, **the respective delays start at the end of the unavailability period** – if the unavailability is the result of a court or administrative decision, the consignment can be made in accordance with the relevant court or administrative approval; **[what about insurance contracts?]**
6. CDC shall safekeep the consigned assets in accordance with the provisions of **the law of 29 April 1999 regarding consignments** made with the State.





# CONSIGNMENT REGIME (IV)

(art. 32)

**Electronic Register of Consignments** made with the CDC and **request for information** by authorised persons:

1. CDC shall hold an **electronic register of all consignments** made as per the law;
2. Any person **having a right** in relation to the consigned assets can file an **information request with the CDC** (at the earliest 18 months after the entry into force of the law) via postal or electronic means - the request shall contain information and evidence as per annex 5 of the law;
3. **CDC may obtain** from the relevant B/IC all **information and evidence kept by the establishment** which are relevant for the examination of the request by the CDC;
4. B/IC must send such **information and evidence without delay to the CDC** and as per the transmission mode specified by the CDC;
5. CDC shall issue a **motivated decision within three months from the date of the request**, or if the request is incomplete within three months from the reception of the additional information;
6. **Failure by the CDC to issue a decision** within the three months period shall be **deemed to be a refusal decision** from the CDC;
7. **CDC may not answer positively** to an information request if it deems the request unjustified or if the information provided is incomplete or inaccurate.





# CONSIGNMENT REGIME (V)

(art. 33 and 34)

## Restitution of consigned assets:

1. Any person **having a right** in relation to the consigned assets can file a **restitution request with the CDC** (at the earliest 18 months after the entry into force of the law) via postal or electronic means; it shall contain relevant information and evidence)
2. **CDC may obtain** from the relevant establishment all **information and evidence kept by the B/IC** which are relevant for the examination of the request by the CDC;
3. B/IC must send such **information and evidence in relation to the assets to be handed back without delay to the CDC** and as per the transmission mode specified by the CDC;
4. B/IC shall **collaborate with the CDC** in order to enable the CDC to identify and analyse the rights of the person making the restitution request and shall **communicate all necessary information** and evidence;
5. CDC shall issue a **motivated decision within six months from the date of the restitution request**, or if the request is incomplete within six months from the reception of the additional information;
6. **Failure by the CDC to issue a decision** within the six months period shall be **deemed to be a refusal decision** from the CDC.
7. Restitution will be made by wire transfer from the CDC to an account opened by requestor with an EU credit institution





# CONSIGNMENT REGIME (IV)

(art. 35 and 37)

- The principle that at the **expiry of a period 30 years** the **consigned assets will be time-barred** remains applicable and subject to the provisions of the law of 29 April 1999 regarding consignments made with the State.
- **Derogations** are however introduced by the law:
  - **starting point of the 30 years period** = start date of inactivity (account, safe or insurance contract)
  - unclaimed assets from safes which could not sold: **time-barred after a period of 5 years of consignment with the CDC** (whose starting point is the issuance of the acknowledgement of receipt by the CDC) -> occurs after 50 years of inactivity of the safe







# ENTRY INTO FORCE (art. 54)

1<sup>st</sup> JUNE 2022

- The Law **entered into force the second month** following its publication on 1<sup>st</sup> April 2022.
- **Specific transitional measures** are contained in the law for accounts or safe that have been inactive prior to the entry into force of the law **depending on the length of the inactivity period.**
- **Specific transitional measures** are contained for dormant contracts as well.

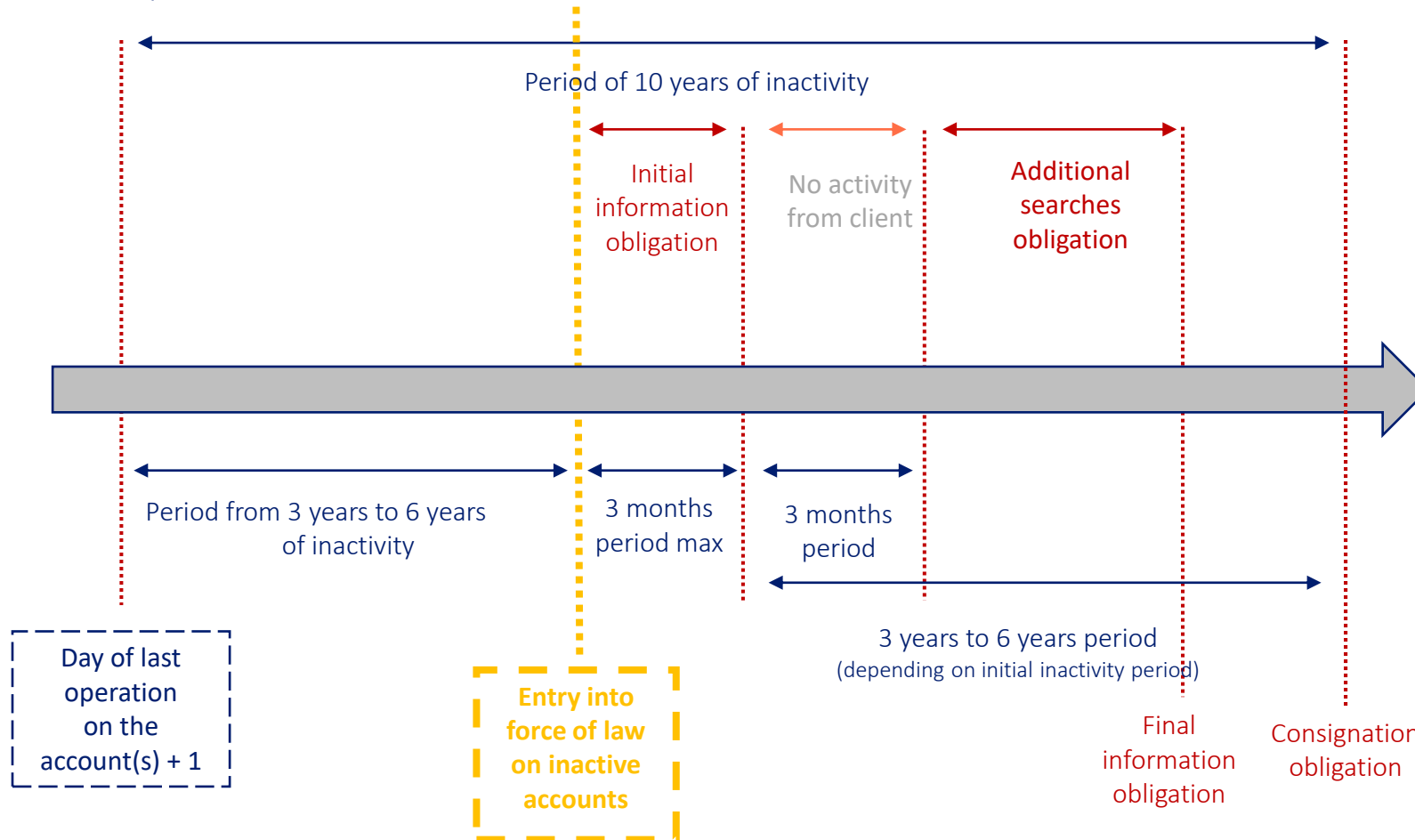




# TRANSITIONAL MEASURES INACTIVE ACCOUNTS (I)

(art. 50 (1))

Timeline applicable to accounts inactive for **more than 3 years and max. 6 years** at the date of the entry into force of the law:

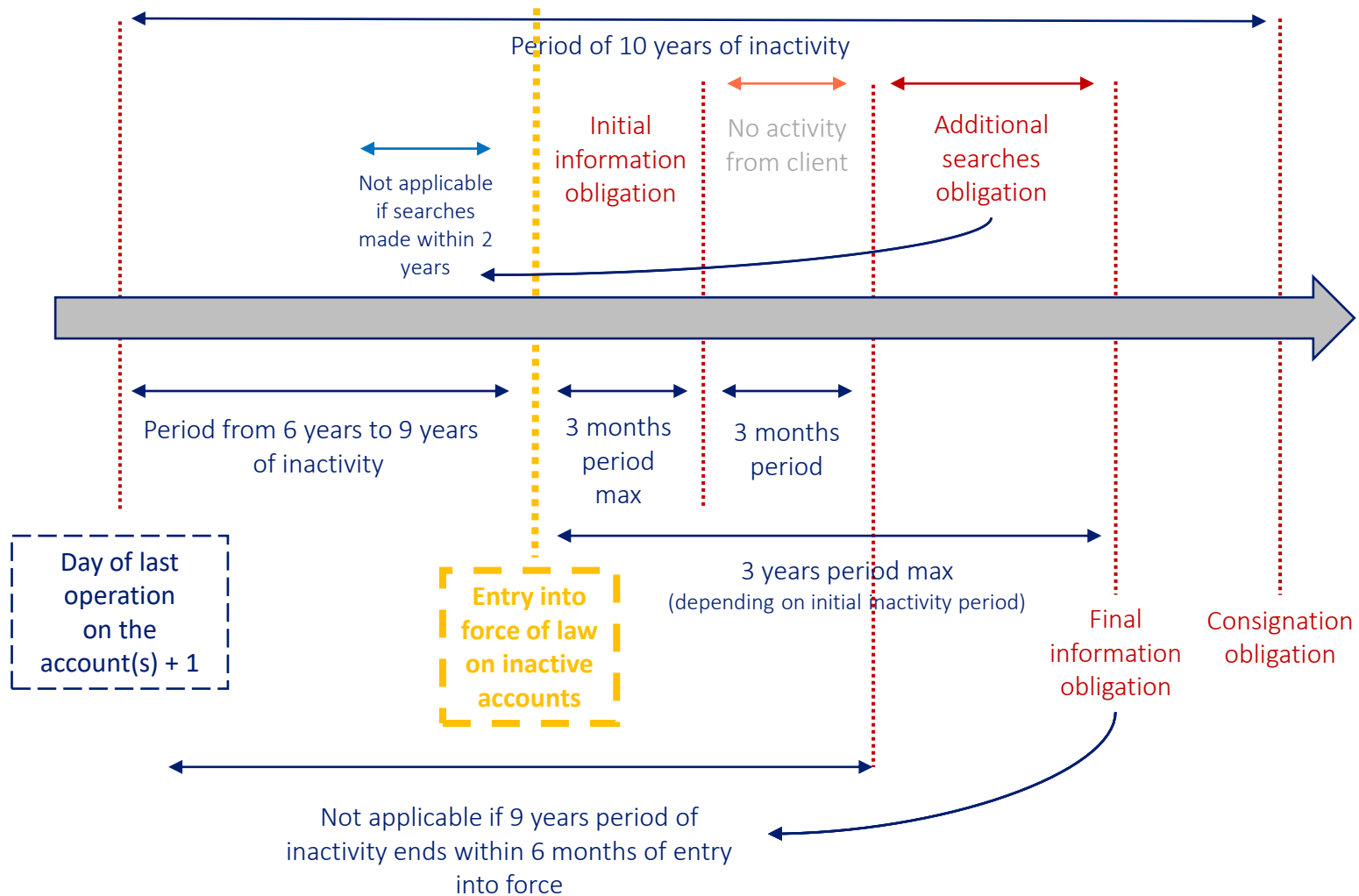




# TRANSITIONAL MEASURES INACTIVE ACCOUNTS (II)

## (art. 50 (2))

Timeline applicable to accounts inactive for **more than 6 years and max. 9 years** at the date of the entry into force of the law:

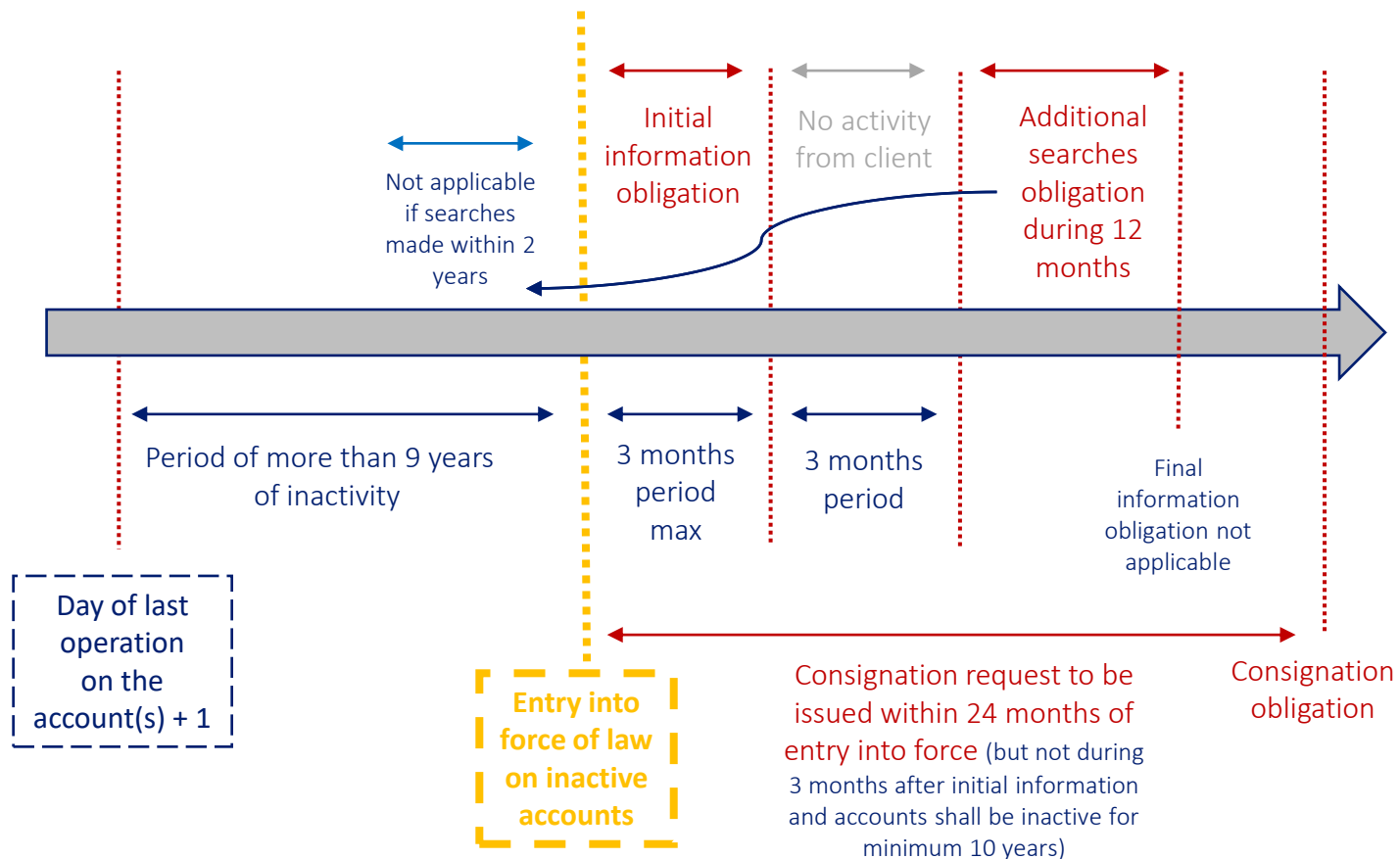




# TRANSITIONAL MEASURES INACTIVE ACCOUNTS (III)

(art. 50 (3))

Timeline applicable to accounts inactive for more than 9 years at the date of the entry into force of the law:



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**How can you get prepared:**  
If searches are made within 2 years before entry into force of the law:

- ✓ No more obligation of additional searches applicable;
- ✓ Easier consignation within 24 months as evidence already available.

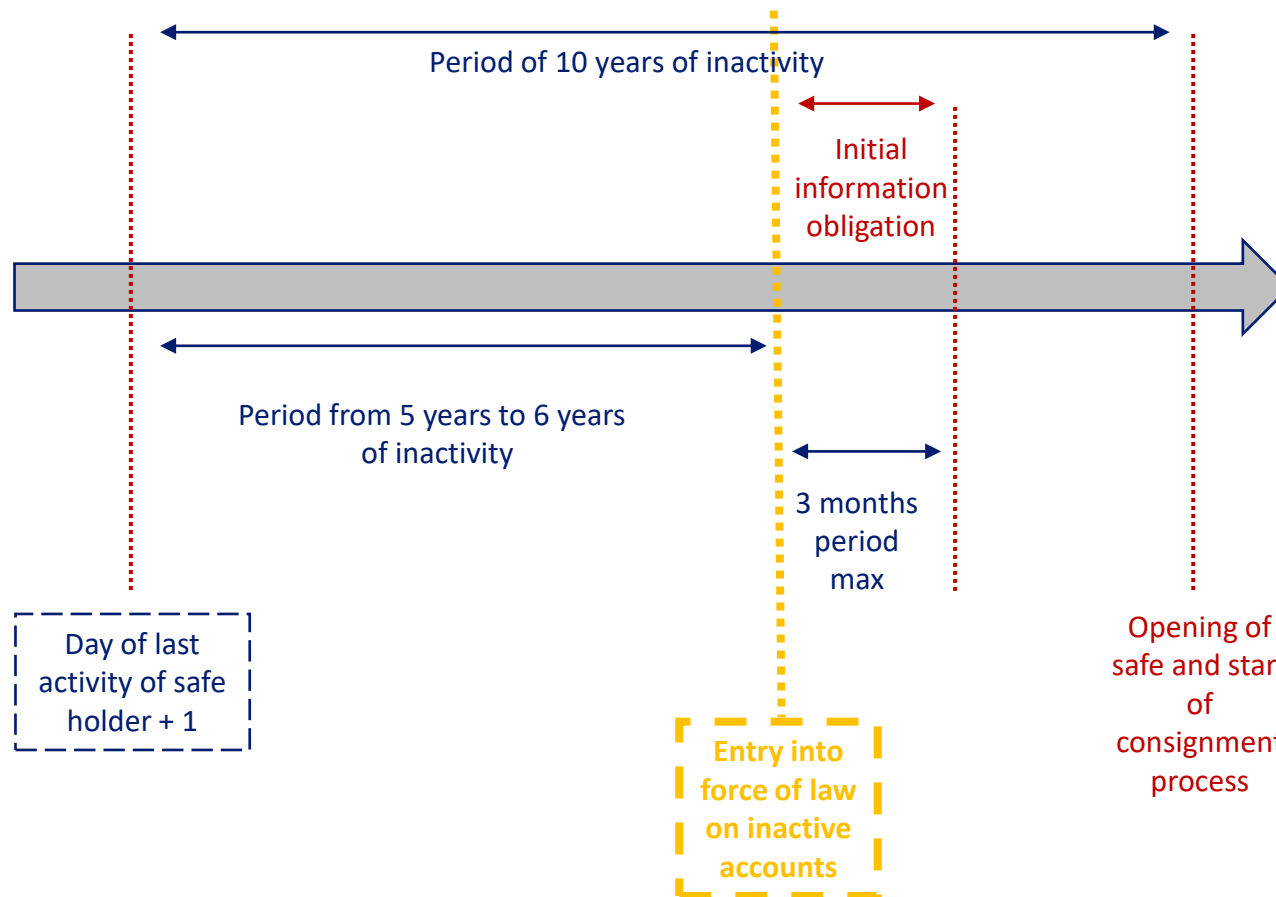
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# TRANSITIONAL MEASURES INACTIVE SAFES (I)

(art. 51 (1))

Timeline applicable to safe inactive for **more than 5 years and max. 6 years** at the date of the entry into force of the law:

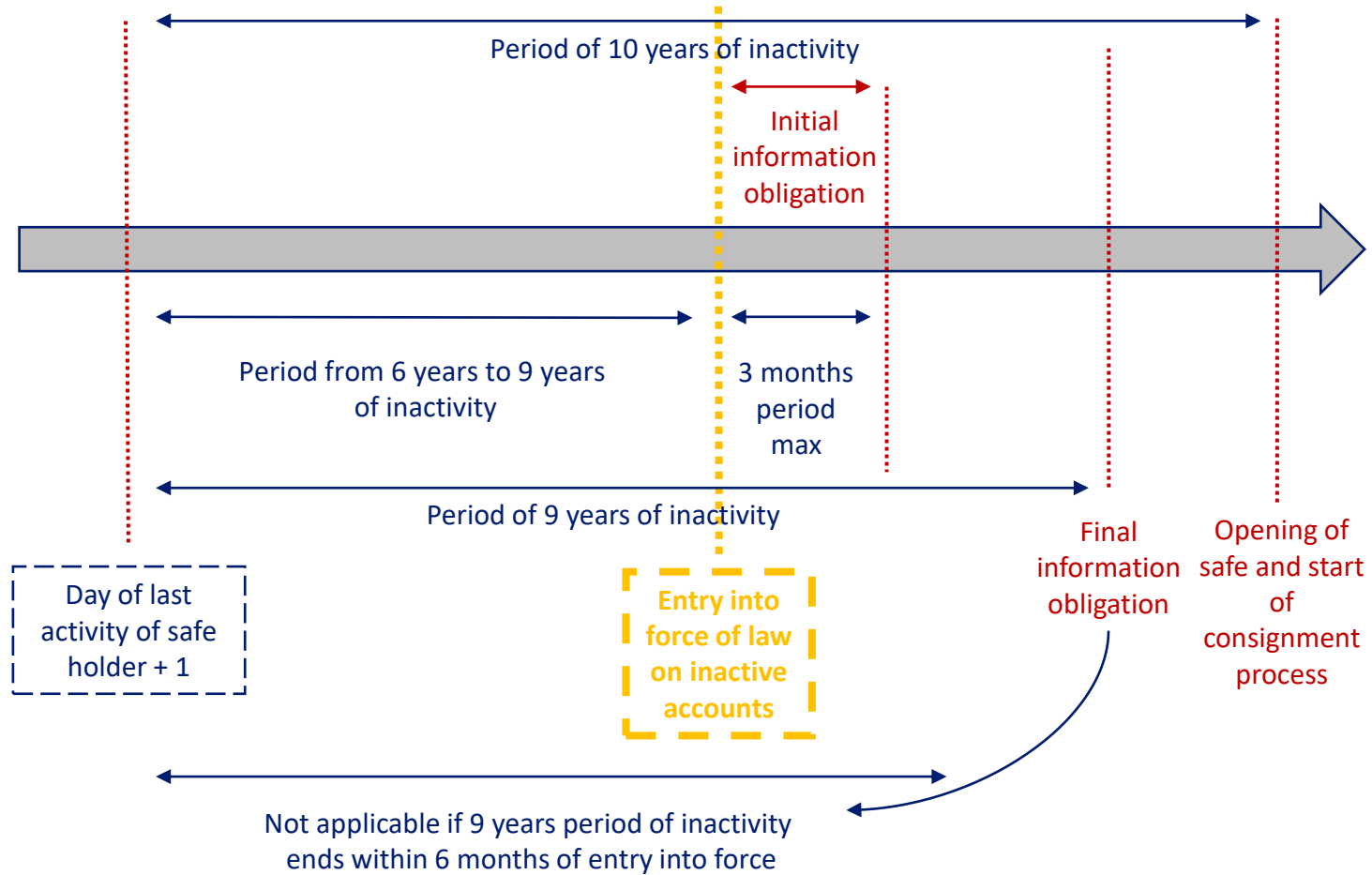




# TRANSITIONAL MEASURES INACTIVE SAFES (II)

(art. 51 (2))

Timeline applicable to safe inactive for **more than 6 years and max. 9 years** at the date of the entry into force of the law:

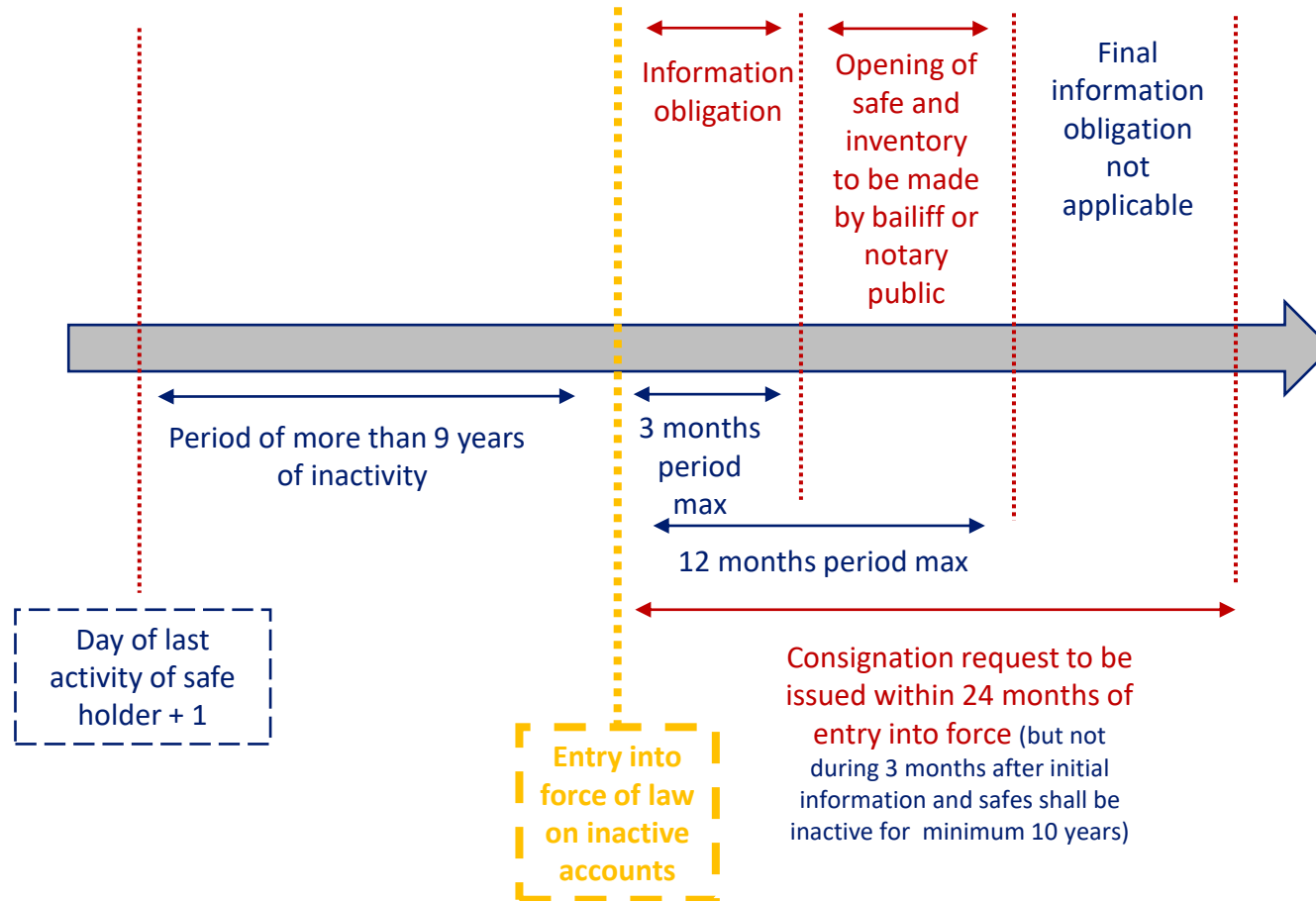




# TRANSITIONAL MEASURES INACTIVE SAFES (III)

(art. 51 (3))

Timeline applicable to safe inactive for **more than 9 years** at the date of the entry into force of the law:



# TRANSITIONAL MEASURES: INSURANCE

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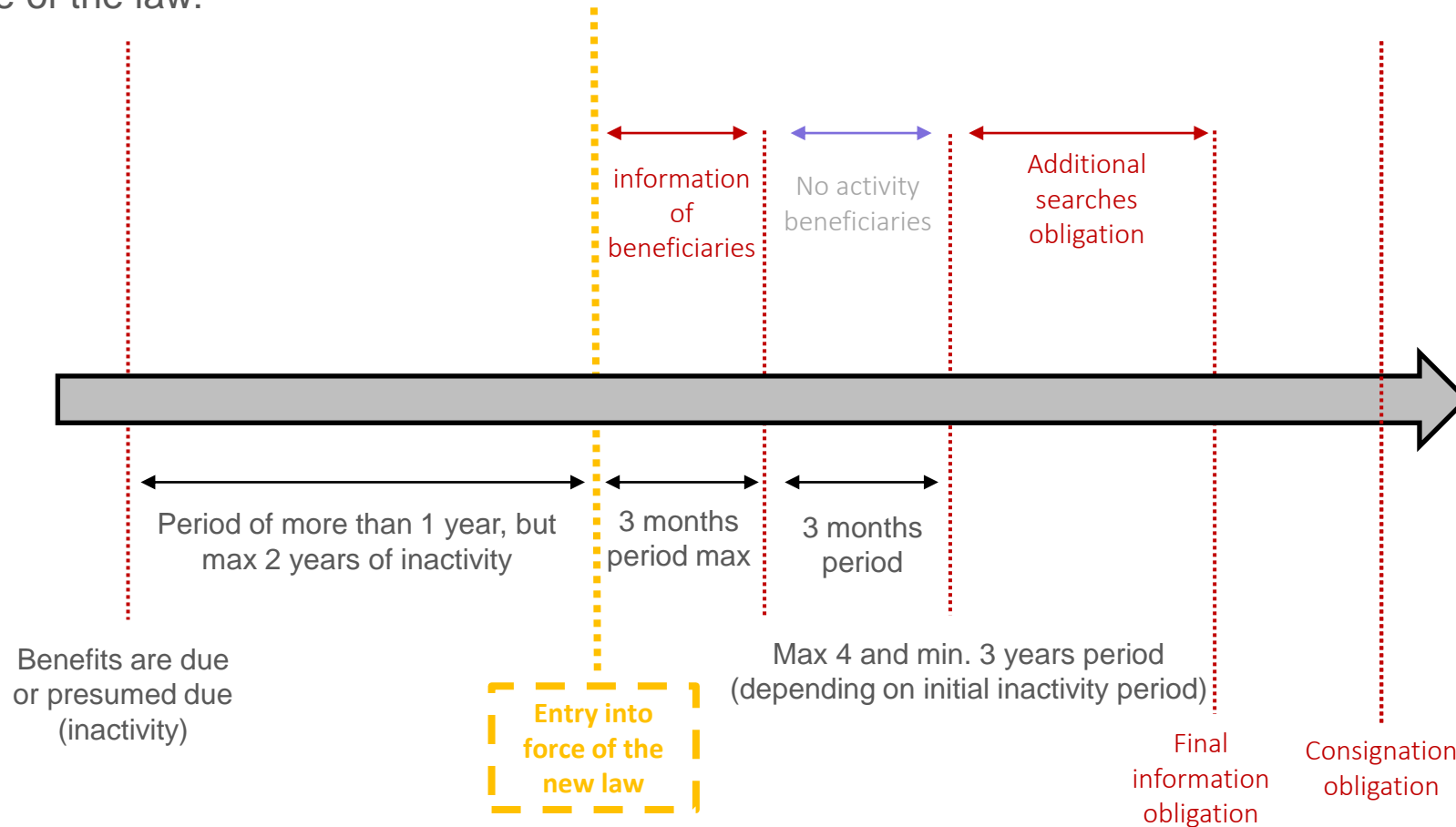
- If the benefit is due at the time the law comes into force and no beneficiary has claimed it for
  - more than one year, but max 2 years:
    - Notification of beneficiaries within 3 months (following the law's enactment)
    - if no reaction within 3 months, or if not enough data to proceed with the information -> search





# TRANSITIONAL MEASURES: INSURANCE

Timeline applicable to contracts which are inactive for more than 1 year but max. 2 years at the date of the entry into force of the law:



# TRANSITIONAL MEASURES: INSURANCE

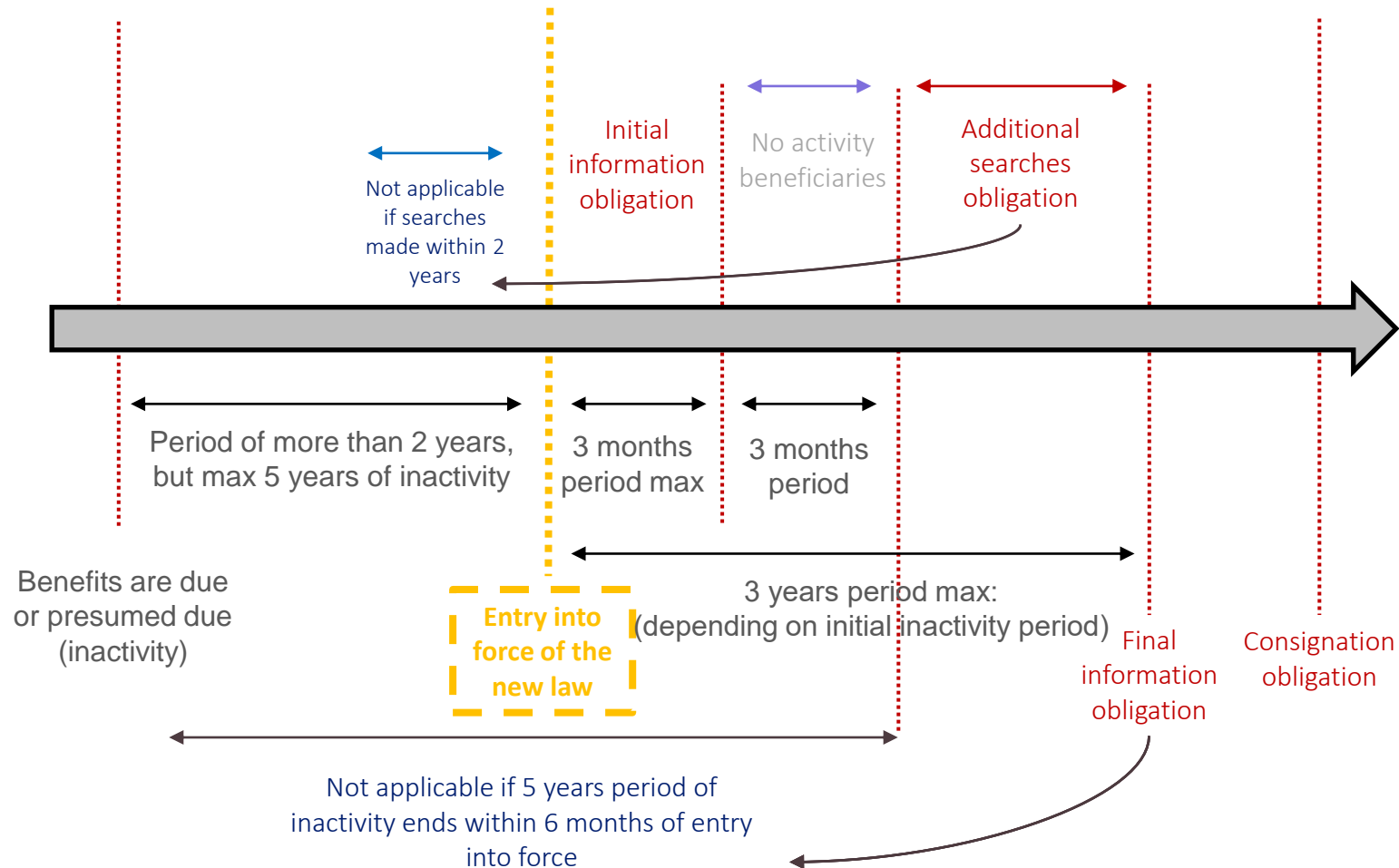
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- If the benefit is due at the time the law comes into force and no beneficiary has claimed it for
  - more than 2 years, but less than 5 years:
    - information to beneficiaries within 3 months (following the law's entry into force)
    - if no reaction within 3 months, or if not enough data to proceed with the information -> searches (exemption if already made searches in the previous 2 years and not successful)
    - [exemption from 3rd information if the 5-year period expires within 6 months of the entry into force of the law].



# TRANSITIONAL MEASURES: INSURANCE

Timeline applicable to contracts which are inactive for more than 2 years but max. 5 years at the date of the entry into force of the law:



# TRANSITIONAL MEASURES: INSURANCE

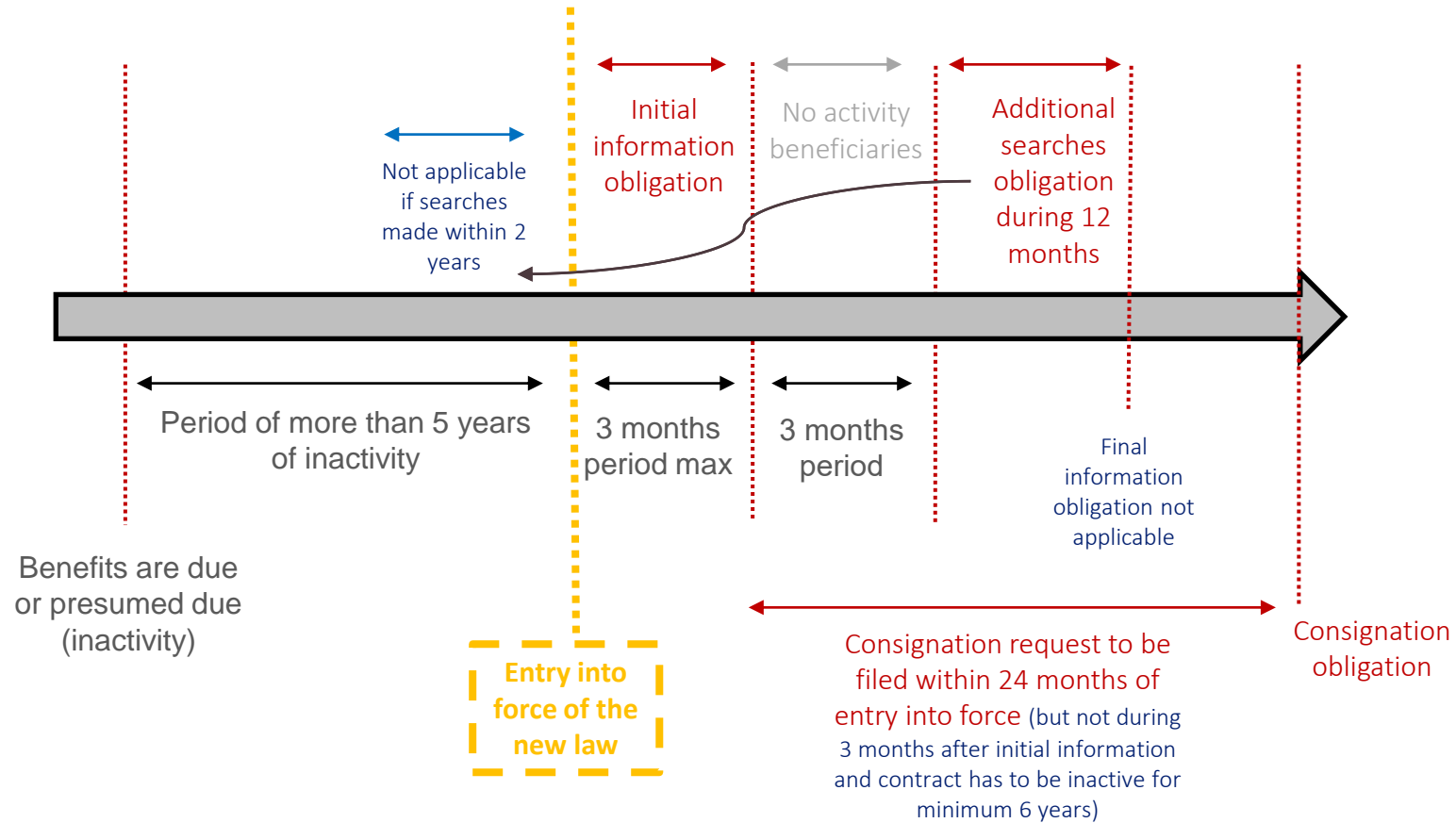
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- If the benefit is due at the time the law comes into force and no beneficiary has made a claim for
  - more than 5 years:
    - inform beneficiaries within 3 months (following the law's entry into force)
    - if no reaction within 3 months, or if not enough data to proceed to the information -> research:
      - 12 months to do the research
      - exemption if research has already been carried out in the previous 2 years and was not successful
    - exemption from 3<sup>rd</sup> information
    - time limit of 24 months following the entry into force of the law to submit a consignment request



# TRANSITIONAL MEASURES: INSURANCE

Timeline applicable to contracts which are inactive for **more than 5 years** at the date of the entry into force of the law:





# ANNUAL INFORMATION OF THE RESPECTIVE REGULATOR (CSSF OR CAA) AND THE ACD

(art.27)

1. Banks shall **send by electronic means** to the **CSSF** and the **Administration des Contributions Directes (ACD)** at the latest on 28 February of each year **information relating to inactive accounts and safes opened in their books** as of 31 December of the previous year (total number of holders, total number of accounts and safes, and total of assets on an aggregated basis).
2. Insurance companies shall **send to the CAA by electronic means and according to procedures to be defined by the CAA and to the ACD** at the latest on 28 February of each year information relating to dormant contracts as of 31 December of the previous year (total number of "dormant" contracts + total balance of these contracts as of 31 December of each year).
3. Transmission to the ACD is foreseen in the context of compliance with the law of 18 December 2015 relating to the *Norme commune de déclaration* and the amended law of 24 July 2015 relating to FATCA.





# SANCTIONS (art. 40 to 46)

## 1. Administrative sanctions

- The CSSF and the CAA are vested with all supervisory and investigation powers necessary to ensure the proper exercise of its duties under the Law.
- The CSSF and the CAA may inflict administrative and other sanctions in case of violation of the main obligations imposed respectively on banks and insurance companies by the Law prior to consignment.
- Publicity of sanctions
- Sanctions such as fines may be imposed upon legal entities subject to its supervision, members of the management bodies of such entities or any person responsible for a violation up to a maximum amount of 1,000,000 EUR for legal entities and 250,000 EUR for physical persons.

## 2. Criminal sanctions

- Criminal sanctions may be imposed in case of **violation of consignment obligations**.
- **Fines** may range from 12,500 to 1,000,000 EUR for legal entities and from 2,500 to 250,000 EUR for members of the management bodies.





## ABBL RECOMMENDATIONS

1. **Maintenance of lists of inactive accounts as per applicable legal criteria and time period** to be able to determine which obligations shall be complied with (i.e. initial information obligation, additional researches obligation; consignment obligation,...)
2. **Undertaking additional researches of accountholder** and/or beneficiaries as the case may be – hiring of third parties service providers to be contemplated.
3. **Implementation and/or modification of internal procedures** to :
  - ✓ Maintain relationship with client(s) to avoid account(s) to become inactive;
  - ✓ Comply with requirements and delays laid down in the law regarding the respective consignment related obligations;
  - ✓ Comply with requirements regarding storage of information and evidence to be provided to the CDC.
4. **Compliance** with legal obligations arising from the law on inactive accounts **as soon as possible** may **trigger application** of more favorable provisions of the law notably regarding transitional measures.



# ACA RECOMMENDATIONS

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- Appropriate tools and access to contract data in order to be able to monitor the age of the insured person (90 years) or the term of the contracts -> view on due dates of insurance benefits and starting date of the 1<sup>st</sup> information obligation
- It is "*crucial (...) that insurance undertakings are able to trace contacts*" and "*adequate record-keeping of the business relationship*" (Bill of law - Commentary on Articles, Article 2)
- Throughout the life of the contract : appropriate measures in order to facilitate due diligence and investigation
- Insurers must have "*an appropriate internal organization*" and "*precise rules*" (policies)
- AML obligations already impose "*good relations*" with clients "*therefore obligations of regular contacts*" with clients already exist (Finance and Budget Commission Meeting, 1/21/2022)

