

## Communication

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### **Communication on the procedures for the performance of insurance or reinsurance activities in Belgium by insurance or reinsurance companies governed by foreign law (companies from another Member State of the European Economic Area or from a third country)**

*« This is a courtesy translation. Only the Dutch and French version have legal value ».*

#### Scope

- *Insurance or reinsurance companies governed by the law of another Member State of the European Economic Area; and*
- *Insurance companies governed by the law of a third country.*

#### Summary/Objective

*This Communication recalls the conditions and describes the procedures that apply to insurance or reinsurance companies governed by the law of another Member State of the European Economic Area that wish to perform insurance or reinsurance activities in Belgium through a branch or under the freedom to provide services. It also presents the conditions and procedure to be adhered to by insurance companies governed by the law of a third country that wish to establish an authorised branch in Belgium (provided that a number of fairly strict conditions are met) or perform activities under the freedom to provide services (in certain cases laid down in international agreements).*

#### Legal basis

*Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, Articles 550 to 561, 575, 584 and 585.*

#### Structure

- I. *Objective*
- II. *Definitions*
- III. *Performance of insurance or reinsurance activities in Belgium by an insurance or reinsurance company governed by the law of another Member State of the EEA*
- IV. *Performance of insurance activities in Belgium by an insurance company governed by the law of a third country*
- V. *Repeal*

Dear Sir,  
Dear Madam,

## **I. Objectives**

This Communication aims to recall the requirements to be met by insurance or reinsurance companies governed by the law of another Member State of the European Economic Area (hereinafter referred to as the "EEA") that wish to perform insurance or reinsurance activities in Belgium through a branch or under the freedom to provide services, and to specify the procedures that apply in such cases. It also presents the conditions and procedure to be adhered to by insurance companies governed by a third country that wish to establish an authorised branch in Belgium (provided that a number of fairly strict conditions are met) or perform activities under the freedom to provide services (in certain cases laid down in international agreements).

## **II. Definitions**

- The Law: the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;
- Member State: a State that is a party to the European Economic Area Agreement (Article 15, 27° of the Law);
- Third country: a State that is not a party to the European Economic Area Agreement (Article 15, 28° of the Law);
- Branch: any agency or branch of an insurance or reinsurance company established on the territory of a Member State other than the Member State of origin, or on the territory of a third country (Article 15, 33° of the Law);
- Freedom to provide services: the activity by way of which an insurance or reinsurance company covers risks situated in another Member State or in a third country, from its registered office or from a branch situated in a Member State or in a third country (Article 15, 35° of the Law).

## **III. Performance of insurance or reinsurance activities in Belgium by an insurance or reinsurance company governed by the law of another Member State of the EEA**

### **3.1. Introduction**

Insurance or reinsurance companies that are governed by the law of another Member State and are authorised to perform insurance or reinsurance activities in their country of origin may, through a branch or under the freedom to provide services, perform insurance or reinsurance activities in Belgium, provided they follow the procedures laid down in the Law.

### **3.2. Legal basis**

The following legal provisions apply for opening a branch in Belgium or taking up business in Belgium under the freedom to provide services:

- 1) Opening of a branch: for insurance companies, Articles 550 to 555 of the Law, and for reinsurance companies, Article 575 of the Law; and
- 2) Freedom to provide services: for insurance companies, Articles 556 to 561 of the Law, and for reinsurance companies, Article 575 of the Law.

### **3.3. Opening of a branch in Belgium**

#### **3.3.1. Opening of a branch by an insurance company**

Insurance companies that have been granted authorisation in another Member State of the EEA and that wish to establish a branch in Belgium in order to perform insurance activities, are required to contact the competent authority of their Member State of origin in order to determine the content of the notification dossier they are to submit to the said authority.

As soon as the competent authority of the Member State of origin has submitted the information mentioned in Article 550 of the Law to the National Bank of Belgium (hereinafter referred to as "the Bank"), the Bank shall, within a two-month time limit, provide the competent authority of the Member State of origin with the provisions of Belgian law that the branch must comply with for reasons of general interest (Article 551 of the Law).

In accordance with Article 552 of the Law, the branch may commence its activities in Belgium from the date on which the competent authority of the Member State of origin receives the communication on the general interest provisions and, at the latest, by the end of the aforementioned two-month time limit.

#### **3.3.2. Opening of a branch by a reinsurance company**

In accordance with Article 575 of the Law, reinsurance companies governed by the law of a Member State may establish a branch in Belgium to perform reinsurance activities, provided that they have been granted authorisation for these activities in their Member State of origin. These reinsurance companies are required to contact the competent authority of their Member State of origin for any procedures to be followed for notifying the said authority of their intention to open a branch in Belgium.

### **3.4. Performance of activities in Belgium under the freedom to provide services**

#### **3.4.1. Performance of activities under the freedom to provide services by an insurance company**

Insurance companies that have been granted authorisation in another Member State and wish to perform insurance activities in Belgium under the freedom to provide services, are required to contact the competent authority of their Member State of origin in order to determine the content of the notification dossier they are to submit to that authority.

As soon as these insurance companies have been notified by the competent authority of the Member State of origin that the information referred to in Article 556 of the Law has been submitted to the Bank, they may commence their activities in Belgium (Article 558 of the Law).

#### **3.4.2. Performance of activities under the freedom to provide services by a reinsurance company**

In accordance with Article 575 of the Law, reinsurance companies governed by the law of a Member State may perform reinsurance activities in Belgium under the freedom to provide services, provided that they have been granted authorisation for these activities in their Member State of origin. These reinsurance companies are required to contact the competent authority of their Member State of origin for any procedures they have to follow to notify the said authority of their intention to perform reinsurance activities in Belgium under the freedom to provide services.

### **3.5. Changes to information related to a branch in Belgium or to activities performed under the freedom to provide services**

In accordance with Article 554 of the Law and Article 145 (4) of Directive 2009/138/EC, any proposed changes to the information included in the dossier on the branch in Belgium of an insurance company governed by the law of another Member State shall be notified by that company to the Bank and the competent authority of the Member State of origin at least one month before these changes are made. Companies may choose the format in which the changes are notified.

In accordance with Article 560 of the Law, any proposed changes to the information included in the dossier on the performance in Belgium of insurance activities under the freedom to provide services shall be notified to the competent authority of the Member State of origin, which shall forward this information to the Bank.

## **IV. Performance of insurance activities in Belgium by an insurance company governed by the law of a third country**

Note: This section does not cover the performance of reinsurance activities in Belgium by reinsurance companies governed by the law of a third country. The procedure for reinsurance companies from third countries will be covered in another communication.

### **4.1. Introduction**

This section concerns the performance of insurance activities in Belgium by insurance companies governed by the law of a third country through a branch or under the freedom to provide services.

It should be noted that:

1. the performance of activities through a branch is subject to stricter conditions for companies from a third country than for companies governed by the law of another Member State; and
2. activities performed under the freedom to provide services are only authorised in certain cases laid down in international agreements to which both Belgium and the third country of origin are parties or by which they are bound, such as the General Agreement on Trade in Services (hereinafter referred to as "GATS"<sup>1</sup>) or the OECD Code on the liberalisation of current invisible operations (hereinafter referred to as the "OECD Code").

In situations that are not covered by the points above, insurance companies governed by the law of a third country may only perform activities in Belgium through a subsidiary which is a company governed by Belgian law that is fully subject to the provisions of Book II of the Law.

If the intention is to create a subsidiary with the aim of carrying out insurance activities, Articles 17 et seq. of the Law fully apply, as do the formalities described in Communication NBB\_2017\_17 on the procedures to obtain an authorisation as an insurance or reinsurance company governed by Belgian law and to obtain an extension of an authorisation.

If the intention is to acquire an insurance company governed by Belgian law that has already been granted authorisation in Belgium, Articles 64 et seq. of the Law should be complied with.

### **4.2. Legal basis**

The following legal provisions apply in this regard:

- 1) opening of a branch: Articles 584 and 585 of the Law; and
- 2) provision of services: Article 584, second paragraph of the Law.

<sup>1</sup> Particularly the provisions included in the Annex on financial services and the Understanding on Commitments in Financial Services.

#### **4.3. Opening of a branch in Belgium**

##### *a) Conditions*

The branch of an insurance company from a third country may only perform insurance activities in Belgium if:

- a) the insurance company is governed by the law of a third country that is considered "equivalent"<sup>2</sup> (Article 585, § 3, 1° of the Law);
- b) the Bank has entered into a cooperation agreement with the supervisory authorities of the third country of origin<sup>3</sup> (Article 585, § 3, 2° of the Law);
- c) the insurance company has been granted authorisation in the third country of origin for performing the insurance activities it intends to carry out through its Belgian branch;
- d) the branch has been granted prior authorisation by the Bank (Articles 584, first paragraph and 585 of the Law).

##### *b) Authorisation and authorisation dossier*

Insurance companies governed by the law of a third country that wish to establish a branch in Belgium, should request prior authorisation from the Bank.

In order for the branch to receive authorisation, the company should provide the Bank with a dossier containing the following:

- (i) the same information that is included in Communication NBB\_2017\_17 (application mutatis mutandis of the memorandum of authorisation), modified to suit a branch and not a separate legal entity (e.g. by replacing any mention of the directors of the company by the managers of the branch), and to suit the fact that certain provisions applicable to companies governed by Belgian law do not apply to branches of third countries (e.g. the formal aspects concerning the effective creation of the legal entity); and
- (ii) the following items:
  - a) the proof required in Article 585, § 1, second paragraph of the Law, that:
    - 1. the branch has the necessary eligible own funds to attain half of the absolute floor of the minimum capital requirement,
    - 2. the branch has assets in Belgium for the aforementioned amount and it has, moreover, deposited half of these assets with a financial intermediary, so as to make them unavailable;
  - b) a confirmation by the supervisory authority of the third country of origin that the company meets the prudential requirements that apply to it in that country (Article 585, § 2, 2° of the Law);

<sup>2</sup> That is to say a country where the prudential supervision of insurance companies is considered equivalent to that regulated by Directive 2009/138/EC and its implementing measures. For more information regarding the equivalence analyses performed by EIOPA, visit <https://eiopa.europa.eu/external-relations/equivalence>. It is also noted that the opening of a branch in Belgium by a swiss insurance company is submitted to a specific regime in accordance with the Agreement between the Swiss confederation and the European economic community concerning direct insurance other than life insurance signed on 10 October 1989.

<sup>3</sup> Unless the Bank is of the opinion that, in a particular case, cooperation with the supervisory authorities of the third country would not substantially improve its knowledge of the insurance company and the group of companies to which it belongs (Article 585, § 3, 2° of the Law).

c) the following additional information:

1. information on the solvency rules that apply in the country where the registered office is established,
2. an opinion by the supervisory authority of the registered office on the branch's scheme of operations and the quality of the independent control functions, and
3. the contact details of the authorised agent, and information on the hierarchical and functional reporting lines between the management of the branch and that of the parent company, as well as the reporting lines between the control functions of the branch and those of the parent company.

Moreover, insurance companies governed by an equivalent third country should, in accordance with Articles 177 and 178 of the Code on miscellaneous duties, levies and taxes (Code des droits et taxes divers - Wetboek diverse rechten en taksen), appoint a tax representative in the context of the annual tax on insurance contracts<sup>4</sup>.

c) *Review by the Bank*

In accordance with Article 585, § 4 and § 5 of the Law, the Bank may refuse to grant authorisation to a branch if the country by the law of which the company is governed, does not offer the same opportunities for access to its market to insurance companies governed by Belgian law, and if the Bank is of the opinion that the creation of a company governed by Belgian law is required for the protection of the policy holders, the insured and beneficial owners, for the sound and prudent management of the company or for the financial stability.

#### **4.4. Performance of an activity under the [freedom to provide services in Belgium in the context of the GATS and the OECD Code](#)**

Insurance companies governed by the law of a third country may only perform activities on Belgian territory under the freedom to provide services in certain cases laid down in international agreements. Set out below is the procedure for performing an activity in Belgium under the freedom to provide services in accordance with the GATS and the OECD Code.

##### **4.4.1. GATS - Maritime shipping, commercial aviation and goods in international transit**

Companies of third countries that are a party to the GATS may, under the freedom to provide services, cover risks located in Belgium relating to:

1. maritime shipping, commercial aviation and space launching and freight (including satellites); such insurance covers any or all of the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
2. goods in international transit.

The aforementioned risks belong to classes 3, 4, 5, 6, 7, 10, 11 and 12 of Annex I of the Law.

In order to be authorised to perform the above-mentioned activities, the insurance company governed by the law of the third country must give prior notification of its intention to the Bank. This notification should be accompanied by a dossier comprising the following items:

<sup>4</sup> See Article 178, second paragraph of the said Code, which states that insurance companies that are not established in Belgium and of which the registered office is established outside the European Economic Area should, prior to performing any insurance business in Belgium, appoint a tax representative which must be authorised by the Minister of Finance or his delegate. This representative should personally, in writing, assume responsibility towards the State for paying the annual tax and fines that may be due.

- 1° the address of the registered office and, where appropriate, of the branch from which the activity will be performed;
- 2° a declaration by the competent authorities of the country where the registered office is established, stating that:
- (i) the company's solvency is sufficient to perform these activities;
  - (ii) it is empowered, pursuant to its national legislation, to perform the insurance activities covered by the request;
  - (iii) there are no objections to the performance of the proposed activities in Belgium;
- 3° the description of the nature of the risks and the characteristics of the products the company intends to cover as well as, where appropriate, the general and special conditions of the insurance policies that are compulsory in Belgium.

The company may commence its activity as soon as it has received notification from the Bank that its dossier is in order. If the Bank has not communicated its decision within two months after receiving the complete dossier, it shall be assumed that it has no objections to the company's intention.

The company should also notify the Bank of any changes it intends to make to the items above.

#### 4.4.2. OECD Code – classes 4, 5, 6, 7, 11 and 12

Companies from third countries that have adopted the OECD Code may agree to cover, under the freedom to provide services, risks located in Belgium belonging to classes 4 (rolling stock CASCO), 5 (aircraft CASCO), 6 (inland and sea vessel CASCO), 7 (transported goods), 11 (civil liability for aircraft) and 12 (civil liability for sea and inland vessels) if the policyholder took the initiative to enter into the contract.

The policyholder is not considered to have taken the initiative to enter into the contract if he was contacted by the insurance company or an agent authorised by it to enter into an insurance contract.

## **V. Repeal**

This Communication replaces and repeals Communications D.146 - A and D.146 - B of 19 April 1996 from the date of its publication on the Bank's website.

Yours faithfully,

Jan Smets  
Governor