

Circular

Public

Brussels, 5 December 2023

Reference: NBB_2023_11

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Circular on the procedure to be followed by foreign credit institutions that wish to open a representative office in Belgium and on the information to report to the NBB on an ongoing basis

Scope of application

- *Credit institutions governed by the law of another Member State of the European Economic Area (hereinafter “EEA”);*
 - *Credit institutions governed by the law of a non-EEA country (hereinafter “Third Country”);*
- The two abovementioned institutions are hereinafter collectively referred to as “foreign credit institutions”; and*
- *the representative offices already registered by the National Bank of Belgium on its list of representative offices.*

Summary/Objectives

This circular describes the procedure to be followed when a foreign credit institution wishes to open a representative office in Belgium and the information to report to the National Bank of Belgium on an ongoing basis. The activities of a representative office must be limited to promoting the activities of the credit institution it represents and to collecting and distributing information. Under no circumstances may a representative office be involved in the conclusion or day-to-day conduct of financial transactions or services.

Relevant statutory provisions

Articles 341 to 343 of the Act of 25 April 2014 on the legal status and supervision of credit institutions (hereinafter the “Banking Act”).

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Dear Madam,
Dear Sir,

Articles 341 to 343 of the Banking Act govern the representative offices in Belgium of credit institutions established under foreign law. These provisions stipulate that credit institutions governed by foreign law that wish to set up a representative office in Belgium are first required to register it with the National Bank of Belgium (hereinafter the “Bank”).

The purpose of this circular is to describe the procedure to be followed by a foreign credit institution - without a Belgian branch – that wishes to open a representative office in Belgium and to specify the information to provide to the Bank on an ongoing basis.

1. Permitted activities of a representative office

A representative office is an entity conducting limited activities that does not have separate legal personality from the foreign credit institution it represents.

In accordance with Articles 341 and 342 of the Banking Act, a representative office may only promote the activities of a foreign credit institution and collect and distribute information. It may not engage in banking activities and in particular may not be involved, in any capacity whatsoever,¹ in the conclusion or conduct of financial transactions or financial services, other than those inherent in the office’s administrative management.

The activities of a representative office must therefore be limited to raising awareness, providing information, and serving as a point of contact, thus excluding any and all credit institution activity. If this restriction is not respected, the representative office may be considered a branch, within the meaning of Article 3(64) of the Banking Act, in which case Article 312 or 333 of the Banking Act on the opening of a branch in Belgium will apply.

1.1. Promotion of the activities of the foreign credit institution – Contact with customers

A representative office in Belgium is permitted to interact, either physically or online, with specific potential local customers of the foreign credit institution, provided it does not engage in any banking activity.

Pursuant to the Banking Act, the promotion to customers of activities relating to transactions reserved to credit institutions is only permissible in order to inform potential or existing customers (of the foreign credit institution) of the nature of the services the foreign credit institution can provide. Such promotional activity includes, for example, informing people from the country of the represented foreign credit institution of the credit services, particularly in the area of mortgage loans, the institution can provide in its home country or in any country where it is authorised to conduct business as a credit institution.

This type of activity also includes informing businesses operating in Belgium that have a commercial relationship with the country where the represented foreign credit institution is established of the possibilities to obtain credit or financial services in that country. A credit transaction, a deposit or the opening of an account that forms the object of such promotional activity can only be validly concluded by the registered office or operational headquarters of the credit institution in its home country or in any country where it is authorised to conduct business as a credit institution.

Promotional activity on behalf of the foreign credit institution is thus intended to facilitate provision of the general information necessary for the opening of accounts by the foreign credit institution in its home country. In practice, such activity should be limited to the provision of general information (e.g. the nature and conditions of the services offered by the credit institution in its home country, details of how

¹ This applies in particular to the receipt of repayable funds from the public, solicitation of the public with a view to the receipt of such funds, the receipt of stock market orders, trading in public funds or foreign currencies, asset management and investment advice.

customers can contact the institution, such as a website, the documents to be provided to the foreign credit institution) and may not include the provision of documents to open an account in the credit institution's home country.

The representative office cannot handle funds and cannot provide financial services, draw up contracts or open and manage customer bank accounts, even if these accounts are held abroad.

1.2. Collection and distribution of information

The purpose of the representative office is to establish contacts and to collect and distribute information:

- Contacts mean essentially relations with corresponding credit institutions, the Belgian authorities and the European authorities;
- Activity relating to the provision of information covers general information to be distributed both in Belgium and in the home country, in particular to credit institutions, companies and customers of the credit institution.

Thus, the representative office may collect a (handwritten or electronic) signature in order to authenticate it, but may not assist a customer with the completion of documents to open an account. To ensure that the activities of the representative office remain within the statutory limits, the office's staff may not be authorised or empowered to carry out financial transactions or provide financial services or to bind the credit institution by their signature for purposes of such transactions or services. The manager of a representative office may therefore only sign documents relating to the office's administrative management.

Furthermore, if a representative office has a website, the latter may include a link to the home page of the foreign credit institution it represents but not to one or more specific documents on that website enabling a business relationship to be established, since the provision of such a "specific" link could be considered participation in the provision of a financial service.

1.3. Freedom to provide services

The authorised activities of credit institutions operating in Belgium from another EEA Member State under the principle freedom to provide services cannot be carried out through a representative office. In this case, the office must take the form of a branch.

2. Registration with the Bank

The opening of a representative office by a foreign credit institution must, pursuant to Article 341 of the Banking Act, form the object of prior registration with the Bank.

In order to do so, the following prerequisite must be met and certain information must be provided.

2.1. Prerequisite

Article 341 reserves the right to set up a representative office to foreign credit institutions that do not have a branch in Belgium. It is thus not possible to establish a representative office if the foreign credit institution is present in the country in the form of a branch. The purpose of this requirement is to avoid confusion, for both the public and the "representatives" of these entities.

2.2. Information to be provided

Before setting up a representative office, the foreign credit institution must provide the Bank with the following information:

1. Information concerning the foreign credit institution:
 - the name of the credit institution in the country where its registered office is located and the name under which it operates in the country(-ies) where it does business;
 - the address of its registered office;
 - its corporate form in its home country;
 - the country(-ies) where it carries out most of its activities;
 - a description of its main activities;
 - financial statements for the last three financial years;
 - a letter from the credit institution's supervisory authority stating either that it has authorised the opening of a representative office or that the opening of such an office does not require an authorisation under its national law.
2. Information concerning the representative office:
 - reasons for opening the office in Belgium and the objectives to be pursued;
 - the name the office intends to use;
 - estimated operating costs for the first year;
 - the identity of the persons authorised to represent the credit institution in Belgium, along with the CV and a certificate of good conduct (i.e. proof of no criminal record) for the lead manager;
 - if the office intends to interact with specific potential customers with a view to enabling the credit institution represented to conclude transactions, a precise description of the nature and methods of these contacts, the means to be used for this purpose and the type of clientele targeted.
3. Formal commitments:
 - an undertaking to comply with (i) the statutory limits applicable to the activities of a representative office as regards the prohibition on the conduct of financial transactions or the provision of financial services, in particular the prohibition on the transfer of income of foreign residents to the foreign credit institution's home country and the prohibition on facilitating access to documents enabling a business relationship to be established; (ii) the obligation to include the mention "representative office" alongside the name of the credit institution; and (iii) expectations regarding the external appearance of the premises (see point 4.2. below);
 - an undertaking to make available to the Bank, upon request, all information, correspondence and documents relating to the office's activities;
 - an undertaking to submit to the Bank an annual report on the office's activities, the minimum content of which is described in point 3 below.

Upon receipt of a complete file, the Bank will consult the authority responsible for the supervision of credit institutions in the country of origin (EEA or a third country) to ensure the latter has no objection to the establishment of a representative office in Belgium.

Once a favourable opinion is received from this authority, the Bank will add the office to the list of representative offices published on its website and inform the credit institution of this decision.

3. Ongoing supervision by the Bank

In order to enable the Bank to keep the list of representative offices up to date, representative offices are required to inform the Bank of any changes to their main characteristics and those of the institution they represent, as well as of any closures.

In addition, representative offices must submit an annual activity report by the end of the first quarter of each year.

This report must include at least the following information:

1. the number of staff employed and any changes thereto;
2. a statement of operating costs for the previous year;
3. comments on the office's activities, in particular the development thereof:
 - contacts with the corresponding credit institutions;
 - nature of the information collected and distributed and type of recipients;
 - contacts with the European authorities;
 - description of promotional activity: types of activity and resources used, type of clientele, etc.;
4. comments on a possible reorientation of activities;
5. the foreign credit institution's annual accounts for the last financial year, drawn up in accordance with the law of its home country.

In addition, all new managers must provide a CV and a certificate of good conduct.

Finally, it should be noted that, in accordance with Article 343 of the Banking Act, the Bank has extensive investigative powers in respect of representative offices. It may request any information it deems necessary, carry out on-site investigations or have them carried out, and inspect all correspondence and documents - including those relating to operating costs - pertaining to the activities of a representative office. If the Bank finds that a representative office fails to meet its obligations, it may revoke its registration pursuant to Article 343 of the Banking Act.

4. Miscellaneous provisions

4.1. Use of the terms "credit institution", "bank" and variations on the term "bank"

Article 5(3) of the Banking Act authorises representative offices to use the terms "credit institution", "bank", "banking", "savings institution" or "savings bank" in their name.

However, it is important to avoid giving the public the impression that, through a representative office, the credit institution concerned is established in Belgium for the purpose of conducting financial transactions or providing financial services or entering into relationships with a view to carrying out such transactions or providing such services.

Consequently, use of the credit institution's name must always be accompanied by the words "representative office" or a translation thereof into a language the public can understand.

4.2. Office signage

In order to avoid confusion in the mind of the public, it is important that the representative office not give the appearance of being a credit institution and that no commercial signage be used. The representative office must, on the contrary, use signage (a plaque or other means) clearly indicating that it is a representative office.

4.3. Advertising

Any print or online advertising of the credit institution concerned must not exceed the limits of awareness advertising. In particular, any offer to establish relations with a view to the conduct of financial transactions or the provision of financial services is prohibited.

However, in the case of a credit institution governed by the law of an EEA Member State, such advertising is authorised if it is carried out pursuant to the principle of freedom to provide services, provided the procedure set out in Article 313 of the Banking Act is followed. In this case, the advertising shall take place outside the representative office.

5. Repeal

This circular replaces and repeals circular D1/3198 of 9 December 1996, as from its publication on the Bank's website.

Yours faithfully,

A handwritten signature in black ink, consisting of a stylized 'W' followed by a large, sweeping 'D'.

Pierre Wunsch
Governor