

Communication

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Communication on the procedures to be followed by insurance or reinsurance companies governed by Belgian law that wish to take up an insurance or reinsurance activity abroad (in another Member State of the EEA or in a third country)

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

Scope

- *Insurance and reinsurance companies governed by Belgian law that are subject to the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies (with the exception of the insurance companies referred to in Articles 275, 276 or 294 of the aforementioned Law of 13 March 2016)*

Résumé/Objectif

This Communication sets out the conditions and describes the procedures to be followed by insurance or reinsurance companies governed by Belgian law that wish to take up an activity in the territory of another Member State of the European Economic Area or in a third country which is not a Member State of this Area, through a branch or under the freedom to provide services. It also specifies the information to be supplied to the National Bank of Belgium in the event of the establishment or acquisition of a subsidiary abroad.

Legal references

Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, Articles 107 to 122.

Structure

- I. *Objective*
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- V. *Establishment or acquisition of a subsidiary carrying on an insurance or reinsurance activity abroad*
- VI. *Repeal*

Dear Sir,
Dir Madam,

I. Objective

This Communication aims to recall the obligations of insurance and reinsurance companies governed by Belgian law that wish to take up an activity in another Member State of the European Economic Area or in a third country, and to specify the procedures applicable in such cases. It also specifies the information to be supplied to the National Bank of Belgium (hereinafter 'the Bank') in case of establishment or acquisition of a subsidiary abroad.

II. Definitions

- The Directive: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II);
- 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 (Art. 15, 27° of the Law);
- Third country: a State that is not a party to the European Economic Area Agreement (Art. 15, 28° of the Law);
- Branch: an agency or branch of an insurance or reinsurance company established on the territory of a Member State other than the home Member State or on the territory of a third country (Art. 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 (Art. 15, 35° of the Law);

III. Pursuit of an insurance or reinsurance activity in another Member State of the European Economic Area

3.1. Introduction

An insurance or reinsurance company governed by Belgian law may exercise the insurance or reinsurance activities for which it has been authorised in Belgium, in another Member State of the European Economic Area (hereinafter 'EEE') in the following two manners:

- 1) the opening of a branch, i.e. a permanent establishment, in the territory of another Member State;
- 2) freedom to provide services, i.e. the activity by way of which an insurance or reinsurance company covers risks situated in another Member State, from its registered office or from a branch situated in a Member State;

If an insurance or reinsurance company wishes to take up in the territory of another Member State an activity for which it has not been authorised in Belgium, it must apply for such authorisation at the latest at the moment of submission of the notification referred to in 1.3 or 1.4 below. In this respect, reference is made to 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, and to the authorisation memorandum.

3.2. Legal references

The legislation applicable to the notification of the opening of a branch and the pursuit of activities under the freedom to provide services by an insurance or reinsurance company governed by Belgian law is the following:

- 1) Opening of a branch: Articles 108 to 114 and 122 of the Law; and
- 2) Freedom to provide services: Articles 115 to 122 of the Law.

3.3. Opening of a [branch in another Member State](#)

3.3.1 Opening of a branch by an [insurance company](#)

a) Prior notification and dossier

An insurance company governed by Belgian law that wishes to establish a branch on the territory of another Member State, must previously notify the Bank thereof (Article 108, § 1, first paragraph of the Law).

For this purpose, it uses the form in Annex 1, which contains the information the company must provide to the Bank in support of its notification (Article 108, § 1, second paragraph), and the information concerning the authorised agent of the branch (Article 108, § 2). The review of the dossier submitted may give rise to requests for clarification or additional information from the Bank.

The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation.

b) Review by the Bank

Pursuant to Article 108, § 3 of the Law, the Bank may oppose the implementation of the plan at the latest three months after receipt of the complete dossier if the insurance company has failed to designate an authorised agent or if the proposed activity may have negative consequences for its governance system, its financial situation, or the Bank's supervision.

c) Transmission of the dossier to the authorities of the host Member State and general interest

If the Bank does not oppose the implementation of the insurance company's plan, the dossier must be sent to the supervisory authority of the host Member State. The Bank must inform the insurance company of the transmission of the dossier and of the date on which the supervisory authorities of the host Member State confirmed receipt thereof (Art. 109 of the Law).

The supervisory authorities of the host Member State must communicate to the Bank the provisions of this Member State which, for reasons of general interest, must be complied with by the branch in the host Member State. The Bank must forward this information to the insurance company.

d) Commencement of the activity

The insurance company may commence the proposed activity through the branch on the date on which the Bank received the list of the provisions of general interest applicable in the host Member State and at the latest once a term of two months has elapsed starting on the date on which the Bank forwarded the dossier to the supervisory authorities of the host Member State (see c) below). (Art. 111 of the Law).

3.3.2 Opening of a branch by a [reinsurance company](#)

a) *Prior notification and dossier*

A reinsurance company governed by Belgian law that wishes to establish a branch on the territory of another Member State, must previously notify the Bank thereof (Article 113 of the Law).

For this purpose, it uses the form in **Annex 1**, which contains the information the company must provide to the Bank in support of its notification (Article 113 in conjunction with Art. 108, § 1, second paragraph), and the information concerning the authorised agent of the branch (Article 113 in conjunction with Art. 108, § 2). The review of the dossier may give rise to requests for clarification or additional information from the Bank.

The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation.

b) *Review by the Bank*

Pursuant to Article 113 in conjunction with Article 108, § 3 of the Law, the Bank may oppose the implementation of the plan at the latest three months after receipt of the complete dossier if the company has failed to designate an authorised agent or if the proposed activity may have negative consequences for its governance system, its financial situation, or the Bank's supervision.

c) *Transmission of the dossier to the authorities of the host Member State*

Within one month of receipt of the complete dossier, the Bank must forward the dossier to the host Member State.

d) *Commencement of the activity*

The reinsurance company may commence the proposed activity through the branch on the date on which the Bank informs it that it does not oppose the proposed plan (Art.114, 2° of the Law).

3.4. Pursuit of an activity under the freedom to provide services in another Member State

3.4.1 Pursuit of an activity under the freedom to provide services by an [insurance company](#)

a) *Prior notification and dossier*

An insurance company governed by Belgian law that wishes to pursue activities under the freedom to provide services in another Member State, must previously notify the Bank thereof (Art. 115, § 1, first paragraph of the Law). ¹

For this purpose, it uses the form in **Annex 2**, which contains the information the company must provide to the Bank in support of its notification (Article 115, § 1, second paragraph of the Law). The review of the dossier may give rise to requests for clarification or additional information from the Bank.

The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation.

b) *Review by the Bank*

Pursuant to Article 115, § 2 of the Law, the Bank may oppose the implementation of the plan at the latest three months after receipt of the complete dossier if the proposed activity may have negative consequences for the governance system, the financial situation, or the Bank's supervision.

¹ It should also be noted that, if activities are performed under the freedom to provide services from a branch of the insurance company governed by Belgian law, it should be considered that, since the branches do not have legal personality, the activities performed under the freedom to provide services are performed by the company governed by Belgian law itself, and it is therefore the Bank (and not the authority of the country hosting the branch) which should be notified of this activity performed under the freedom to provide services.

c) Transmission of the dossier to the authorities of the host Member State and general interest

If the Bank does not oppose the implementation of the insurance company's plan, the dossier is forwarded to the supervisory authority of the host Member State. The Bank must inform the insurance company of the transmission of the dossier and of the date on which the supervisory authorities of the host Member State have confirmed receipt thereof (Art. 116 of the Law).

The supervisory authorities of the host Member State must communicate to the Bank the provisions of that Member State which, for reasons of general interest, must be complied with in case of exercise of cross-border activities in the host country. The Bank forwards this information to the insurance company.

d) Commencement of the activity

The insurance company may commence the proposed activity under the freedom to provide services on the date on which the Bank forwarded the notification dossier to the supervisory authorities of the host Member State (Art. 118, first paragraph of the Law).

3.4.2 Pursuit of an activity under the freedom to provide services by a [reinsurance company](#)

a) Prior notification and dossier

A reinsurance company governed by Belgian law that wishes to pursue activities under the freedom to provide services in another Member State, must previously notify the Bank thereof (Art. 120 of the Law).

For this purpose, it uses the form in Annex 2, which contains the information the company must provide to the Bank in support of its notification (Article 121 in conjunction with Article 15, § 1, second paragraph of the Law). The review of the dossier may give rise to requests for clarification or additional information from the Bank.

The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation.

b) Review by the Bank

Pursuant to Article 121 in conjunction with Art. 115, § 2 of the Law, the Bank may oppose the implementation of the plan at the latest three months after receipt of the complete dossier if the proposed activity may have negative consequences for the governance system, the financial situation, or the Bank's supervision.

c) Commencement of the activity

The reinsurance company may commence the proposed activity through the branch on the date on which the Bank informs it that it does not oppose the proposed plan (Art.121, 3° of the Law).

3.5. Changes to information relating to the pursuit of an activity through a branch or under the freedom to provide services by an insurance or reinsurance company in another Member State

Any proposed changes to the information provided in the initial form relating to (i) the opening of a branch by an insurance or reinsurance company or (ii) the pursuit of an activity under the freedom to provide services in a Member State by an insurance or reinsurance company, must be notified to the Bank at least one month before the change is made (Art. 112, 114, 119 and 121 of the Law).

For this purpose, the insurance or reinsurance company fills in the appropriate form in Annex 1 or 2, but only those parts of the form which contain the information which is changed.

The Bank decides on the matter according to the same procedure as that for an initial notification.

In case of a change of authorised agent of the branch, the company must only provide a "fit & proper" form (see circular NBB_2013_02 concerning standards on expertise and professional integrity for management committee members, directors, heads of independent control functions and senior managers of financial institutions) for the nominee authorised agent.

IV. Pursuit of an insurance or reinsurance activity in a third country

4.1. Introduction

An insurance or reinsurance company governed by Belgian law that wishes to pursue, in a third country, an insurance or reinsurance activity for which it has been authorised in Belgium, must previously notify the Bank thereof, irrespective of whether that activity is pursued through a branch or under the freedom to provide services.

It should be noted that the conditions for the opening of a branch or the pursuit of an activity under the freedom to provide services in a third country, are determined by the legislation of that country, except in case of bilateral or multilateral agreements to which Belgium and the third country concerned are parties. Therefore, an insurance or reinsurance company wishing to pursue an activity in the territory of a third country must contact the authority of the third country to precisely identify the applicable local legislation and, where appropriate, ensure compliance with any local authorisation obligation. It is noted that the opening of a branch in a third country often implies the preparation of a dossier that is very similar to that of a full authorisation dossier.

The Bank may also consult with the authority of the third country in order to lay down rules for the opening and the supervision of the branch as well as for the desired sharing of information (Art.110 of the Law).

This section concerns the case in which the law of the third country allows insurance or reinsurance activities to be pursued in the territory of a third country through a branch or under the freedom to provide services and does not affect the obligations that may be imposed in respect of such operations by the host country.

4.2. Legal references

The following legislation applies:

- 1) Opening of a branch: Articles 108, § 5, 110, 111, second paragraph and 114 of the Law; and
- 2) Provision of services: Articles 115, § 4, 117, 119 to 121 of the Law.

4.3. Procedure for opening a [branch in a third country](#) and for the [provision of services in a third country](#)

a) Notification and dossier

An insurance or reinsurance company governed by Belgian law that wishes to open a branch in a third country or to operate there under the freedom to provide services, must previously notify the Bank thereof.

For that purpose, the company submits a dossier containing the following elements:

- 1) the form in Annex 1 or 2, according to whether the dossier concerns the opening of a branch or the pursuit of an activity under the freedom to provide services;
- 2) detailed information on the prudential legislation and regulations applicable in the third country; and
- 3) any other information requested by the Bank.

This dossier must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation.

Taking into account the fact that dossiers relating to an activity outside the EEA are generally more complex than those relating to an activity within the EEA, forms 1 and 2, as referred to above, which are intended for cross-border activities within the EEA, do not suffice.

b) Review by the Bank

The Bank may oppose the plan of the insurance or reinsurance company under the same conditions as those set out in 3.3.1.b, 3.3.2.b, 3.4.1.b or 3.4.2.b of Section III.

The Bank may also oppose this plan if it has reasons to doubt compliance with the rules for taking-up of business provided for by the legislation of the third country or the possibility of exercising effective supervision of the branch established on the territory of the third country (Art.108, § 5 and 115, § 4 of the Law).

4.4. Changes to information relating to a branch or to the provision of services in a third country

Any proposed changes to the information provided in the initial form relating to the opening of a branch or the provision of services in a third country, must be notified to the Bank at least one month before the change is made (Art. 112, 114, 119 and 121 of the Law).

For this purpose, the insurance company fills in the appropriate form in **Annex 1 or 2**, but only those parts of the form which contain the information which has changed. The Bank decides according to the same procedure as that for an initial notification.

V. Establishment or acquisition of a subsidiary pursuing insurance or reinsurance activities in another EEA Member State or in a third country

An insurance or reinsurance company governed by Belgian law that intends to acquire, directly or indirectly, or to establish, in the EEA or in a third country, a subsidiary pursuing insurance or reinsurance activities, must contact the competent authority of the State concerned.

Pursuant to Article 107 of the Law, it must also notify the Bank in advance of its intention to establish or acquire a subsidiary.

For this purpose, it uses the form in **Annex 3**, which should contain the information the company must communicate to the Bank in support of its notification (Article 107, second paragraph of the Law). In case of establishment or acquisition of a subsidiary in a third country, this form must be accompanied by information concerning the prudential legislation and regulations applicable in the third country. Requests for clarification or additional information may also be requested by the Bank.

The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation.

The establishment or acquisition of a subsidiary pursuing insurance or reinsurance activities in the EEA or in a third country must be the subject of a formal decision by the Bank where the decision is considered to be strategic within the meaning of Articles 15, 77° and 102 of the Law. In that case, the Bank must decide within 3 months of receipt of a complete dossier.

VI. Repeal

This Communication replaces and repeals Communication D.146 - C of 19 April 1996 with effect from the date of its publication on the Bank's website.

A copy of this Communication will be sent to the accredited auditors of your company.

Yours faithfully,

Jan Smets
Governor

Annexes

- Annex 1 : form for the notification of the opening of a branch
- Annex 2 : form for the notification of the pursuit of an activity under the freedom to provide services
- Annex 3 : form for the notification of the establishment or acquisition of a subsidiary conducting insurance or reinsurance business