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Belgium: Detailed Assessment of Observance of Insurance Core Principles

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FINANCIAL SECTOR ASSESSMENT PROGRAM

May 16, 2013

DETAILED ASSESSMENT OF OBSERVANCE

INSURANCE CORE PRINCIPLES

Prepared By

Monetary and Capital Markets Department

CONTENTS

Glossary

ALM	Asset-liability management
Board	Board of Directors
CBFA	Commission Bancaire, Financière et des Assurances
CTIF	Financial Intelligence Unit
CGC	The NBB's Corporate Governance Charter
Cir-CG	Internal Governance Circular
CoB	Conduct-of-business
Control Office	Control Office of mutual health funds and national unions of mutual health funds
Council	Council of Regency
CSRSFI	Committee for Systemic Risks and System-relevant Financial Institutions
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities
ESCB	European System of Central Banks
ESFS	European System of Financial Supervisors
ESRB	European Systemic Risk Board
EU	European Union
FSAP	Financial Sector Assessment Program
FSMA	Financial Services and Markets Authority
FTE	Full-time-equivalent
IAIS	International Association of Insurance Supervisors
ICPs	Insurance Core Principles
IFRS	International Financial Reporting Standards
ILPs	Investment-linked policies
Insurance Law (IL)	The Law of 9 July 1975 on the supervision of insurance undertakings
Intermediation Law	The Law of 27 March 1995 on insurance and reinsurance intermediation and the distribution of insurance
MHF	Mutual health funds
MCR	Minimum capital requirement
MiFID	Markets In Financial Instruments Directive
Minister	Minister of Finance
MoF	Ministry of Finance
MoU	Memorandum of Understanding
MoU-FS	MoU on cooperation on cross-border financial stability between the supervisory authorities, central banks and finance ministries of the EU

NBB	National Bank of Belgium
NBB Statutes	The Law of 22 February 1998 on the Organic Statute of the National Bank of Belgium
NBB Organic Law	Organic Statute of the National Bank of Belgium adopted by the General Council on 23 December 1998
ORSA	Own-Risk and Solvency Assessment
PCR	Prescribed capital requirement
RD-AA	Royal Decree of 17 November 1994 on the annual accounts of insurance undertakings.
RD-CA	Royal Decree of 27 September 2009 on the consolidated accounts of insurance and reinsurance undertakings
RD-IL	Royal Decree of 22 February 1991
RD-LA	Royal Decree of 14 November 2003 on Life Assurance;
Reinsurance Law (RL)	The Law of 16 February 2009 on reinsurance companies
SCR	Solvency Capital Requirement
SIFIs	Systemically important financial institutions
Supervision Law (SL)	The Law of 2 August 2002 on the supervision of the financial sector and on financial services
Twin-Peak Decree (RD-TP)	Royal Decree implementing the development of financial supervisory structures of 3 March 2011
TIP Law	Law of 25 June 1992 on terrestrial insurance policies.
TP	Technical provisions
TP&CP Law	The Law of 6 April 2010 on trade practices and consumer protection
UCITs	Undertakings for Collective Investment in Transferable Securities

EXECUTIVE SUMMARY

1. **The Belgian insurance industry is mature and concentrated.** It is relatively small compared to the banking sector: assets held by banks (€1,185 billion) are five times of those held by insurers (€250 billion) as at September 2011. Although there are 92 direct insurers, the industry is dominated by the 23 composite insurers that conduct both life and non-life insurance operations, accounting for more than 90 percent of total industry assets. In 2011, the top five life insurers accounted for 71 percent of the assets while the top five non-life insurers held 58 percent of the assets. The top three insurance groups held more than 60 percent of the total assets as at end-2011.

2. **Belgian insurers were adversely affected by the global financial crisis and continue to confront challenges related to legacy assets and economic uncertainties in Europe.** Government support was extended to a few insurers to maintain the stability of the industry in 2008. Nevertheless, the insurance industry's solvency position has continued to weaken since 2009, and life insurers have significant exposures to guaranteed high returns in part of their legacy portfolios. Insurers hold high levels of government bonds (€104 billion), accounting for 41 percent of assets at end-2011, of which €59.6 billion were in Belgian government bonds. Investments in corporate bonds represent 23 percent (€59.6 billion) of total assets. The solvency margins computed under the current Solvency I regime tend to under-estimate risks. While insurers have been gradually shifting toward contracts that offer lower guarantees, some of the new contracts offer more policy options, increasing the risks of surrenders by policyholders. The demand for life policies has been eroded by households' stronger preference for liquidity in recent years. Non-life insurers have taken measures to improve their underwriting performance although they remain susceptible to investment risks.

3. **The Belgian authorities have made significant progress in updating the insurance regulatory regime and supervisory practice since 2004**. As a member of the European Union (EU), the Belgian regulatory regime is largely shaped by EU Directives on licensing, solvency, insurance intermediaries and consumer protection. The authorities have implemented the Flashing Light Provisions to strengthen the solvency requirements of life insurers with exposures to legacy portfolios and enhanced the risk management requirements for insurers. The supervisory architecture has been overhauled with the implementation of the Twin Peaks structure in April 2011. The National Bank of Belgium (NBB) is in charge of the micro- and macro-prudential supervision of insurers, while the Financial Services and Markets Authority (FSMA) is responsible for registering the intermediaries and for supervising the conduct of business by insurers and intermediaries. The NBB has introduced a supervisory framework that integrates vertical analyses of individual insurers with horizontal review of the insurance sector, while leveraging on the macroeconomic competencies of the NBB. Checks-and-balances in the supervisory process have been enhanced through the separation of vertical and horizontal supervision as well as offsite review and onsite inspections.

4. **There is scope for strengthening the supervisory structure and the legal capacity of the NBB.** The Twin Peaks structure establishes clear supervisory mandates and enhances checks-and-balances. A key success factor is effective communication and coordination. A regular review of the

practical implementation of the Twin Peaks to identify and assess potential gaps, duplication or coordination issues are needed to ensure that the overall supervisory objectives for the insurance sector are effectively achieved. A more principles-based approach in delegating legal authority to the NBB to issue enforceable rules is needed to facilitate supervisory discretion within the parameters set by the law. The NBB should be empowered to take immediate recovery measures not withstanding an appeal by an insurer. As an integrated prudential supervisor, there are merits in articulating clear policies to deal with potential conflicts in supervisory objectives, e.g., between financial stability and prudential safeguards for policyholders. To avoid possible doubts, the authorities should consider clarifying in the legal framework that the Minister of Finance's (the Minister's) scope of supervision of the NBB's transactions does not cover supervisory activities.

5. **The updated regulatory framework has a high level of observance with the Insurance Core Principles (ICPs), supported by robust prudential supervision.** The majority of the downgrades in ratings reflect gaps in the regulatory framework, i.e.; scope of the fit and proper requirements; duties of directors particularly with respect to policyholders; public disclosures; updating the prudential standards for asset-liability management and realistic contingency plans for going- and gone-concern situations. The NBB's decision to enhance the current solvency regime ahead of the implementation of Solvency II is a welcome initiative, and should contribute to the longer-term sustainability of insurers. Further improvements in the NBB's risk-based supervision could be achieved through: a) the formulation of an appropriate baseline supervisory program; b) internal policies for inspecting functions outsourced by insurers; and c) review of the effectiveness of contributions of external auditors and the role of actuaries.

6. **The authorities are advised to review current conduct-of-business (CoB) regulation and supervision to strengthen the protection for policyholders**. Although training and qualification requirements imposed by the FSMA complies with the IMD directive at the European level, there is scope to enhance the level of professionalism of intermediaries through more robust training requirements and appropriate supervisory measures to deter unhealthy competition arising from more than 17,000 intermediaries. The FSMA proposes to adapt the Markets in Financial Instruments Directive 2 (MiFID 2) to insurers and insurance intermediaries, aimed at providing a cross-sectoral and comprehensive framework for CoB regulation. The FSMA should be empowered via regulations to establish enforceable rules on: a) handling of claims and proper policy servicing by insurers; b) market conduct requirements at the group level; and c) combating and reporting insurance fraud by intermediaries.

7. **It will be important that the NBB and the FSMA are adequately resourced to effectively discharge their supervisory mandates.** The NBB is advised to regularly review its resource planning to achieve the appropriate supervisory intensity and effectiveness and an appropriate baseline program. Going forward, there are also significant resource implications arising from the implementation of Solvency II and supervision of complex cross-border insurance groups/conglomerates. The FSMA needs to strategize an appropriate risk-based supervisory approach to deal with the large population of regulated entities and ensure adequate resources to implement the strategy.

ASSESSMENT OF INSURANCE CORE PRINCIPLES

INTRODUCTION AND SCOPE

8. **This assessment provides an update on the significant regulatory and supervisory developments in the insurance sector of Belgium since 2006**. The assessment was conducted by Su Hoong Chang (Senior Financial Sector Expert, IMF) and Philipp Keller (external expert engaged by the IMF) from November 6 to 20, 2012. Belgium undertook an initial Financial Sector Assessment Program (FSAP) in 2006, which included a formal assessment of its observance with the Insurance Core Principles (ICPs) issued by the International Association of Insurance Supervisors (IAIS) in 2003.

9. **The current assessment is benchmarked against the ICPs issued by the IAIS in October 2011.** The ICPs apply to all insurers, whether private or government-controlled. Specific principles apply to the supervision of intermediaries. With the implementation of the twin peaks supervisory structure in Belgium on 1 April 2011 (outlined in paragraph 27), the assessment covers the supervisory practices of both the NBB and FSMA.

A. Information and Methodology Used for Assessment

10. **The level of observance for each ICP reflects the assessments of the corresponding standards.** Each ICP is rated in terms of the level of observance as follows:

a) ***Observed***: where all the standards are observed except for those that are considered not applicable. For a standard to be considered observed, the supervisor must have the legal authority to perform its tasks and that it exercises this authority to a satisfactory level.

b) ***Largely observed***: where only minor shortcomings exist, which do not raise any concerns about the authorities' ability to achieve full observance.

c) ***Partly observed***: where, despite progress, the shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance.

d) ***Not observed***: where no substantive progress toward observance has been achieved.

11. **The assessment is based solely on the laws, regulations and other supervisory requirements and practices that are in place at the time of the assessment**. Ongoing regulatory initiatives are noted by way of additional comments. A comprehensive self-assessment and other pertinent information (supervisory reports and analysis, studies, consultation papers, etc.) provided by the authorities facilitated a meaningful assessment. Technical discussions with and briefings by officials from the NBB and FSMA have enriched the analysis in this report.

12. **The assessors are grateful to the authorities for the full cooperation and thoughtful logistical arrangements**, particularly the helpful co-coordination of various meetings with industry participants. The assessors benefited from the valuable inputs and insightful views from meetings with insurers, industry and professional organizations.

B. Overview—Institutional and Macro Prudential Setting

Market structure and industry performance

Industry structure and recent trends

13. The insurance industry in Belgium is relatively small compared to the banking sector and its penetration and density rates are comparable to other advance markets (Table 1). Assets held by banks (€1,185 billion) are five times of the total assets of the insurance industry (€250 billion) as at September 2011. Higher penetration and density rates are recorded for life insurance compared to non-life insurance. The insurance density in Belgium is lower than the average recorded in advanced markets, largely due to significant level of coverage by the social security system. In 2009, 46,797 individuals worked in the insurance industry.

Table 1: Insurance Penetration and Density in 2011

	Insurance Penetration (As % of GDP)	**Insurance density** (US$ per capita)
Non-life		
Belgium	3.2	1,079
Advanced markets	3.6	1,543
Life		
Belgium	5.2	1,756
Advanced markets	5.0	2,168

Source: World Insurance in 2011, Swiss Re (data on advanced markets)
The NBB (data on Belgium)

14. The total number of insurers has been decreasing steadily since 2008 with no change in the number of insurance groups (Table 2). More than one third of the insurers operate as branches in Belgium, and all the branches are headquartered in the European Economic Area (EEA). While the number of non-life insurers was the highest, composite insurers dominate in terms of scale of operations (Table 3). Composite insurers that conduct both life and non-life operations are prohibited, except for those that were grandfathered at the time the legal prohibition was introduced in 1992. The number of composite insurers has increased from 21 to 23 because two life insurers were reclassified as composite insurers since 2010/2011 after having been authorized to undertake health insurance business. The operations of the Belgian reinsurers are insignificant. There is no restriction on entry and foreign ownership. Ownership of insurers is split evenly between domestic and foreign stakeholders.

Table 2: Trend in Insurance Market Structure

	2008	2009	2010	2011	Jun 2012
Life	22	21	20	18	17
Non-life	57	54	53	52	52
Composite	21	21	22	23	23
Reinsurance		1	2	2	2
	100	97	97	95	94
Supplementary information					
Foreign branches	52	51	50	54	54
Local insurers' branches abroad	51	39	44	41	50
Insurance groups	9	9	9	9	9

Source: National Bank of Belgium.

15. The Belgian insurance industry is dominated by a few financial conglomerates and is concentrated. The top three insurance groups held more than 60 percent of the total industry assets as at end-2011. The top five life insurers accounted for 71 percent of the assets while the top five non-life insurers held 58 percent of non-life premiums in 2011. The nine insurance groups derived, on average, more than 90 percent of their premiums from domestic operations, in 2011. Only one (and the largest) insurance group wrote about 34 percent of its premiums from outside Belgium.

16. Insurance policies are distributed mainly through brokers and bancassurance (Table 3). Bancassurance continues to dominate life insurance sales, particularly in investment-linked policies (ILPs) and mortgage insurance. Direct sales are mainly done through mutuals and cooperatives and corporate accounts. As at end-2011, there were 17,285 insurance intermediaries comprising 3,587 agents; 5,408 sub-agents; and 8,290 brokers. The number of intermediaries has declined significantly from the 26,307 in 2005, when the regulation of insurance intermediaries was implemented in EU. Further consolidation of intermediaries is expected as the FSMA plans to strengthen conduct-of-business regulation and supervision (please refer to ICP 18 and 19).

Table 3: Insurance Distribution Channels

(percent)

	2008	2009	2010
Brokers	34.6	34.9	34.5
Assurfinance[1]	8.5	8.3	8.3
Exclusive agents	6.3	6.8	6.8
Bancassurance[2]	30.2	29.7	30.5
Direct sales	17.5	17.7	17.2
Others	2.9	2.6	2.7
	100	100	100

Source: National Bank of Belgium

Assets and liabilities

17. **Composite insurers accounted for more than 90 percent of the industry's total assets and they held the highest level of government and corporate securities totaling €152.9 billion** (Table 4). Life insurers have the smallest asset base although with similar concentration in fixed income securities. Investments supporting investment-linked policies (ILPs) represented only 7 percent of total industry assets. Notably, non-life insurers have a relatively higher level of receivables and reinsurance recoverables, the latter was largely due to the higher level of reinsurance for non-life business, which is typical.

18. **Insurers' holdings of government bond totaled €103.9 billion as at end-2011, of which about €59.6 billion[3] were invested in Belgian government bonds**. Insurers increased their holdings of Belgian government bonds by 55 percent relative to end-2010, drawn by the attractive yields on Belgian government bonds, which peaked in December 2011. Sovereign bonds issued by France (€21.6 billion at book value) and Germany (€8.5 billion) also represented a significant share of the government bond portfolio. Exposures to other euro area countries fell to € 14.4 billion, as insurers had reduced their exposure to these countries by more than € 5 billion in 2010 and by a further € 7 billion in 2011.[4]

[1] Assurfinance: distribution by independent banking agents who work for a financial group and registered with the FSMA to sell insurance products of other financial groups.

[2] Bancassurance: distribution by bank employees who sell products of the same financial group.

[3] Based on book value, which is lower than the market value of €61.4 billion.

[4] These exposures are gross positions at book value, without adjustment for any associated hedging.

Table 4: Analysis of Direct Insurers' Assets

(in € million, unless stated otherwise)

	Life		Non-Life		Composite		Total	
Government securities	2,894	*30%*	3,338	*29%*	97,659	*42%*	**103,891**	*41%*
Corporate securities	2,369	*25%*	2,019	*17%*	55,235	*24%*	**59,623**	*23%*
Equities	462	*5%*	874	*7%*	9,303	*4%*	**10,640**	*4%*
Real estate	253	*3%*	148	*1%*	3,417	*1%*	**3,818**	*1%*
Cash & deposits	440	*5%*	588	*5%*	6,215	*3%*	**7,244**	*3%*
ILP Investments	741	*8%*		*0%*	17,821	*8%*	**18,562**	*7%*
Receivables	152	*2%*	1,234	*11%*	5,518	*2%*	**6,903**	*3%*
R/I recoverable	194	*2%*	2,183	*19%*	4,734	*2%*	**7,111**	*3%*
Total assets	**9,529**	*100%*	**11,657**	*100%*	**234,055**	*100%*	**255,243**	*100%*
% of Industry Total	*3.7%*		*4.6%*		*91.7%*		*100.0%*	

Source: National Bank of Belgium.

19. For assessing the solvency of insurers at the solo level, all financial instruments are valued at amortized cost, to be consistent with the valuation approach for technical provisions (TP). Subject to the approval of the NBB, the net unrealized valuation gains may be used to meet the regulatory solvency margin requirement. For the assets covering TP, the valuation approach is market-based, except for government bonds which are valued at amortized cost less depreciation. As at end-2011, insurers' holdings of Belgian government bonds recorded a higher market value than the book value.

Table 5: Assets Covering Technical Provisions

(in € million)

			Composite			Industry
	Life	Non-Life	Life	Non-Life	Total	Total
As at end-2011						
Covering Assets	8,430	8,790	183,984	24,301	208,285	225,505
Technical provisions (TP)	8,418	7,142	179,306	22,348	201,654	217,214
Total liabilities	9,529	11,657			234,055	
TP as % of liabilities	*88%*	*61%*			*86%*	
Trend of TP						
2007	31,976	9,556	124,230	18,018	142,248	183,780
2008	14,553	7,553	142,820	21,151	163,971	186,077
2009	14,843	5,975	155,218	21,523	176,741	197,559
2010	7,983	6,247	173,844	22,040	195,884	210,114
2011	8,418	7,142	179,306	22,348	201,654	217,214
% change 2007 to 2011	*-73.7%*	*-25.3%*	*44.3%*	*24.0%*	*41.8%*	*18.2%*

Source: National Bank of Belgium.

20. While composite insurers have increased their TP since 2007, TP maintained by the other direct insurers have declined (Table 5). Assets covering TP are subject to stringent regulatory requirements in order to safeguard the interests of policyholders (please see details under ICP 15). In this regard, any liquidity swap between an insurer and a related bank involving assets covering TP needs to be notified to the NBB in order to check compliance with the concentration limits.

Underwriting performance

21. Life insurance premiums have declined since 2007 mainly due to the ongoing economic uncertainties (Table 6). In recent years, households' stronger preference for liquidity has eroded demand for life insurance products. This is compounded by the predominance of the bancassurance business model in Belgium, which might have motivated some banks needing substantial liquidity to channel household savings into banking products at the point of sale. About 85 percent of the premiums relate to traditional policies while ILPs, under which investment risks are assumed by the policyholders, accounted for an average of 15 percent of total premiums for the period 2007-2011.

Table 6: Analysis of Life Premiums

(in € billion)

	2007	2008	2009	2010	2011	
Traditional						
Individual	13.7	12.5	11.7	12.1	11.5	*61%*
Group	4.2	4.4	4.6	4.6	4.6	*25%*
Investment-linked	3.1	3.1	1.4	1.9	2.0	*11%*
Others	1.2	1.2	1.2	0.6	0.6	*3%*
Total	**22.2**	**21.2**	**18.9**	**19.2**	**18.7**	*100%*
% Change		*-4.5%*	*-10.8%*	*1.6%*	*-2.6%*	

Source: National Bank of Belgium.

22. The bulk of the traditional life policies offer guaranteed rates of returns; and it is difficult for life insurers to meet the guarantees made in their legacy portfolios. In the 1990s, insurers tended to offer guaranteed returns of up to 4.75 percent, the statutory ceiling up to 1999, which was then reduced to 3.75 percent. The pressure to retain high maximum returns is particularly strong for group life insurance where an employer has a legal obligation to ensure a minimum return of 3.25 percent on employers' contributions and 3.75 percent on employees' contributions. Around 52 percent of Belgian employers participate in supplementary pensions contracts, which accounted for about 25 percent of life premiums (€ 4.6 billion) in Belgium in 2011.[5] For competition reasons, insurers have tended to offer the same minimum returns for group insurance contracts.

23. Insurers have been gradually shifting toward contracts that offer lower guaranteed yields but remain exposed to the options available to policyholders. The guaranteed rates for new polices correspond to the market risk-free interest rate prevailing at the time of premium payments. Moreover, some contracts specify that the guarantee is limited in time, i.e., at the end of the period the contract reserve is regarded as new premiums subject to the interest rate prevailing at that time. As a result, the guaranteed average return on traditional policies declined from 4.5 percent as at end-1999 to 3.2 percent as at end-2010. The actual returns on the investments covering traditional contracts were around 4.5 percent in 2009 and 3.8 percent in 2010. The NBB requires insurers to establish additional provision for contracts offering a guaranteed return above the "flashing light rate"[6] and allocate reserves to this provision over a maximum of ten years (elaborated in ICP 14). However, some new contracts offer more flexibility to policyholders which may expose insurers to a greater risk of policy surrenders and hence higher liquidly risks.

[5] Source: Moody's—"Belgian Ministry of Economy rejects the National Bank's decision to lower the maximum guaranteed rate on long-term life insurance contract, a credit negative for insurers," November 1, 2012.

[6] Defined as 80 percent of the average yield on 10-year government bonds on the secondary market over the past five years. The flashing light rate is calculated annually by the NBB and was 3.26 percent as at end-2011.

24. Non-life insurers have taken measures to improve their underwriting performance. Gross written premiums rose marginally to reach €10.3 billion in 2011 (Table 7). Motor insurance is the dominant class, with 33 percent share of gross premium written, followed by accident and health (24 percent). In response to the renewed increase in the combined ratio[7] in 2009 and 2010, non-life insurers increased the level of premiums, improved cost control and imposed stricter underwriting terms for certain loss-making insurance products and classes. The combined ratio dipped to 99.8 percent in 2011, the first time that the ratio fell below 100 percent since 2004.

Table 7: Major lines of General Insurance Business: Gross Premiums written

(in € million)

	2009	2010	2011
Motor	3,140	3,255	3,406
Property	2,136	2,181	2,334
Liabilities	686	688	700
Accident & health	2,385	2,443	2,505
Others	1,238	1,308	1,366
	9,584	9,875	10,310

Source: National Bank of Belgium.

Profitability and solvency

25. The global financial crisis in 2008 resulted in the need to provide government support to a few systemically important institutions. The Dexia Group was particularly hard hit due to its large exposures to sovereign risks and heavy dependence on wholesale funding. Dexia Bank Belgium, together with its insurance arm, was acquired by the Belgian State for € 4 billion.[8] Other Belgian insurers that received state support were Ethias and KBC Insurance.

26. Depressed financial markets continue to adversely affect insurers' investment performance in 2011. In response, insurers have trimmed down their bond investments resulting in a realized loss totaling €4.1 billion on Greek government bonds and other European peripheral government bonds recorded by life insurers. Non-life insurers also suffered a decline in investment income from €1.2 billion in 2010 to €0.9 billion in 2011. Unrealized investment gains totaled €3.8 billion (sovereign bonds accounted for €1.4 billion) as at end-2011.

27. Profitability trend has been volatile since 2007 and the industry reported a net loss of €0.9 billion in 2011 (Chart 1), compared a net profit of €1.4 billion in 2010. The technical result of Belgian life insurance activity traditionally combines a negative result on insurance activities counterbalanced by a positive investment result. In 2011, the net investment income of life insurers

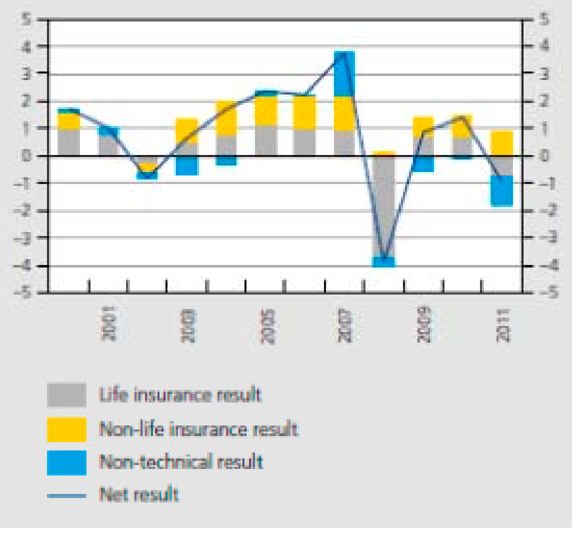
[7] Total cost of claims plus operating expenses to net premium income.

[8] The Group has rebranded in early 2012 under a new commercial name Belfius.

fell to €4.0 billion (2010: €7.8 billion), which partly offset the underwriting loss of €4.7 billion, ending with an overall operating loss of €0.7 billion. Non-life insurance activity reported net operating income of €1.8 billion while a net loss of €1.1 billion was recorded in insurers' non-technical accounts.

Figure 1: Net result of Belgian Insurers (company basis)

(in € billion)



Source: National Bank of Belgium

28. Overall, the insurance industry solvency position has weakened since 2009, although the capital requirements under Solvency I were met. (Table 8).

Table 8: Solvency Position of Insurers

(in percent)

Solvency margin(Solvency I)	2009	2010	2011
Life (long-term)	208	192	169
Non-life (general)	311	299	284
Reinsurance	0	187	171

Source: National Bank of Belgium.

29. The adjusted average solvency margins of the insurance sector tend to be over-stated. The current Solvency I framework does not value technical provisions in a market consistent basis nor does it take account of the impact of movements in interest rate. The regulatory solvency margin consists of: a) an explicit margin which includes own funds, subordinated debts and other qualified balance sheet items; and b) an implicit margin which comprises the net unrealized gains on investments, as approved by the NBB. Such unrealized gains fluctuate in line with the fluid market conditions, as evidenced in the last two years. The implicit margin is, therefore, not a stable source of solvency support as it could dissipate during a market downturn when insurers' need for additional financial resources is critical.

30. Since 2009, the authorities and the industry haven been preparing for the implementation of Solvency II. The adoption of Solvency II is expected to facilitate risk-based supervision and provide regulatory incentives for insurers to properly measure and manage all relevant key risks. Solvency requirements are to be based on a market consistent valuation of an insurer's assets and liabilities (including TP) based on a total balance sheet approach. The Solvency Capital Requirement (SCR) requires insurers to hold regulatory capital at a level that would ensure that it would meet its obligations to policyholders and beneficiaries with a probability of at least 99.5 percent, over a one-year horizon. The strongest supervisory measures would be taken against insurers who fail to meet the Minimum Capital Requirement (MCR). Insurers are also required to establish, as an integrated part of their capital management strategy, policies and processes to assess their overall solvency needs tailored to their specific risk profile i.e., Own-Risk and Solvency Assessment (ORSA). More details are outlined in ICP 17.

31. The NBB has decided to move forward with the implementation of the requirements under Solvency II, ahead of the official implementation by the EU. Current indications are that Solvency II may not come into effect before 2016. The mission welcomes the NBB's proactive approach, which will support effective risk-based supervision by the NBB. The enhanced regime should aim at improving the long-term sustainability and resilience of insurers, with due consideration for the market structure and risk profile in Belgium.

Risks and vulnerabilities

32. High exposure to guaranteed rate contracts and declining long-term interest rates remain the key risks for life insurers, compounded by the current depressed financial markets. Despite positive measures by life insurers to limit such guarantees for new policies, their legacy portfolios still represent a substantial amount of liabilities. Technical provision associated with guaranteed rates of return of 4.75, 4.5, 3.75 and 3.5 percent for traditional individual policies totaling €32 billion as at end-2010 or 31.5 percent of the total TP for this class of business. The NBB's prudential decision to lower the maximum interest rate from 3.75 percent to 2 percent was vetoed by the Ministry of Economy and Consumer Affairs.[9] The grounds for rejection are that a lower maximum rate is harmful to competition; the NBB is already empowered to intervene on a case-by-case basis if it opines an insurer offers a guarantee rate imprudently; and the average return on pension contributions over the past 20 years was 6 percent. The key prudential risk following this decision is that insurers continue to offer the same maximum guarantee rate for competitive reasons (as evidenced in the past), despite significant uncertainties as to whether they are able to generate investment returns of 3.75 percent, over the next 10 to 20 years.

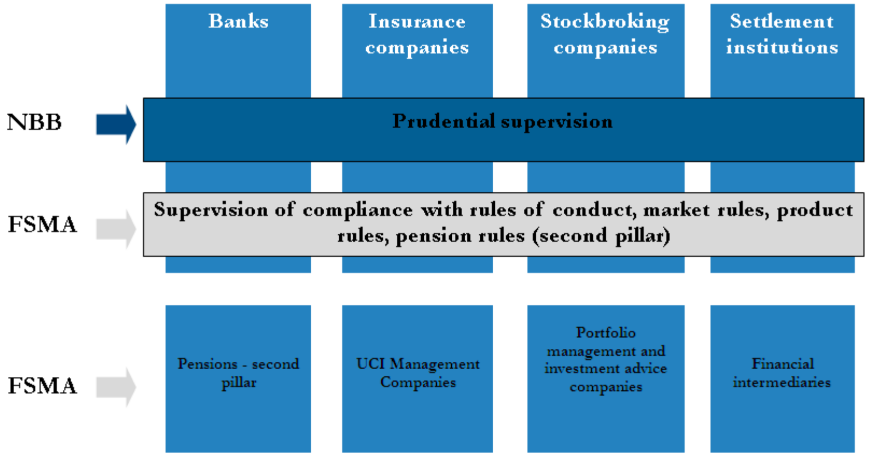
[9] Article 19 of the Insurance Law states that the Minister may "….on his own initiative or at the request of the Council of Ministers, exercise a right of call-back within 15 days subject to the submission of detailed grounds."

33. Non-life insurers are exposed to increasing frequency and severity of catastrophic events and similar market risks on their investment portfolios. As in the case of life insurers, non-life insurers also have significant holdings in sovereign and corporate bonds, which could be amplified by further deterioration in economic conditions in the region. While the peak losses over the last 10 years had not caused any financial problem, the NBB monitors the adequacy and security of non-life insurers' reinsurance program, including the aging analysis of reinsurance recoverables.

Institutional framework and arrangements

34. Belgium implemented the twin peaks supervisory structure on 1 April 2011. The NBB is in charge of the micro- and macro-prudential supervision of credit institutions, stockbroking firms, insurers and settlement institutions as well as monitors the stability of the Belgian financial system. The FSMA is responsible for the supervision of financial markets and consumer protection, for the supervision of Undertakings for Collective Investment in Transferable Securities (UCITs), for registering UCI management companies, portfolio management companies, mortgage companies, and financial intermediaries (including insurance intermediaries), and for supervising the conduct of business all financial institutions.[10] In addition, the FSMA is responsible for the prudential supervision of pension funds. The NBB and the FSMA also supervise financial entities pursuant to the anti-money laundering law/ regulations, in their respective areas of competencies.

Figure 2: Twin Peaks Structure in Belgium



Source: Financial Services and Markets Authority.

35. The new institutional architecture dovetails with the establishment of the European System of Financial Supervisors (ESFS) on January 1, 2011. The ESFS comprises the European Systemic Risk Board (ESRB), responsible for macroprudential oversight, and three European Supervisory Authorities (ESAs) charged with microprudential supervision of the banking, insurance and securities markets in Europe, namely the European Banking Authority (EBA), the

[10] Previously, the CBFA was the integrated supervisor for the Belgian financial sector.

European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). The ESFS aims to ensure better systemic risk prevention and promotes the harmonization of prudential rules and practices at European level, while reinforcing cooperation between national authorities.

36. The NBB does not supervise mutual health funds (MHF), which are non-profit organizations that operate the national compulsory health insurance system, based on the principle of solidarity and mutual assistance between members. These mutual health funds also have a relatively small insurance activity aside from their major activity in the Belgian social security system. MHF are under the purview of the Control Office of mutual health funds and national unions of mutual health funds (Control Office), established in 1990 as a public interest institution under the Ministry of Social Affairs. MHF play an important role in informing and protecting their members and in cooperating with health care practitioners and institutions to preserve quality and accessibility of health care. The NBB and the FSMA shall conclude cooperation agreements with the Control Office on MHF, which govern, *inter alia*, exchange of information and the uniform application of regulatory requirements. Given the non-commercial nature of the MHF and the government funding, they are excluded from the scope of the current assessment.

C. Preconditions for Effective Insurance Supervision

Sound and sustainable macroeconomic and financial sector policies

37. The macroeconomic and fiscal framework of Belgium is partly shaped by its membership in the EU. NBB is a part of the European System of Central Banks (ESCB), with price stability as the primary objective for monetary policy. In response to the financial crisis which began in end-2008 and the sovereign debt crisis since 2010, the European Central Bank (ECB) made some fundamental changes to its monetary policy stance and took a series of exceptional measures to support the financial sector and safeguard the effective transmission of monetary policy.

38. At the time of assessment, the authorities do not perceive the Belgian economy to present major imbalances that would threaten the stability of the Belgian financial system. Nonetheless, financial tensions in the Euro area, sluggish growth prospect and the high level of public debt remain sources of vulnerabilities and negative developments in terms of external competitiveness are concerns to be addressed. The sustainability of public finances is further exacerbated by the budgetary impact arising from an aging population. Going forward, fiscal consolidation, structural reforms in the labor market and strengthening competitiveness are key policy objectives.

A well-developed public infrastructure

39. The legal system in Belgium is developed and constituted by a hierarchy of laws. As a member of the EU, Belgium also has to transpose European Directives into Belgian law. The Constitution is the highest-ranking and defines, *inter alia,* the organization of the State, including empowering the Parliament to pass laws. A law may authorise the King to adopt Royal Decrees or

Ministers to take Ministerial Decrees in order to execute the law. A law may also delegate administrative authority to the NBB to issue legally binding regulations. Regulations proposed by the NBB are subject to the approval by a Royal Decree or Ministerial Decree, to respect the principle of democracy. The independence of the judiciary is respected.[11] As a member of the EU, the authorities also make necessary legislative and regulatory amendments to transpose European Directives into Belgian law.

40. Accounting and auditing standards adopted in Belgium are in line with international best practices. While the Commission for Accounting Principles oversees the Belgian General Accounting, the NBB is responsible for specific rules applicable to insurance accounting. Belgian insurers are required, as of 2012, to publish consolidated accounts in accordance with the International Financial Reporting Standards. Only external auditors accredited by the NBB may be appointed by insurers and they are expected to contribute to the NBB's supervisory process and they are obliged to notify the NBB on specified matters e.g., breaches of the law or qualified opinion. External auditors must be members of the Institute of External Auditors; a body that oversees observance of auditing as well as the competence and independence of its members. Belgian auditing standards are compliant with International Auditing Standards issued by the International Auditing and Assurance Standards Board.

41. The Institute of Actuaries of Belgium establishes professional and ethical standards for its members. There are more than 830 qualified actuaries registered with the Institute. The actuarial training syllabus in Belgium has been developed in line with the Groupe Consultatif's Core Syllabus for actuarial training in Europe and International Actuarial Association education guidelines. The Institute requires members to fulfill continuing professional development to remain up-to-date. While the Institute is empowered to take disciplinary action against its members for failing to perform their tasks in line with the international professional guidelines, no such action has been taken to date. The Insurance Law does not establish a statutory role for actuaries, who are also not subject to whistle blowing obligations to the NBB.

42. The NBB provides comprehensive macroeconomic statistics for the public on its website and via its statistical database, Belgostat. It collects and compiles extensive statistics on various facets of the economic and financial activities in Belgium. The integration of its micro-prudential and macro-prudential roles under the twin-peak structure is expected to improve the efficiency and effectiveness of its statistical efforts. The statistics published by the NBB include: a) national account; b) financial accounts identifying the financial instruments in which the various economic sectors place their surpluses or finance their deficits; c) Belgian budget balance and public debt; d) balance of payments; e) monetary and financial statistics; and f) business surveys.

[11] The Belgian Constitution of February 17, 1994 guarantees the independence of judges when exercising their jurisdictional powers; and no judge may be removed or suspended from office unless by judgment. In its Global Competitiveness Report 2012, the World Economic Forum ranked Belgium highly on judicial independence (28 out of 144) while efficiency of legal framework was ranked 45th.
http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf

Effective market discipline in financial markets

43. Several structures and frameworks foster the effective functioning of market discipline in Belgium. The regulated stock exchange (Euronext) is subject to investor protection and governance rules, information disclosure requirements and supervision by the FSMA. Most of the requirements on investor protection and information disclosure are based on relevant EU Directives.

44. Belgium's corporate governance system is in line with the Organization for Economic Cooperation and Development's Principles of Corporate Governance. The authorities have issued a cross-sectoral Internal Governance Circular for the financial sector, adopting a comply-or-explain approach (ICP 7).

Mechanisms for consumer protection

45. The legal framework for consumer protection is well established under a number of legislation: the Civil Code, the Law of 6 April 2010 on trade practices and consumer protection (TP&CP Law), Law of 25 June 1992 on terrestrial insurance policies (TIP Law) and the Law of 2 August 2002 on the supervision of the financial sector and on financial services (Supervision Law). The Insurance Ombudsman mediates disputes between policyholder and their insurers/intermediaries, at no cost to the policyholders. The opinion of the Ombudsman is not binding.

46. Since 2008, policyholders of traditional life policies (except for group insurance related to employee benefits) are covered by the Deposit Guarantee Scheme up to € 100,000 per policyholder. The Resolution Fund, which is partially pre-financed by the banking sector, may potentially be used to intervene to finance the resolution of insurers.

Efficient financial markets

47. The financial markets in Belgium offer a broad range of instruments that facilitate insurers' asset-liability management. As at end-2011, insurers held only 3 percent of their assets with the dominant banking sector, with more than 60 percents of their investments in fixed income securities (Table 5). Total fixed income securities of more than one year outstanding as at end-2011 amounted to €813 billion.[12] In September 2000, the Brussels Exchanges[13] merged with the Paris Bourse and Amsterdam Exchanges to form Euronext, the first pan-European exchange. It is part of the NYSE Euronext group, the cross-border exchange group created in 2007 by the combination of NYSE Group, Inc. and Euronext N.V. There are approximately 8,000 issues listed on NYSE Euronext (excluding structured products) – which accounts for one-third of the world's equities trading and one of the leading futures and options trading venues.

[12] Table 17.1.1., Quarterly Financial Statistics 2012-II.

[13] In April 1999, the Brussels Exchanges was established as an integrated market operator comprised of Belfox (Belgian Futures and Options Exchange), Bourse de Bruxelles (Brussels stock exchange) and CIK (the central securities depository).

Table 9: Summary of Compliance with the ICPs

Insurance Core Principle	Level	
1. Objectives, Powers and Responsibilities of the Supervisor	LO	The responsibilities for insurance supervision in Belgium are clearly defined under the Twin Peak supervisory structure, which has been implemented for less than two years. The NBB and the FSMA have clear mandates under the Twin Peaks structure, which also enhances checks-and-balances. The objectives of the supervision of insurers and reinsurer are defined in the primary legislations. The NBB may establish enforceable rules within the parameters specifically prescribed in the primary law, subject to the approval of the King or a Minister.
2. Supervisor	PO	The NBB and the FSMA have financial independence in exercising their functions and powers and they are subject to clear accountability mechanisms. Both the supervisors and their staff members are legally obliged to safeguard confidential information and have the necessary legal protection against civil liability except for fraud or gross negligence. While the NBB and the FSMA have budgetary discretion, there is a need to strengthen their supervisory resources to achieve appropriate supervisory intensity and effectiveness. There are explicit procedures for the appointment and dismissal of the members of the governing bodies of the NBB and the FSMA, and the Belgian Administrative Law provides for transparency of the reasons for their dismissals. There is an established policy on the composition of the NBB Board in terms of diversity of experience and skill set. The lack of internal policy and procedure to ensure prompt escalation of significant events and the lack of authority for the NBB to declare its decisions to take recovery measures as immediately executable may hinder timely intervention by the NBB. There is scope for strengthening the resources of the Internal Audit Service to provide quality assurance on the integrity of supervisory activities of the NBB.
3. Information Exchange and Confidentiality Requirements	O	The framework for information exchange in Belgium is aligned with the relevant EU Directives and protocols, empowering the NBB to obtain and exchange information with relevant supervisors and authorities subject to confidentiality, purpose and use requirements. The existence of an agreement or understanding on information exchange is, generally, not a prerequisite for information exchange. The NBB may share information with non-EEA supervisors on a reciprocal basis or pursuant to cooperation agreements. Internationally, the NBB is signatory to the IAIS Multilateral MoU. The NBB also participates actively in relevant supervisory colleges, where information exchanges are to be facilitated by coordination arrangements agreed by the colleges. However, the coordination arrangements are not yet signed officially, pending the implementation of Solvency II. Domestically, the MoU between the NBB and the FSMA as required under the Insurance Law was under discussion at the time of assessment. There is also scope for the FSMA and the NBB to review

		how best to strengthen supervisory cooperation as they gain experience in implementing the twin-peaks structure.
4. Licensing	O	Insurance activities within Belgium can only be conducted by authorized insurers/ reinsurers. The NBB is the licensing authority and the requirements and procedures for obtaining authorisation are clearly defined, objective and public. While regulated insurance activities is not defined positively in the Insurance Law, the NBB makes reference to definition of "insurance contract" under the Law on Terrestrial Insurance Contract and has provided binding ruling on insurance activities. A multidisciplinary team evaluate applications for authorization in accordance with established internal procedures, taking account of the FSMA's opinion. A draft Royal Decree has been prepared to provide partial exemptions to mutual insurance associations and cooperative societies that limit their activities to the municipality where their registered office is located, or to that municipality and neighbouring municipalities. The NBB has not taken action against the non-compliance with the authorisation requirement by certain mutual insurance associations and cooperative societies on the basis of that their operations are limited in scale; and these institutions would not fall within the scope of the draft Royal Decree nor the future Solvency II rules.
5. Suitability of Persons	LO	The NBB assesses the fitness and propriety of Board Members and Senior Management at the stage of proposed appointment and re-appointment, based on comprehensive information and extensive deliberation. It is in the process of revising its fit and proper regulation in line with international best practices and the key enhancements include: extending the suitability requirements to Key Persons in Control Functions; requiring notifications by insurers of circumstances that may materially adversely affect the suitability of persons and greater clarity on the criteria for fitness and propriety.
6. Changes in Control and Portfolio Transfers	O	The Insurance Law defines qualifying holdings and set the thresholds for the acquisition of and increase/decrease in qualifying holdings, which require the prior approval of the NBB. The criteria for assessing acquisition proposals are the same as those applicable for initial authorization applications. Insurers are required to: a) notify the NBB of changes in qualifying holdings that would result in a person's holdings either to exceed or to fall below the specified thresholds; and b) submit the names of their Significant Owners annually. Portfolio transfers are subject to the approval of the NBB, to protect the rights of policyholders, insureds and beneficiaries. The NBB and the FSMA do not have the power to approve or oppose the conversion of a mutual company to a stock company. Nonetheless, they are expected to comment on the conversion proposal and may intervene through indirect means, if necessary. Such conversion has been rare in Belgium.
7. Corporate Governance	LO	Since the last assessment in 2006, the authorities have significantly strengthened the regulation and supervision of insurers' corporate governance, by adopting legally binding minimum requirements in the field of governance, supplemented by a comply-or-explain

		approach that is supported by detailed supervisory guidance. The NBB's assessment of insurers' governance practices is a key input in the Scorecard System and in prioritising it risk-based supervision. The authorities are in the process of updating the Internal Governance Circular to take account of evolving international best practices.
8. Risk Management and Internal Controls	O	The authorities have established sophisticated principles-based risk management and internal control system requirements. Stronger requirements apply to insurers who are exempted from the Flashing Light provisions. The external auditors play a substantial role in reviewing insurers' reports to the NBB on their internal control system (refer to ICP 9).
9. Supervisory Review and Reporting	LO	The NBB has introduced an integrated risk assessment framework that is supported by a risk-based supervisory process. The supervisory framework integrates vertical analyses of individual insurers with horizontal review of the insurance sector as a whole, while leveraging on the macroeconomic competencies of the NBB. Checks-and-balances in supervisory assessment have been enhanced through the separation of vertical and horizontal supervision as well as the off-site review and on-site inspections. The four-eye-principle approach also promotes active sharing of experiences across functions. The NBB has also established policies and procedures with respect to the contributions of the accredited auditors' contribution to the supervisory process. The Scorecard system facilitates proper documentation and consistency of supervisory assessments as well as providing a structured framework to discuss supervisory issues; both internally and with insurers. The intensity of supervisory engagement is prioritized based on a risk-based approach. The NBB is empowered to collect extensive regulatory and statistical information from insurers and the reporting obligation applies at both the solo and group levels. Since January 2012, the NBB has been conducting on-site inspection based on audit techniques, with clear scoping and formalized work program. It issues formal reports on its findings and remedial measures and monitors the implementation of required measures. NBB may inspect service providers of outsourced functions but has not conducted such inspections. As the current supervisory framework is new, the NBB has been monitoring the implementation experience and practical issues that arise. A methodological review exercise is ongoing across prudential departments with the view to further enhancing supervisory effectiveness. The NBB has also recently decided to implement certain elements of Solvency II ahead of the official implementation schedule and this would improve the coverage and quality of regulatory reporting. It is also critical that the NBB carefully plan for adequate resources to conduct effective supervision supported by a baseline supervisory program that is proportionately applied to reflect the risk profiles of insurers and insurance groups. Given its broad mandate in supervising a large number of licensees, FSMA typically monitors insurers' compliance with CoB requirements based on off-site reviews. There is minimal regulatory

		reporting by insurers and intermediaries, which hinders the formulation of risk-based supervision plans. On-site visits of insurers are typically driven by external triggers while the inspections of intermediaries focus mainly on compliance with registration requirements.
10. Preventive and Corrective Measures	O	Unauthorized insurance activities constitute an offence under the Insurance Law and the NBB and FSMA may refer such cases for prosecution. The NBB has, at its disposal, a range of preventive and corrective measures that supports the progressive escalation of actions. Before taking such measures, the NBB exercises moral suasion and works with the insurers concerned to rectify any deficiencies within a specified timeframe.
11. Enforcement	O	The NBB and the FSMA have a wide range of powers to take enforcement action and impose sanctions, if insurers are unable or unwilling to address supervisory concerns in a timely manner. A transparent process and the engagement of the Sanctions Committees (to be established) in the NBB and of the Sanctions Committee of the FSMA helps to ensure proportionate and consistent sanction decisions.
12. Winding-up and Exit from the Market	O	The winding-up of insurers is based on the procedure set out in the Insolvency Law (insolvency) and the Company Code (dissolution and liquidation), subject to certain insurance-specific modifications set out in the Insurance Law. Policyholders have priority of claim above other unsecured creditors in the event of a winding-up. The Insurance Law that determines the point at which it is no longer permissible for an insurer to continue its business.
13. Reinsurance and Other Forms of Risk Transfer	LO	The NBB requires insurers to submit comprehensive information on their reinsurance programs and its IT Tool calculates standard early warning indicators automatically. Reinsurance is taken into account in the PCR (solvency margin) using rough proxies and the risk mitigating effect might be under- or overstated for some forms of reinsurance (e.g., for non-proportional covers). This has to be balanced with the resources required to perform a more detailed analysis, particularly for complex reinsurance programs. Reinsurance credit risks (default and migration risk) are not considered adequately, which may hinder the early detection of deteriorating credit quality of reinsurers. Similarly, concentration risk arising from reinsurance ceded to only one or few reinsurers is not considered.
14. Valuation	LO	The valuation of assets and liabilities for solvency purposes must conform to applicable accounting standards at both solo (BGAAP) and group level (IFRS). The valuation approach for assets covering TP is generally market-based, except for sovereign bonds, which are valued at amortized cost less depreciation/impairment. TP are valued at historical cost. Arising from the supervisors' observation that some insurers have not applied the valuation approach (notably on impairments) with the expected rigor, the NBB has reviewed insurers' valuation of certain assets in more depth since the financial crisis and has taken action against insurers to address any solvency concerns. The NBB focuses mainly on the level of TP and less on the methods

		used to calculate TP. The current valuation standard for TP is based on implicit prudence without an explicit current estimate and MOCE (Margin over Current Estimate). This makes the analysis of the sufficiency of TP more difficult for the NBB.
15. Investment	LO	The regulatory requirements on investments are in line with EU Directives, which apply only the assets covering insurers' TP i.e., there are no requirements on free assets. ALM requirements for some insurers have been implemented since 2006 in relation to the Flashing Light provision and there is scope for updating the prudential standard to reflect evolving best practices. In addition, insurers have to formulate crisis scenarios and quantify the impact as part of their ALM framework. Effective supervision of insurers' ALM hinges on adequate technical supervisory capacity.
16. Enterprise Risk Management for Solvency Purposes	LO	The current prudential standards have established some elements of the regulatory requirements for an enterprise risk management by insurers. To meet ICP 16, there should be clearer requirements and more comprehensive scope on insurers' risk management policy, particularly for investment and underwriting risks. In addition, enterprise risk management should be supported by an ORSA. Currently, some elements of ORSA are applicable only to those insurers that are exempted from the Flashing Light provision.
17. Capital Adequacy	PO	The current Solvency I framework is not risk-based—the capital requirement does not take all material risk into account, e.g., credit risk, and if risks are taken into account, this is not done explicitly. The capital requirement is also not consistent with the valuation standard. Capital adequacy does not explicitly consider the following factors on a realistic basis: asset liability matching; reinsurance and other risk mitigating measures; or diversification between risks. Group capital requirements are also based on Solvency I, which does not take into account group-specific risks e.g., contagion risks. While there are two solvency control levels, the MCR is not a minimum bound below which no insurer is regarded to be viable to operate effectively, i.e., there is no solvency control level which leads to an automatic strongest supervisory actions in the absence of appropriate corrective action by an insurer.
18. Intermediaries	LO	Although the registration conditions for intermediaries are clear and transparent and the training and qualification requirements imposed by the FSMA comply with the IMD directive at the European level, there is scope to raise the level of continuous professional development requirements. The FSMA's supervision of intermediaries focuses mainly on checking compliance with registrations requirements to limit access by qualified and fit and proper intermediaries. While the pre-contract information disclosure provides adequate information on an intermediary's status and relationship with insurers, there is scope for enhancing disclosure on potential conflict of interest, particularly relating to remuneration arrangements. The FSMA conducts on-site inspections of intermediaries and has withdrawn or suspended the registrations of intermediaries who failed to meet its requirements. The legal

		framework provides protection for clients monies handled through intermediaries. To supervise a large numbers of intermediaries with limited resources, it is advisable that the FSMA develops an appropriate risk-based approach, supported by explicit and proportionate corporate governance requirements for intermediaries.
19. Conduct of Business	LO	The current regulatory regime on CoB focuses on prohibition against unfair and misleading practices. The implementation of the voluntary moratorium of structured products that are considered as "particularly complex" in August 2011 is a commendable supervisory initiative. The emerging international best practices are to promote fair treatment of customers that are an integral part of business culture of insurers and intermediaries. In this regard, the FSMA has proposed amendments to the Supervision Law to impose a general obligation on insurers and insurance intermediaries to act fairly, honestly and professionally in the best interests of their clients and provide correct, clear and not misleading information. The proposed adaptation of MiFID 2 to insurance meditation will enhance CoB requirements.
20. Public Disclosure	PO	The current disclosure regime in Belgium focuses on the financial position and performance of insurers and there are significant gaps in the disclosures on: technical provisions, risk management and exposures, details of performance and capital adequacy. The application of IFRS as from financial year 2012 has improved the disclosures made in consolidated accounts. The impending implementation of Solvency II will bring the disclosure regime in line with international best practices.
21. Countering Fraud in Insurance	O	While there is no specific legislation on insurance fraud, the general criminal law adequately addresses fraudulent conduct relating to insurance, which are subject to criminal proceedings. Supervisory attention for fraud is part of the assessments relating to governance/risk management, compliance and internal audit functions (where applicable) of insurers. The insurance industry has taken measures to counter fraud such as training programs, sharing information via databases and a new code of conduct concerning insurance fraud prevention. The NBB and FSMA may cooperate, coordinate and exchange information relating to insurance frauds with other competent authorities, including foreign authorities.
22. Anti-Money Laundering and Combating the Financing of Terrorism	O	The NBB and FSMA are aware of the money laundering and terrorism financing risks of the insurance industry and have effective mechanisms to cooperate, coordinate and exchange information with both domestic and foreign supervisors/FIUs. The authorities are reviewing the current AML-CFT regime to take account of the new FATF Recommendations of February 2012.
23. Group-wide Supervision	LO	The supplementary supervision of insurance groups in Belgium is shaped by EU Directive and facilitated by a structured coordination framework at the EU level organized by EIOPA. The NBB has adequate powers and flexibility to determine the scope of insurance groups as well as to supervise and take appropriate measures against both regulated and non-regulated entities within a group. The NBB is actively involved in supervisory colleges, both as a home

		and host supervisor (ICP 25). However, there are no group-wide market conduct requirements. There is also scope for establishing consistent supervisory processes for group supervision e.g., in reporting intra-group transactions. Although the NBB has concluded supervisory cooperation agreements with other insurance supervisors, there is scope for improvement. To this end, the supervisory colleges are taking up this work under the aegis of EIOPA.
24. Macroprudential Surveillance and Insurance Supervision	O	As the central bank and prudential supervisor, the NBB is well placed in achieving effective macroprudential surveillance. It collects extensive quantitative and qualitative information quarterly, complemented by ad-hoc questionnaires, if necessary. Its Macrofinancial Committee serves as a forum for the exchange of information on macro-financial developments in Belgium and in countries where Belgian institutions have exposure. The Risk Committee oversees cross-sectoral risk analyses by risks areas to facilitate early detection of potential systemic threats/ risks. The NBB participates in the EIOPA stress testing exercises and conducts its own stress tests of the Belgian insurance sector. Given that macro-prudential surveillance is a nascent development, the NBB plans to regularly review the integration of macro-prudential analyses and assessments into its micro-prudential supervision to identify further refinements.
25. Supervisory Cooperation and Coordination	O	In preparation for the implementation of Solvency II, the NBB has established comprehensive coordination arrangements with other involved supervisors to facilitate effective supervision on a legal-entity and a group-wide basis. The NBB chairs three supervisory colleges as the group-wide supervisor, with the mandate to establish the key functions and other coordination mechanisms of these colleges. Where appropriate, the NBB coordinates with relevant agencies from other sectors, including central banks and government ministries. Pending the implementation of Solvency II, the coordination arrangements have not been concluded for all insurance groups although all the colleges have been operating in line with the EIOPA's templates. The NBB became a signatory to the IAIS Multilateral MoU in December 2011, facilitating cross-border cooperation with non-EEA members who are signatories to this multilateral MoU.
26. Cross-border Cooperation and Coordination on Crisis Management	LO	The Belgian regime for cross-border cooperation and coordination on crisis management is based on the EU framework, which has been partially operationalized. The EU Framework supports and provides guidance on coordinating the arrangements for crisis preparation, management and resolution by supervisory colleges in EU. However, coordination arrangements and emergency plans have not yet been implemented for all supervisory colleges that the NBB participates in. Some insurance groups are still in the process of developing their contingency plans.
Aggregate Level: Observed (O), largely observed (LO), partly observed (PO), not observed (NO), not applicable (N/A).		

Table 10: Summary of Observance Level

Observed (O)	12
Largely observed (LO)	11
Partly observed (PO)	3
Not Observed (NO)	0
Total	**26**

Table 11: Recommendations to Improve Observance of ICPs

Insurance Core Principle	
1. Objectives, Powers and Responsibilities of the Supervisor	The authorities are advised to: a) Conduct regular reviews of the practical implementation of the Twin Peaks structure, to identify and assess any potential gaps, duplication or coordination issues to ensure that supervisory objectives for the insurance sector are effectively achieved; and b) Consider a more principle-based approach in delegating legal authority to the NBB to issue enforceable rules.
2. Supervisor	The authorities are advised to: a) Rectify the NBB Organic Law to enable the NBB to declare its decisions to take recovery measures with respect to insurers as immediately executable, notwithstanding an appeal; b) Ensure that the NBB and FSMA have adequate supervisory resources to achieve the appropriate supervisory intensity and effectiveness, including a baseline supervisory program (ICP 9); c) Consider clarifying that the scope and circumstances for Minister's supervision of the NBB's "transactions" does not cover the its supervisory activities; d) Establish clear policies, procedures and decision making lines to ensure prompt escalation of significant issues to appropriate levels within the NBB as well as in cases of emergency; and e) Review the adequacy of resources of the Internal Audit Service of the NBB to provide assurance on the integrity of its supervisory activities.
3. Information Exchange and Confidentiality Requirements	The authorities are advised to expedite the conclusion of the MoU between the NBB and the FSMA to guide effective cooperation and exchange of information.[14]
4. Licensing	The authorities are advised to expedite the finalisation of the draft Royal Decree establishing proportionate regulatory requirements for

[14] Following the FSAP mission, a general MOU on collaboration between the NBB and the FSMA to ensure coordination of the supervision of institutions under the respective supervision of the two agencies has been concluded on March 14, 2013.

	local mutual insurance associations and cooperative societies.
5. Suitability of Persons	The authorities are advised to expedite the revision of the fit and proper regulation.
6. Changes in Control and Portfolio Transfers	The authorities are advised to consider empowering the NBB and FSMA to approve the conversion of the mutual companies to stock companies, to better safeguard the interests of policyholder and beneficiaries.
7. Corporate Governance	• The corporate governance framework could be enhanced by establishing clearer and explicit supervisory expectation on: a) the duties for directors to act in a manner that would not compromise the interests of an insurer and policyholders, particularly in a group context; and b) adequate powers and resources for the Board of directors to exercise effective oversight.
9. Supervisory Review and Reporting	The authorities' decision to implement Solvency II ahead of the official launch date is a positive initiative. In addition, the effectiveness of on-going supervision could be strengthened by: a) Developing an appropriate baseline supervisory program for insurers/insurance groups according to their risk profiles; b) Strategizing an appropriate risk-based CoB supervision by the FSMA to cover the large number of registered entities, to better prevent misconduct by insurers and intermediaries rather than the current more reactive approach. To this end, it is advisable for the authorities to empower the FSMA to establish appropriate off-site reporting by insurers and intermediaries; c) Reviewing the scope and effectiveness of leveraging on the work of external auditors and actuaries in the supervisory process; d) Establishing internal policies for inspecting outsourced functions by the NBB and FSMA; and **e)** Ensuring that both the FSMA and the NBB are equipped with adequate supervisory resources including the technical capacity to achieve the appropriate coverage and supervisory intensity.
13. Reinsurance and Other Forms of Risk Transfer	We recommend that the NBB: a) Strengthen the prudential standards relating to reinsurance, and requires insurers to embed the management of reinsurance risk as part of their risk management framework, particularly with respect to counterparty, concentration and liquidity risks arising from reinsurance; and b) Formulate appropriate standards applicable for risk transfer to capital markets to facilitate better understanding of the structure and operations of such arrangements.
14. Valuation	Given that the adequacy of the TP is critical for the protection of policyholders, it is important that the NBB enhance its supervisory assessment to include explicit consideration of the underlying assumptions and methods used to estimate the TP. In this regard, the NBB is advised to further build technical capacity to conduct supervisory reviews and consider how best to leverage on the actuarial functions of insurers. The risk of a protracted low-interest rate environment makes it

	important for supervisors to monitor the cost of insurance liabilities, in particular for life insurers' legacy portfolios with high guarantees. In a low interest rate environment, the cost of producing the insurance liability cash flows becomes higher and the value of TP on an economic basis increases. While ICP 14 accepts amortized cost as an economic valuation, we recommend that the NBB strengthen its Flashing Light approach and put in place a sound market consistent valuation standard for TP, either as a Pillar 1 or as a Pillar 2 requirement for all insurers. We recommend that the NBB consider introducing a sound market consistent valuation approach as part of its decision to implement Solvency II ahead of the official timeline. Even as a Pillar 2 requirement, this will give important information to the NBB and to insurers, while providing the incentives for proper ALM. The current Flashing Light provision – implemented since 2006 – might be a basis for the NBB to extend an appropriate market consistent valuation standard to all insurers. It would also support both the NBB and insurers in the transition to Solvency II.
15. Investment	The NBB is currently examining how the risks relating to a low interest environment and the establishment of an adequate ALM can be better monitored. The implementation of Solvency II will also establish clearer supervisory expectations as part of insurers' own risk and solvency assessment. The NBB also intends to enhance its supervisory competences on ALM through advanced training and development initiatives. The mission supports the NBB's proposal to update the prudential standards for ALM to reflect evolving international best practices and strengthening supervisory capacity to assess insurers' ALM practices. It is also advisable to establish formal regulatory requirements on the investments of insurance groups.
16. Enterprise Risk Management for Solvency Purposes	The NBB's decision to implement ORSA earlier than the official Solvency II timeline will improve observance of ICP 16. For ORSA to be truly effective as a supervisory tool and also as a management tool for insurers, it needs to be supported by a sound valuation and risk assessment framework. Given the potential risk of a prolonged low-interest rate environment with potentially declining interest rates, transparency on the long-term financial/economic situation of insurers is particularly important. As interest rates stay low, the high returns in legacy portfolios are likely to put pressure on the financial position of life insurers resulting in gradual deterioration of their financial soundness. An ORSA with a market consistent valuation standard helps to address this potential risk and would also function as an early warning sign for both the NBB and the industry.
17. Capital Adequacy	The NBB is aware of the shortcomings of Solvency I and has been preparing for the implementation of Solvency II, which is likely to remedy many of the drawbacks of Solvency I. In view of the further delay in the introduction of Solvency II, the NBB has decided to implement certain elements of Solvency II ahead of the official timeline. In this regard, the NBB has been building up resources and

	know-how for internal models. We recommend that the NBB, in planning for the early implementation of certain elements of Solvency II: a) Explores strengthening both the quantitative and qualitative elements of the current solvency framework; e.g., ORSA (ICP 16) and conducting quantitative impact studies with all industry participants; b) Works with the industry to improve the quality of the calculation of the Solvency II market consistent balance sheet and capital requirements, over time; c) Enhances the prudential standards for intra-group transactions, including transactions between insurers and banks within a conglomerate, given the dominance of insurance groups and conglomerates and the fact the Solvency I does not incorporate group-risk realistically; d) Formulates an appropriate stress testing and scenario analysis framework to facilitate more robust assessment of insurers' risk exposures to compensate for the lack of risk sensitivity of Solvency I; and e) Reviews the adequacy of supervisory resources to implement the above measures and the eventual implementation of Solvency II.
18. Intermediaries	The FSMA's proposal to adapt MiFID 2 for insurance intermediation will improve observance of ICP 18, when the measures are implemented. In addition, it is advisable: a) For the FSMA to review the effectiveness of the current continuous professional development requirements and establish appropriate regulatory threshold beyond which intermediaries are expected to implement sound corporate governance practices; and b) For the authorities to amend the Intermediation Law to impose a time limit for the migration of sub-agents to agents/brokers.
19. Conduct of Business	The authorities is advised to strengthen the CoB regime by: a) Implementing the proposed amendments to the Supervision Law and the MiFID 2 requirements to better ensure fair treatment of clients; b) Empowering the FSMA to issue enforceable rules on: the handling of claims and policy servicing by insurers; and fact-finding of client's needs and financial circumstances as basis for financial advice; and c) Ensuring that the FSMA is adequately resourced to supervise the CoB of insurers and intermediaries effectively.
20. Public Disclosure	The authorities are advised to address the significant gaps in the disclosure requirements identified.
21. Countering Fraud in Insurance	The authorities are advised to empower the NBB and the FSMA to issue enforceable rules requiring insurers and intermediaries to report insurance fraud.
22. Anti-Money Laundering and Combating the Financing of Terrorism	The authorities should periodically reconsider whether or not non-life insurance should be covered by the AML/CTF regime in Belgium.
23. Group-wide Supervision	The implementation of Solvency II will enhance Belgium's

	observance with ICP 23. It is important that the NBB carefully plan for adequate supervisory resources to supervise insurance groups, especially the complex cross-border groups that are domestic SIFIs.
24. Cross-border Cooperation and Coordination on Crisis Management	The conclusion of the coordination arrangements and emergency plans will enable the NBB to implement cross-border cooperation and coordination on crisis management for insurance groups. The arrangements and plans should also be regularly tested by all involved supervisors to ensure their operational effectiveness and to detect any gaps in procedures or information. In addition, the authorities are advised to consider empowering the NBB to require insurers and insurance groups to establish crisis management plans or contingency plans for use in a going- and gone-concern situation.

D. Authorities' Response to the Assessment

ICP 1: Objectives, powers and responsibilities of the supervisor

48. Given its recent implementation the NBB finds it's early to conduct a thorough review of the Twin Peaks structure. However, any potential gaps, duplication or coordination issues will be promptly dealt with when they appear.

49. The NBB agrees that an explicit legal basis or principle based approach would be more comfortable, but the NBB is convinced that article 14bis, § 4 Insurance Law could for some limited prudential issues address such lack of an explicit legal basis.

ICP 2: Supervisor

50. The NBB agrees that there is an inconsistency between the immediate execution possibility for banking and insurance recovery measures in case of an appeal and will rectify this situation via an amendment of the NBB Organic Law.

51. The NBB will reconsider the adequacy of the supervisory resources in order to achieve the appropriate supervisory intensity and effectiveness in the course of 2013.

ICP 5: Suitability of Persons

52. The NBB is in the process of revising the fit and proper regulation and is currently holding a public consultation on the new proposal. The adoption of the new regulation is planned in the course of 2013.

ICP 7: Corporate Governance

53. The NBB agrees with all recommendations on corporate governance and is planning to incorporate these when revising the governance requirements in the second half of 2013.

ICP 9: Supervisory Review and Reporting

54. The NBB continues the development and refinement of the scorecarding approach which should allow for the establishment of a baseline supervisory program and a more precise estimation of required resources. The NBB is planning to increase its technical capacity in particular areas by recruiting additional staff (e.g. actuaries).

55. The NBB will consider the establishment of internal policies for inspecting outsourced functions when updating the methodology and work plan of the audit team.

56. The NBB will reflect on how the contributions of external auditors and actuaries can be assessed on their effectiveness within the context of their role under Solvency II. In this regard, discussions have been initiated with the professional organizations.

ICP 14: Valuation

57. The NBB is currently revising the Flashing Light approach including the exemption file method in order to better monitor the adequacy of technical provisions, in particular for life insurers' legacy portfolios with high guarantees. The revised Flashing Light approach will be implemented in the second half of 2013.

58. Next to this, the NBB will seriously consider the outcome of European Insurance and Occupational Pensions Authority's (EIOPA) decisions to advance the implementation of some parts of the Solvency II framework.

ICP 16: Enterprise Risk Management for Solvency Purposes

59. The implementation of ORSA is part of the interim guidelines, which are currently prepared by EIOPA to advance the implementation of Solvency II. The NBB will seriously consider the outcome of EIOPA's decisions to advance the implementation of some parts of the Solvency II framework including ORSA.

ICP 17: Capital Adequacy

60. The NBB is reflecting on different measures to strengthen the solvency framework including an adaptation of the Flashing Light approach, a revision of the profit sharing mechanism and alternative ways to decrease the maximum guaranteed interest rate.

61. The NBB participates in EIOPA working groups to improve the quality of the calculation of the Solvency II market consistent balance sheet and capital requirements. In this regard, the NBB has recently launched an impact assessment to test proposed measures for products with long term guarantees.

62. In order to have a more accurate view on the solvency position and risk exposures of insurers, the NBB is planning to conduct an EIOPA-led stress test in the second half of 2013. The NBB will also continue the execution of periodic vulnerabilities analyses to monitor the evolution of life insurers' legacy portfolios with high guarantees.

ICP 20: Public Disclosure

63. The NBB is planning to introduce higher disclosure requirements under Solvency II.

DETAILED PRINCIPLE-BY-PRINCIPLE ASSESSMENT

Table 12: Detailed Assessment of Observance of the ICPs

ICP 1	**Objectives, Powers and Responsibilities of the Supervisor** The authority (or authorities) responsible for insurance supervision and the objectives of insurance supervision are clearly defined.
Description	Under the Twin Peaks supervisory structure adopted on April 1, 2011, the NBB is in charge of the micro- and macro-prudential supervision of financial institutions (including insurers) while the FSMA is **responsible for the integrity of the financial markets and conduct of business supervision. The Twin Peak architecture is legally established by the** Royal Decree implementing the development of financial supervisory structures of March 3, 2011 (Twin-Peak Decree). The NBB has a clear mandate to contribute to the stability of the financial system; and exercise prudential supervision of financial institutions. The key primary legislations that defines NBB's authority and responsibility in the area of insurance supervision are: a) The Law of 22 February 1998 on the Organic Statute of the National Bank of Belgium (NBB Organic Law); b) Statutes of the National Bank of Belgium as agreed by Royal Decree of 3 October 2011 (NBB Statutes); c) Law of 9 July 1975 on the supervision of insurance undertakings (Insurance Law) and the implementing Royal Decree of 22 February 1991 (RD-IL); d) Law of 16 February 2009 on reinsurance companies (Reinsurance Law) and the implementing Royal Decree of 27 September 2009; e) Law of 25 June 1992 on non-marine insurance policy, which establishes the rules on insurance policies[15]; f) Insurance Law of 11 June 1874 on reinsurance agreements and certain transport insurance contracts. However, most of the provisions are not binding; g) Royal Decree of 14 November 2003 on Life Assurance (RD-LA); and h) Royal Decree of 21 November 2005 on supplementary group supervision of financial conglomerates i) Royal Decree of 17 November 1994 on the annual accounts of insurance undertakings. (RD-Accounts) The Insurance Law and Reinsurance Law establish the objective of supervision i.e., to protect the rights of the insured and third party beneficiaries. This general objective is supported by sub-objectives: the financial soundness of insurers and reinsurers, the contractual relations between insurers and policyholders, the organisation and coordination of supervision and the stability of the financial system. *(Art 1 of IL, Art 37 of RL and Art 36/2 of NBB Organic Law)* The objective for supplementary supervision of insurance groups is to assess the financial position and solvency of financial services groups, their risk concentration, intra-group transactions as well as internal control and risk management systems (Art 91*octies decies* of IL)

[15] Fire insurance, liability insurance, legal expenses insurance, life assurance, etc.

	The NBB may establish legally binding regulations supplementing the legal or regulatory provisions on points of a technical nature. The NBB's regulations are subject to approval by the King via Royal Decree. The King may also amend the NBB's regulations or establish rules via Royal Decree (if the NBB has not done so). Amendments to the NBB Statutes require the approval of the King via Royal Decree. *(Art 12bis and 36, NBB Organic Law)* However, the scope of the NBB's regulatory power is confined to the adoption of regulations "to supplement the relevant laws or regulations concerning technical aspects." Thus, the NBB legal authority to issue secondary regulations is generally limited to issues that are specifically prescribed in the primary law. In the absence of any specific reference, the NBB has to request the government to effect legislative amendments to address an emerging supervisory concern, even though it may be covered in the law at a conceptual level. It is then for the government to decide whether to make the necessary changes in accordance with its own priorities. This generally prescriptive approach adopted for the NBB's rule making power may constrain the NBB's supervisory discretion and/or timely intervention. For example, the NBB would be unable to issue legally enforceable rules to extend the fit and proper requirements to Key Persons in Control Function without changing the law, a regulatory gap noted in ICP 5.[16] *(Art 12bis and 36, NBB Organic Law)* The NBB issues circulars to inform supervised institutions of its supervisory expectations and how it interprets the applicable law and how the NBB will apply the regulations in specific cases. Thus, without being hard law as such, circulars could be considered as legally binding insofar as they elaborate legal principles. The principle of good administration implies that the NBB must respect its circulars and the NBB is expected to explain any deviations from its circulars. The NBB is adequately empowered to: obtain any necessary information for supervision; conduct on-site inspections; and impose corrective and preventive measures as well as sanctions as outlined in ICPs 9 to ICP 11. *(Art 21 & 26 of IL, Art 37 & 71 et seq. of RL and Art 36/19 of NBB Organic Law)* The FSMA strives to ensure the honest and equitable treatment of financial consumers by insurers and intermediaries. Its competences are: 1) supervision of the financial markets and listed companies; 2) supervision of compliance with rules of conduct; 3) supervision of financial products; 4) supervision of financial service providers and intermediaries; 5) supervision of supplementary pensions; and 6) contribution to improving financial education of the public. The key primary legislations that defines FSMA's authority and responsibility in respect of conduct of business supervision for the insurance sector are: • Royal Decree of 5 April 2011 on the FSMA's Supervisory Board; • Royal Decree of 28 April 2011 on the FSMA's Management Committee; • The Law of 2 August 2002 on the supervision of the financial sector and on financial services (Supervision Law);

[16] The NBB has interpreted that Article 14*bis* §4 of the Insurance Law may be used to "impose specific requirements on an insurance undertaking that could *inter alia* go against the suitability of its organizational structure," including extending the scope of the fit and proper requirements. Article 14*bis* §4 states: "The [Bank] may, without prejudice to the provisions of §§ 1, 2 and 3, specify what is meant by an appropriate management structure, appropriate internal control, an appropriate independent internal audit function, [an appropriate risk management function and, on the advice of the FSMA, an appropriate independent compliance function]."

	• The Law on non-life insurance contract; • Certain non-prudential provisions of the Insurance Law; • The Company Law; and • The Law of 27 March 1995 on insurance intermediation and distribution. There is no direct conflict between the relevant insurance legislations and the supervisors' objectives for supervision. Both the NBB and the FSMA do not have development of financial markets as their objectives. While not unique to the Twin Peaks structure in Belgium, there could be tension between the objectives for prudential and conduct-of-business (CoB) supervision. For example, while a liquidity swap may be deemed to pose no direct/immediate financial risk on insurers, there may be implications for the protection of policyholders if assets covering technical provisions are less liquid or more risky. Similarly, it is generally recognised that systemic CoB issues may have prudential implications for insurers. Given the recent introduction of the Twin Peaks structure, regular reviews of the practical implementation issues such as communication and coordination between the NBB and the FSMA is helpful to fulfil the overall objectives of insurance supervision and achieve synergy from the separation of roles.
Assessment	Largely observed
Comments	The responsibilities for insurance supervision in Belgium are clearly defined under the Twin Peak supervisory structure, which has been implemented for less than two years. The NBB and the FSMA have clear mandates under the Twin Peaks structure, which also enhances checks-and-balances. The objectives of the supervision of insurers and reinsurer are defined in the primary legislations. The NBB may establish enforceable rules within the parameters specifically prescribed in the primary law, subject to the approval of the King or a Minister. The authorities are advised to: c) Conduct regular reviews of the practical implementation of the Twin Peaks structure, to identify and assess any potential gaps, duplication or coordination issues to ensure that supervisory objectives for the insurance sector are effectively achieved; and d) Consider a more principles-based approach in delegating legal authority to the NBB to issue enforceable rules.
ICP 2	**Supervisor** The supervisor, in the exercise of its functions and powers: • is operationally independent, accountable and transparent; • protects confidential information; • has appropriate legal protection; • has adequate resources; and • meets high professional standards.
Description	<u>Governance</u> The NBB is a public institution governed by: a) Title VIII of Part Three of the Treaty on the Functioning of the European Union; b) The Protocol on the Statute of the ESCB and of the ECB c) The NBB Organic Law;

	d) The NBB Statutes; e) Certain legal provisions relating to public limited liability companies[17] in respect of matters not covered by a) to d) above; f) The NBB's Corporate Governance Charter (CGC). The NBB is listed on the Brussels Stock Exchange, with a share capital of € 10 million. The Belgian government holds 50 percent of the voting rights (200,000 shares) and the remaining shares are held by the public.[18] As the NBB does not have profit making as its main object, it has a special legal status and organic rules which distinguish it from other public limited liability companies. As a member of the ESCB, the NBB is subject to special accounting rules and special status regarding the information disclosure obligations. In addition, certain provisions of the Belgian Corporate Governance Code do not apply e.g., appointment and dismissal of Board members. The powers of the general meeting of shareholders are limited to the: election of the Regents and Censors; appointment of the external auditor; endorsing the annual accounts/reports; and amending the NBB Statutes on the proposal of the Council of Regency (where it does not have the power to do so). The governance structure of the NBB comprises: a) The Governor directs the NBB and presides over the Board of Directors (Board) and the Council of Regency (Council) ; *(Art 18, NBB Organic Law)* b) The NBB Board is responsible for the administration and management of the NBB, issues the NBB regulations and decides on the NBB's policy direction. The Board also appoints and dismisses members of staff and determines their remuneration. Currently, the Board comprises eight members, in addition, there are two special representatives advising on prudential supervision (but who are not Board members) **;** *(Art 19, NBB Organic Law and Art 29 of NBB Statutes)* c) The Council has the authority to: amend the NBB Statutes to conform to the NBB Organic Law and the international obligations which are binding on Belgium; and establish the Code of Conduct for NBB directors and staff. It exchanges views on general issues relating to the NBB, including supervisory policies and international regulatory developments. However, it does not intervene at the operational level. The Council comprises the Governor, the directors and ten Regents, elected by the General Meeting. Dividend distribution[19] by the NBB is entrusted to the Council, who is responsible for balancing the public interests against the interests of the shareholders of NBB. *(Art 20, 31 and 32, NBB Organic Law)* d) The Board of Censors supervises the preparation and implementation of the NBB budget and serves as the Audit Committee of the NBB. The Censors are elected by the general meeting of shareholders for a renewable term of three years. It comprises 10 members, of

[17] When the NBB was set up in 1850, the legislature gave it the form of a public limited liability company. The private banks, which had the right to issue banknotes, owned the capital of the NBB. The shares were later listed on the stock exchange.

[18] Except for the shares owned by the State, the NBB does not know of any shareholder with 5 percent or more of the voting rights.

[19] In execution of article 32 of the NBB Organic Law the Council of Regency determines the policy with regard to reserves and dividends.

	which one must be independent. *(Art 21, NBB Organic Law)* e) The Sanctions Committee, which was not yet operational at the time of assessment. It conducts hearings and pronounces the imposition of administrative fines and penalties on supervised entities (ICP11). In its role as the Audit Committee, the Board of Censors monitors: a) the financial reporting process; b) the effectiveness of the internal control, risk management systems and internal audit; c) the statutory audit of the annual accounts; d) the independence of the statutory auditor. *(Art 21 bis, NBB Organic Law and Art 32 bis of the NBB Statute)* The Internal Audit Service of the NBB has the following mandates: a) raising awareness of and independently appraise the enterprise risk management in the NBB; b) provide opinion on and recommendations for improving the internal controls; and provide assistance where necessary in implementing these measures. It does not have direct operational responsibility and reports to the NBB Board. *(CGC 2.5)* Prior to the implementation of the Twin Peaks structure, two internal audits were conducted to identify risks arising from the transfer of prudential supervision from the CBFA to the NBB and propose mitigating measures. There was no internal audit on the NBB's prudential supervision after the transfer to allow more time to implement the new supervisory structure. Going forward, the Internal Audit Service plans to conduct risk-based internal audits based on risk assessments of the NBB's statutory functions, including supervisory activities. The current resource level of the Internal Audit Service is inadequate for effective quality assurance of the NBB's supervisory activities. The NBB submits an annual ECB report and a yearly report on its supervisory activities (its annual report) to the Chamber of Representatives and the Senate. The Governor may be heard by the competent committees of the Chamber of Representatives and of the Senate. *(Art 28, NBB Organic Law and CGC 4.3)* The NBB has not defined "emergency" or "significant issues" nor the related internal policies and procedures to deal with these events. The NBB Statutes foresee that the Governor decides on the fact whether or not a specific situation is to be considered as an "emergency" situation, and whether to convene the NBB Board via written or teleconference procedure. The NBB considered that its operational teams have sufficient expertise and are sufficiently conscious to identify a "significant issue" or an "urgency situation" correctly. If a member of the operational services would detect a significant issue or emergency situation he would immediately inform its head of service, who will in its turn directly contact its respective Director and the Governor. *(Art 19, NBB Organic Law and Art 29.7 of NBB Statute)* The FSMA is an autonomous public institution established by law. It carries out tasks in the general interest entrusted to it by Parliament. It is governed by: a) A Supervisory Board that oversees the operations and financing of the FSMA as well as advises on priorities and the implementation of supervisory policies; and *b)* A Management Committee that take decisions and measures necessary to carry out the FSMA's supervisory mandate. The Chairman of the Management Committee is the head of the FSMA. All decisions of the Management Committee are collegial in nature. Each member of the Management Committee is responsible for overseeing specific services. The Audit Committee of the FSMA reports to the Supervisory Board and consists of three members selected from the Board who may not have holdings nor hold a position in any

	supervised entities, or in a professional association representing the supervised entities. The Committee takes cognizance of the internal audit reports and of the response by the Management Committee; examines the draft budget and the financial statements of the FSMA before these are approved by the Board. **Appointment and Dismissal** The NBB Board is composed of the Governor and five to seven directors. The Governor is appointed by the King for a renewable term of five years. The other directors are appointed by the King, on the proposal of the Council, for a renewable term of six years. Both the Governor and the directors may be removed from office only if they have been guilty of serious misconduct or if they no longer fulfill the conditions required to perform their duties. The Governor may appeal to the Court of Justice of the EU against a decision of removal while Board members may appeal to the Council of State. These limited grounds for dismissal and the appeal process helps to preserve the independence of the NBB.*(Art 23, NBB Organic Law and Art 14.2 of the Statutes of the ESCB)* There is an established policy on the composition of the NBB Board in terms of diversity of experience and skill set. Given the expanded mandate of the NBB in recent years, the Council has addressed the diversity issue in the Remuneration and Appointments Committee Regulations. The Regents and Censors are elected for a three-year renewable term by the General Meeting. Five regents are chosen on the proposal of labor organizations, industry, commerce and agricultural organizations and from small firms and traders. Five Regents are to be proposed by the Minister of Finance (Minister). The Censors are chosen from among persons with special qualifications in supervision, accounting and financial expertise. *(Art 23, NBB Organic Law and Art 35 &36 of the NBB Statute)* Members of the Legislative Chambers, the European Parliament, the Councils of the Communities and the Regions, persons who hold the position of minister or secretary of state or of member (and their staff members) of the Government of a Community or Region may not hold the office of governor, vice-governor, Board member, member of the Sanctions Committee, Regent or Censor. The governor, the vice-governor and Board members may not hold any office in a commercial company or in any public body that carries on an industrial, commercial or financial activity. The Regents and the majority of Censors may not be a member of the administrative, management or supervisory bodies of NBB-supervised institutions nor may they perform management duties in such institutions. *(Art 25 &26, NBB Organic Law and Art 37 of the NBB Statute)* The members of the FSMA's Supervisory Board and Management Committee are appointed by Royal Decree for a period of six years. It is not explicitly foreseen that the reasons for dismissal of the Governor or Board members of the NBB are publicly disclosed. Similarly, reasons for removing the members of the governing bodies of the FSMA need not be disclosed. The NBB considers that transparency on the dismissal of the Governor or NBB Board members is provided under Belgian administrative law. This is because all administrative acts (such as the dismissal of the Governor) must be motivated. This means that the dismissal decision (in practice a Royal Decree published in the Belgian Official Gazette) have to clearly identify the factual and legal elements on which it is based. Furthermore, in the event that the EU Court of

Justice decides on any appeal against a dismissal brought by the Governor, the judgment shall be delivered in open court and published in the Official Journal. (*Law of 29 July 1991 on Explicit Founding of Administrative Acts),*

Independence and Funding

The NBB has autonomy in its prudential supervision, subject to a limited check through special administrative supervision relating to the enforcement of formal regulations issued by the NBB via Royal Decree.

"Except as regards the tasks and transactions within the domain of the ESCB, the Minister of Finance, through his representative, shall have the right to supervise the Bank's transactions and to oppose the implementation of any measure which is contrary to the law, the Statutes or the interests of the State." "The representative of the Minister of Finance shall, *ex officio*, attend the meetings of the Council of Regency and the Board of Censors. He shall "…suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within eight days of the suspension, the decision may be implemented." The MoF representative reports to the Minister each year on the performance of his duties. The NBB explained that the phrase "NBB's transactions" refers to non-ESCB book keeping transactions within the competence of the Board of Censors and the Council of Regency (e.g., own portfolio management). For the avoidance of doubt, the authorities are advised to consider carving out the NBB's supervisory activities from the Minister's supervision explicitly, as in the case of its ESCB tasks. The NBB has indicated that it will clarify this issue by amending the NBB Organic Law. *(Art 22, NBB Organic Law and Art 41 of the NBB Statute)*

The NBB has discretionary power in administering the laws under its purview, in accordance with the general principles of law and with due regard to proportionality and equality. Differences in treatment between supervised entities must be justified by legal or regulatory grounds or within the discretionary power of the NBB. However, the Insurance Law may also provide that the prudential decision exercised by the NBB be subject to agreement by other ministries. A recent example is the rejection of the NBB's prudential decision to lower the maximum interest rate for life policies by the Ministry of Economy and Consumer Affairs.

The costs of supervision incurred by the NBB and the FSMA are funded by regulated entities. The funding scheme: should cover the effective cost of supervision; strives for stability and predictability of the financing burden for supervised institutions; and constitutes a pre-financing system with subsequent regularisation of the paid amounts. Two separate contributions are levied on the insurance sector and the banking/securities sector. For each sector, there are two types of contribution: a) contributions that are part of a global amount for the sector; and b) additional contributions from SIFIs. Contributions from the insurance and banking sectors add up to about 90 percent of the NBB's expenses. At the end of the year, contributions received and receivable are calculated. If the contributions exceed or fall short of the global amount, a correction is made. Excess contribution is refunded while any shortfall would be met by additional contributions. *(RD 17 July 2012 (NBB) and RD 17 May 2012 FSMA.)*

The Council approves the expenditure budget and the annual accounts prepared by the NBB, assisted by the Budget Committee. The Budget Committee has the power to examine the NBB's budget before it is approved by the Council. It is chaired by one Censor and comprises two regents, one other censor, the representative of the Minister and the director responsible for the Controlling Department (advisory capacity). The NBB has autonomy in the field of salary scales, engaging outside experts, training budget, IT and travel budget. *(Art 12 bis §4 &20 NBB Organic Law, Art 30 of NBB Statutes and CGC 2.3.3)*

The FSMA is an autonomous public institution and applies the rules of conduct for financial institutions independently. Its operating costs are funded by supervised entities, via three types of contributions: a) sectoral contributions from entities subject to permanent supervision; b) variable specific contributions to finance the supervision of specific operations or requests e.g., approval of a prospectus, handling notifications, registration and enrolment as well as giving ruling; c) fixed contributions to finance specific costs e.g., the acquisition of the FSMA's registered office. The FSMA's budget must be approved by its Supervisory Board. The FSMA has received additional funding to hire new staff to discharge its responsibilities under the Twin Peaks structure and it has an approved FTE of 311. *(Art 44 & 56 of SL and Royal Decree of 17 May 2012)*

Review and Transparency of Requirements and Procedures

The NBB and the FSMA publishes the relevant legislation and its supervisory procedures (e.g., the NBB's risk-based supervision approach) as well as circulars and other communications on their websites. These publications promote transparency of the regulatory requirements and supervisory procedures.

The NBB and FSMA regularly review the relevant laws and regulations to take account of evolving market and regulatory developments. As a member of the EU, the authorities also undertake necessary legislative and regulatory amendments to transpose EU Directives into Belgian law.

Proposed laws, regulations and circular letters are typically subject to consultation with the parties concerned. Consultation takes place within the Insurance Commission, which is an advisory committee set up to consider questions raised by the Minister or the FSMA. The Commission comprises 26 permanent members appointed by the King.[20] The Insurance Commission may also issue advices on its own initiative. The NBB and the FSMA also regularly organizes consultations with the insurance sector to update insurers of upcoming regulatory developments. A recent consultation by the FSMA was on moratorium of complex structured products. *(Art 41 of IL)*

Information on the Insurance Sector and the Supervisor

The NBB is legally obliged to publish an annual report on its role and how it discharges its responsibilities. The annual report presents useful information on the financial system including the insurance sector, such as the structure of the insurance market; financial positions of insurers; and regulatory developments in Belgium and the EU. The NBB's Financial Stability Report provides analysis on the potential risks and vulnerabilities in the macro-economic environment as well as those specific to the insurance sector. These reports are readily accessible on the NBB's website. *(Art 28 NBB Organic Law)*.

While respecting its obligation of professional secrecy, the FSMA communicates as transparently as possible about its decisions and activities, with justifications. This is done through its annual report and its website. The Chairman of the Management Committee can also report to Parliament.

[20] Of the 26 members, 11 members represent supervised entities, 6 members represent the interests of consumers; 3 members represent insurance intermediaries and 6 members with professional experience and qualifications in activities subject to the supervision of the FSMA are nominated by the Minister.

	Appeal Against Supervisory Decisions Certain decisions of the NBB, namely its decisions as an administrative authority, e.g., refusal or withdrawal of the authorisation, are subject to a right of appeal with the Council of State. The Council considers only the legality of the decision e.g., it may annul NBB decisions where they are found to be *ultra vires*. Some appeals may be lodged with the Council of State according to an accelerated procedure, which is subject to specific legal provisions. Appeals against the NBB's decision to impose an administrative fine or penalty may be lodged solely with the Brussels Court of Appeal, which would suspend the NBB's decisions. Decisions by the NBB to take exceptional recovery measures take effect from the date of notification to the insurer by registered letter or by letter with advice of receipt. The decisions shall take effect against third parties from the date of the publication of the decisions. The NBB may declare its decision to take recovery measures immediately executable notwithstanding an appeal with respect to banks only; but the same power does not apply to insurers. The NBB will rectify this inconsistency via a future amendment of Article 36/22 NBB Organic Law. *(Art 26 § 2 of IL and Art 36/22 of NBB Organic Law)*. Appeals against the decisions taken by the FSMA may be made before the administrative or judicial jurisdictions, as applicable. **Confidentiality** Except when called upon to give evidence in court in a criminal case, the NBB and members and former members of its organs and its staff members are subject to professional secrecy requirements. Breach of secrecy is subject to criminal penalties. (*Art 35, NBB Organic Law and Art 85 & 458 of the Penal Code)* Disclosure of confidential information obtained in the course of duties may be made: a) where the communication is authorized under the relevant laws; b) to expose criminal offences to the judicial authorities; c) within the framework of administrative or judicial appeal proceedings against acts or decisions of the NBB and in any other proceedings to which the NBB is a party ;or d) in abridged or summary form, such that individuals or legal persons cannot be identified. e) to specified competent authorities – see ICP 3. (*Art 36/13 and 36./14, NBB Organic Law)* The NBB has recently introduced regulations to safeguard confidentiality via the policies on the classification and processing of information. This regulation is applicable to all personnel of the NBB and clearly states how confidential information should be treated. In addition, access to several services where confidential and sensitive information is now restricted to a limited number of staff members. The Chairman, Management Committee members, Supervisory Board members, Secretary General and the members of staff of the FSMA, as well as persons who have held those positions in the past, are bound by professional secrecy. They may not divulge confidential information revealed to them in the performance of their duties to any person or authority whatsoever. There are a number of exceptions where disclosure is permissible, including sharing of confidential information with domestic and foreign authorities (ICP 3). *(Art 74 & 75 of SL)*

	Legal Protection The NBB and the FSMA, the members of their governing bodies and their staff members shall not bear any civil liability for their decisions, non-intervention, acts or conduct in exercising their supervisory tasks, except for fraud or gross negligence. *(Art 12 bis, NBB Organic Law and Art 68 of SL)* In addition, the NBB and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith via an insurance agreement covering the costs of defending actions. This insurance agreement was amended in 2011 to cover the NBB staff responsible for prudential supervision. Furthermore, a specific insurance agreement for professional liability with regard to prudential supervision covers the NBB and its personnel even in case of fraud and wilful misconduct. **Supervisory Resources** Prudential supervision of insurers is conducted by the Insurance Supervision Service of the NBB. In 2011, there were about 36.5 full-time-equivalent (FTE) staff members responsible for supervising 92 direct insurers and 2 reinsurers, allocated as follows: 12.4 FTEs for complex groups, 10.5 FTEs for international companies and 13.6 FTEs for local companies.[21] There was also a diverse range of expertise: legal (3), financial (11), actuarial (3) and auditing (11). While the resources of the Insurance Supervision Service have been increased to around 50 FTEs in 2012, the Assessors are of the opinion that the current level should be strengthened in order to achieve the appropriate supervisory intensity and effectiveness. The considerations are that the Insurance Supervision Service: a) has been allocating disproportionate resources to closely monitor the financial conditions of some insurers in distress since the global financial crisis that began in 2008 and in view of the on-going turbulence in the EU; b) the need to ensure robust supervision of the nine insurance groups, of which six are complex groups. The NBB also has to dedicate resources to serve as an effective group-wide supervisor for two insurance groups; and c) the impending resource-intensive implementation of Solvency II. The Insurance Supervision Service has been dealing with 10 insurers who have been in the process of being wound-up. The licenses for two of these insurers were revoked by the NBB and the policyholders of one of the insurers may not be fully compensated for their insured benefits. In addition, a number of insurers are subject to enhanced supervision (i.e., beyond the current scope of risk-based supervision and the supervisory intensity varies according to the severity of their conditions) and the NBB is working on a durable solution to deal with this group of insurers. On average, about 10 insurers were subject to enhanced supervision in 2010 and 2011. Similarly, the FSMA has a significant challenge in supervising a large number of intermediaries. The formulation of a risk-based supervision approach may contribute to better prioritization of supervisory resources. Nonetheless, it is critical that the FSMA has adequate resources for effective on-going supervision instead of the current reactive approach driven primarily by external reporting of breaches or concerns.

[21] Complex Group consists of Belgian entities belonging to a complex group, International Companies are Belgian entities belonging to a foreign group, and local Companies are domestic insurers.

	Integrity and Professionalism A Code of Conduct imposes strict rules of behavior on the NBB Board members and staff members, who are expected to maintain the highest standards of professional ethics. They are also subject to the rules on insider trading and market manipulation. *(Art 25 & 25bis of the SL and Art 26 of SL)*. In particular, the NBB Board and staff members shall observe a respectable attitude and conduct and refrain from any behavior liable to damage the prestige and honor associated with their duties. They shall demonstrate politeness, correctness and fairness in their professional relations. They should show loyalty to the NBB, demonstrate integrity, independence, impartiality and discretion, while respecting high standards of professional ethics. They are expected to avoid any situation liable to give rise to a conflict of interest or appear to do so. *(NBB Code of Conduct)*. If a member of the NBB Board has, directly or indirectly, an interest relating to proprietary rights which conflicts with a decision or transaction to be decided by the Board, he must inform the other members before the Board deliberates and abstain from the discussions and voting. Similar provisions apply to members of the Council to address potential conflict of interests. *(CGC 2.3.2 & 2.3.3 and NBB Code of Conduct)*. Members of the NBB Board and staff members should show restraint in the conduct of all their private financial transactions. They are barred from engaging in transactions exceeding their own financial capacity, particularly if they are of a speculative nature, and also from involvement in any economic or financial transaction liable to obstruct their independence and their impartiality. They may not, directly or indirectly[22], hold or deal in shares in the NBB or supervised entities (including their parent companies) subject to specified exceptions. *(NBB Code of Conduct)*. The FSMA's Code of Ethics expects the Chairman, the members of the Management Committee, the Secretary General and its staff members to demonstrate loyalty, integrity, independence, impartiality and discretion without regard to their personal interest. They must subscribe to high standards of professional ethics and avoid any situation posing potential conflicts of interest. In particular, they shall abstain from speculative financial transactions and transactions involving amounts that are disproportionate to their financial standing, distract them from their professional obligations, or influence the objectivity of their assessment or opinion. They are also prohibited from dealing, directly or indirectly, in shares of supervised entities, subject to specific exceptions. **Outsourcing of supervisory functions** The Twin Peaks Decree authorizes the NBB and the FSMA to outsource supervisory functions to external auditors. The powers of external auditors appointed are broad, including request for document and information, on-site inspections and access to all IT systems. All costs incurred in using the external auditor will be borne by the relevant financial institution. The NBB and the FSMA currently do not outsource any of their supervisory activities.

[22] "Indirectly" refers to transactions made upon the initiative of or upon the advice of a member of the NBB Board or a staff member by a person with whom he/she has connections. "Connected persons" include spouse or partner, dependent children, a relative (as defined) as well as defined connected legal person.

Assessment	Partly observed
Comments	The NBB and the FSMA have financial independence in exercising their functions and powers and they are subject to clear accountability mechanisms. Both the supervisors and their staff members are legally obliged to safeguard confidential information and have the necessary legal protection against civil liability except for fraud or gross negligence. While the NBB and the FSMA have budgetary discretion, there is a need to strengthen their supervisory resources to achieve appropriate supervisory intensity and effectiveness. There are explicit procedures for the appointment and dismissal of the members of the governing bodies of the NBB and the FSMA, and the Belgian Administrative Law provides for transparency of the reasons for their dismissal. There is an established policy on the composition of the NBB Board in terms of diversity of experience and skill set. The lack of internal policy and procedure to ensure prompt escalation of significant events and the lack of authority for the NBB to declare its decisions to take recovery measures as immediately executable may hinder timely intervention by the NBB. There is scope for strengthening the resources of the Internal Audit Service to provide quality assurance on the integrity of supervisory activities of the NBB. The authorities are advised to: a) Rectify the NBB Organic Law to enable the NBB to declare its decisions to take recovery measures with respect to insurers as immediately executable, notwithstanding an appeal; b) Ensure that the NBB and FSMA have adequate supervisory resources to achieve the appropriate supervisory intensity and effectiveness, including a baseline supervisory program (ICP 9); c) Consider clarifying that the scope and circumstances for Minister's supervision of the NBB's "transactions" does not cover the its supervisory activities; d) Establish clear policies, procedures and decision making lines to ensure prompt escalation of significant issues to appropriate levels within the NBB as well as in cases of emergency; and e) Review the adequacy of resources of the Internal Audit Service of the NBB to provide assurance on the integrity of its supervisory activities.
ICP 3	Information Exchange and Confidentiality Requirements The supervisor exchanges information with other relevant supervisors and authorities subject to confidentiality, purpose and use requirements.
Description	Information obtained by the NBB in the performance of its duties is subject to professional secrecy protections. The NBB Organic Law sets the general framework for the exchange of information. *(Art 35 and Arts 36/13 to 36/18, NBB Organic Law)* Specifically for the insurance sector, the NBB is empowered to share confidential information with specified recipients: competent authorities of the EU and other third countries for the purpose of prudential supervision or financial stability; the FSMA; authorities and legal representatives involved in bankruptcy or composition proceedings of supervised entities; external auditors, independent actuaries (and their professional bodies), and competition authorities in the EU. *(Art 36/13 & 36/14, NBB Organic Law)*

	The NBB "may"[23] cooperate with foreign authorities that exercise prudential supervision or have a financial stability mandate, including the conclusion of mutual cooperation and coordination agreements. The information exchanged in this context is covered by professional secrecy obligation. In forwarding information received from cooperating authorities, the NBB may specify that the information cannot be disclosed without its express consent or can only be disclosed for purposes for which it has given its agreement. The NBB must also respect any restrictions that may be set out by the foreign authority. *(Art 36/16 & 36/17, NBB Organic Law)* The conditions for cross-border activities and the exchange of information between EU supervisors under the EU life and non-life Directives have been transposed into the Insurance Law. *(Art 49 to 78 of IL).* The Insurance Law is silent on whether the existence of an agreement or understanding on information exchange is a prerequisite for information exchange. In practice, the NBB takes into account the following in deciding whether and to what extent to fulfil a request for information: the nature of the requested information; the ability and willingness of the recipient supervisor to maintain the confidentiality of any information exchanged; and the use to which the information will be put. There is no specific obligation to requests for information in writing. The NBB may refuse to follow up a request for information, investigation, on-site verification or monitoring if: a) doing so may threaten Belgium's sovereignty, security or public order; b) legal proceedings have already been initiated for the same charges against the same persons in Belgium; or c) these persons have already been tried irrevocably for the same charges in Belgium. In such cases, it shall inform the requesting authority and may provide it with information on the proceedings or judgment. *(Art 36/17, NBB Organic Law)* There is no explicit provision authorizing the NBB to inform other involved supervisors of an insurance group in advance of taking any action that might reasonably be considered to affect entities under their purview. Nonetheless, this issue is largely addressed in the coordination arrangements adopted by supervisory colleges, in which the NBB is a member (ICP 25). In addition, the NBB Organic Law does not differentiate between prior or post information sharing, but encompasses both. Prior info sharing is considered part of an efficient cooperation process and the only restriction is that confidential information may only be used for supervisory purposes and that the receiver is bound by a similar professional secrecy. The collaboration tool[24] used in the supervisory colleges that the NBB is a member of facilitates timely exchange of pertinent information between the college members and participants. Members of the colleges publish and update a list of all email addresses and persons in charge in the collaboration tool. However, college participants who are not members of the EU or have not signed the IAIS Multilateral MoU do not have access to all information available on the collaboration tool. The Helsinki and Siena Protocols or the draft Solvency II Directive do not require reciprocity for

[23] There is no legal obligation to do so as the communication of confidential information is an exception to the professional secrecy.

[24] This is a security tool used by supervisory colleges to exchange information, on a quarterly or annual basis or in case of major change.

	information exchange. As such, the NBB is able to share information without requiring strict reciprocity with EU members. With respect to supervisors outside of the EEA, the exchange of information may be extended on a reciprocal basis as there is no guarantee on the level of confidentiality requirements in the non-EEA states. The NBB may conclude cooperation agreements with these non-EEA supervisors. *(Art 91septies decies of IL)* Confidential information can only be shared on the condition that the recipients use that information to carry out their tasks and that they are subject to an equivalent obligation of professional secrecy as the NBB. Furthermore, information communicated by an EEA supervisor may be divulged only with the express agreement of that supervisor. *(Art 36/14, NBB Organic Law)* The NBB may only use the information that it has received from other authorities or the FSMA for monitoring supervised entities. All its cooperation agreements have a provision stating that the information to be exchanged needs to be "relevant to ensure effective and efficient supervision." Subject to the agreement of the transmitting authority, the NBB may use this information for other purposes or forward to other authorities. There is no legal obligation for the NBB to share information under the NBB Organic Law[25], and the NBB Board and staff members cannot be legally compelled (e.g., in a court proceedings) to divulge official secrecy. Nonetheless, the NBB has executed confidentiality agreements with members of the supervisory colleges that it chairs or participate, which provide that: a) before a home or host supervisor discloses any confidential information to a third party, it will request and obtain prior consent from the supervisor who provided the information; b) in the event that either the home or host supervisor is required by statute or legal process to disclose confidential information, it will, to the extent permitted by law, inform the relevant supervisor about such possible onward sharing. If that supervisor does not consent such disclosure and if possible and appropriate, the disclosing supervisor will take reasonable steps to resist disclosure. The FSMA may share confidential information with domestic and foreign authorities subject to conditions that the information: is intended to assist the foreign authority in the performance of its functions; and will be subject to an obligation of professional secrecy equivalent to that applicable to the FSMA. In sharing confidential information, the FSMA may indicate that the information may only be divulged with its explicit consent or for the purposes for which it has given its consent. When the FSMA receives information, it must comply with any restrictions that may be imposed by the foreign authority with regard to the possibility of divulging that information. **Twin Peak Arrangements** In order to ensure the effective, coordinated supervision of insurance companies, the NBB and the FSMA shall conclude a protocol, which shall be published on their respective websites. The protocol shall determine the arrangements for collaboration between the NBB and the FSMA in all cases where the law provides for: notifications; provision of opinion, consultation, exchange of information or any other contact between the two institutions, and in cases where it is necessary for the two institutions to act in concert to ensure the uniform application of the legislation. *(Art 37 of IL)*

[25] For example, Article 35 of NBB Organic Law foresees that members and former members of the NBB organs or its personnel *may* share such information when being summoned to testify before criminal courts or tribunals.

	The proposed protocol between the NBB and the FSMA was still under negotiation at the time of assessment. The draft protocol recognizes that the Insurance Law generally does not provide for the practical modalities for the contact points listed. In addition, the protocol seeks to enhance the consistency and the efficiency of the supervision exercised by both authorities. The draft protocol envisages: a) Concertation provided under the law between the NBB and the FSMA e.g., when the NBB assesses a change in control in insurers, it has to perform its evaluation in concertation with the FSMA if the proposed acquirer is an investment firm or management company authorized by the FSMA *(Art 23bis § 4 of IL)*; and b) Cooperation not provided for in the Insurance Law, e.g., the obligation for the FSMA to notify the NBB when it notices that an insurer is working with an intermediary who is not registered with the FSMA; and the obligation of both NBB and FSMA to consult one another upon drafting of a regulation or a circular on a subject falling within or interfering with the competencies of the other authority. Where a financial institution commit serious breaches of the rules of conduct, the FSMA shall inform the NBB of the alleged breach before taking the following measures: a) prohibiting or suspending (in whole or in part) the activities of the institution concerned; or b) ordering the replacement of its management. Where such breaches are systematic, the FSMA may request the NBB to revoke the license of the institution. The NBB may only refuse the request if the withdrawal is likely to compromise the stability of the financial system and the FSMA may challenge the NBB's decision before the MoF, who makes a final decision. The FSMA notifies the NBB on measures that do not concern the revocation of a financial institution's license and the NBB may oppose such measures only where the measures would compromise financial stability or result in the suspension or termination of the institution's activity as a whole. Disagreement between the FSMA and the NBB will be decided by an arbitration panel, established on a case-by-case basis. The arbitration panel would comprise three members appointed by the NBB and the FSMA (excluding their staff or decision-making bodies) and its decision is binding and not subject to recourse. *(Art 36bis of SL)*
Assessment	Observed.
Comments	The framework for information exchange in Belgium is aligned with the relevant EU Directives and protocols, empowering the NBB to obtain and exchange information with relevant supervisors and authorities subject to confidentiality, purpose and use requirements. The existence of an agreement or understanding on information exchange is, generally, not a prerequisite for information exchange. The NBB may share information with non-EEA supervisors on a reciprocal basis or pursuant to cooperation agreements. Internationally, the NBB is signatory to the IAIS Multilateral MoU. The NBB also participates actively in relevant supervisory colleges, where information exchanges are to be facilitated by coordination arrangements agreed by the colleges. However, the coordination arrangements are not yet signed officially pending the implementation of Solvency II. Domestically, the MoU between the NBB and the FSMA as required under the Insurance Law was under discussion at the time of assessment. There is also scope for the FSMA and the NBB to review how best to strengthen supervisory cooperation as they gain experience in implementing the twin-peaks structure.

	The authorities are advised to expedite the conclusion of the MoU between the NBB and the FSMA to guide effective cooperation and exchange of information.
ICP 4	**Licensing** A legal entity which intends to engage in insurance activities must be licensed before it can operate within a jurisdiction. The requirements and procedures for licensing must be clear, objective and public, and be consistently applied.
Description	Belgian insurers/reinsurer as well as insurers/reinsurers established under non-EU law must obtain authorization from the NBB before they conduct insurance/ reinsurance activities in Belgium. While there is no explicit definition of carrying on insurance business, concluding insurance contracts as an insurer without prior authorization of the NBB is prohibited under the law. In addition, contracts relating to risks located in Belgium and concluded with an unauthorized person shall be void. However, if the policyholder concluded the contract in good faith, the unauthorized person must fulfill its contractual obligations. *(Art 2bis and Art 3 of IL and Art 5 & 59 of RL)* An authorisation is granted for each class of insurance or per group of insurance classes. Insurance activities are classified into two groups: life insurance activities and non-life insurance activities. The NBB grants authorization only to applicants who meet the relevant authorization conditions. The NBB's authorisation states the insurance classes or groups of insurance classes in which the holder is allowed to undertake. The NBB maintains a list of all authorized insurers, which is published on its website. *(Art 4 & 14 of IL and Art 11 of RL)* The NBB should communicate its decision to grant or refuse authorization within four months upon receipt of all the information and documents. Authorization is deemed to be refused if no decision is taken on expiry of the four-month period. The NBB must notify the applicant of the specific reasons for refusing authorization. *(Art 4 of IL)*. Insurers are not permitted to conduct both non-life and life insurance activities within the same legal entity (composite insurer). In this regard, composite insurers existing on 27 November 1992 were grandfathered. Another exception is that life insurers may also conduct personal accident and health insurance and *vice versa*. Composite insurers must keep separate accounts for their life and non-life activities. *(Art 14 of IL)* While the Insurance Law does not define regulated insurance activities[26], it provides a list of exemptions (e.g., MHFs), which could be interpreted as a negative list. In defining "insurance activities" under the Insurance Law (which itself is part of the definition of the term "insurance company"), reference has to be made to the definition of "insurance contract" under the Law on Terrestrial Insurance Contract.[27] In addition, a request for a ruling may be addressed to the NBB on whether an operation qualifies as an activity falling under the definition of an

[26] The definition of "insurance company" in the Insurance Law only applies in the context of supplementary supervision of insurance groups.

[27] A contract of insurance is defined as "a contract according to which, in return for the payment of a fixed or variable premium, a party, the insurer, commits itself towards another party, the policyholder, to provide the benefit stipulated in the contract in case an uncertain event emerges that, depending on the circumstances, either the insured or the beneficiary does not wish to emerge."

	insurance company as laid down in the Insurance Law. The ruling is, in principle, binding on the NBB.[28] *(Art 2 § 1, 91bis of IL; Art 1, A, of the Law of 25 June 1992 on Terrestrial Insurance Contract; Art 36/5 of the NBB Organic Law and Art 1, § 1 of the Royal Decree of 23 August 2004)* The Reinsurance Law defines reinsurance companies. The permissible legal forms for insurers/reinsurers are: company limited by shares, cooperative society, mutual insurance association or mutual benefit society (not applicable to reinsurers). Insurers' business activities are restricted to insurance, securities, management of collective pension funds and related activities i.e., they are not allowed to undertake non-financial activities. *(Art 4 & 13 of RL)* In response to the recommendations arising from the 2006 ICP assessment, the Insurance Law has been amended in 2010 to require the authorization of mutual insurance associations and cooperative societies that limit their activities to the municipality where their registered office is located, or to that municipality and neighboring municipalities. To date, these entities have not complied with the Insurance Law, in anticipation of the entry into force of a Royal Decree that provides partial exemptions. A draft Royal Decree provides for the registration of these entities, which will be subject to regulatory requirements on reinsurance, corporate governance and limits on insurance risks. The NBB has not taken action against this non-compliance on the basis enforcement efforts would be disproportionate to the marginal role played by these institutions in serving the needs of the Belgian insurance market. The total premium income of these institutions is below €20 million i.e., less than 0.05 percent of the total premium income of the insurance sector in 2011 (€30 billion). In addition, these entities will not be captured under Solvency II given their limited scale. Based on the NBB's investigations, all these entities have an annual contribution income below €1 million. *(Art 2 §1quater of IL)* An EEA insurer may conduct insurance business in Belgium, either by establishing a branch or under the freedom to provide services, provided that such business is covered by the authorization granted by their home states. The home supervisor must provide the NBB, *inter alia,* with a certificate attesting the classes of insurance which the insurers has been authorized to offer and that it meets the applicable minimum solvency margin. Non-EEA insurers cannot establish a branch in Belgium unless they comply with specified conditions and they may not sell insurance under the freedom to provide services in Belgium except for specialized risks. Similar requirements apply to reinsurers. To date, no foreign insurer has been granted authorization to pursue insurance activities via a branch in Belgium. *(Art 63-73 of IL &* Art 25-30 of RD-IL and Art 55-67 of RL) The licensing conditions include: a) Fitness of propriety of the applicant's Board members, Senior Management, and significant owners (ICP 5); b) Capital requirements *(Art 15 of IL)*; c) Corporate or group structure *(Art 14bis of IL);* d) Governance framework including the composition and responsibilities of the Board of directors (Board), Board committees and management team; risk management and internal controls; and e) Business and financial plans including projected financial statements for the first three financial years.

[28] An example of such a ruling of the former CBFA dated November 2007 on the status of an insurance company can be found on the NBB website http://www.nbb.be/pub/cp/domains/vo/va.htm?l=en

Upon receipt of a formal and complete application, the NBB acknowledges receipt indicating the date on which the statutory period begins to run. A copy of the application file is sent to the FSMA requesting its opinion in areas within its competence.[29] The FSMA must give its opinion[30] within 14 days and no later than two months following receipt of the request. If no opinion is given within the period, the opinion is deemed favorable. If the NBB disregards the FSMA's opinion, it shall record the fact and state the reasons for its decision. The FSMA's opinion shall be attached to the notification of the decision on the application. *(Art 8 of IL)*

Internally, the NBB appoints a multidisciplinary team to review the application and make recommendation to the NBB Board. The multidisciplinary team evaluates whether the applicant will be in a position to comply with legal requirements and adopt sound financial management, and whether the assumptions for the business plan are realistic. The group and/or organizational structure should not hinder effective supervision. Where necessary, the team may request further clarifications/details or supporting documents. Where the applicant is a subsidiary of another financial institution, the NBB consults the relevant supervisor.

Belgian insurers/reinsurers intending to establish a branch or subsidiary in the EEA must notify the NBB. The NBB may object if it believes the proposal may adversely affect the organization, financial position or supervision of the insurer; or it has reasons to doubt the suitability of the authorized agent or other persons responsible for managing the branch. The NBB must inform the insurer of its objection to establishing a branch within six weeks after receipt of the notification. If there is no objection, the NBB provides the host supervisor in the EEA with a notification, comprising: the scheme of operations; the classes of insurance to be conducted; particulars of the authorized agent; and a certificate of solvency. *(Art 22, 50 & 51 of IL and Art 30-34 of RL)*

The NBB must also be notified of any plan to conduct insurance activities via the freedom to provide services abroad. While the NBB can object to an insurer's proposal, it could only intervene *a posteriori* with respect to a reinsurer. Similarly, When it has no objection, the NBB must send a notification to the host supervisor in the EEA. *(Art 57-58 of IL and Art 35 of RL)*

While there is no explicit provision empowering the NBB to impose authorisation conditions on insurers, the NBB has indeed imposed authorisation conditions in practice. In contrast, the Reinsurance Law explicitly authorises the NBB to impose authorization conditions. *(Art 10 of RL).*

The NBB is required to communicate its decision on an application for authorization (granting or refusal) to the applicant. In practice, the authorization process involves an intensive exchange of information between the NBB and the applicant, so that the latter may take the necessary measures or withdraw the application before the final decision is made. *(Art 4 of IL and Art 9 of RL)*

Over the last few years, the annual number of applications received remained limited:

[29] The areas of competence include assessment of the: professional reputation of executive candidates proposed; adequacy of integrity policy as it applies to the rules of conduct; applicant's organization insofar as it affects the fair, honest, and professional treatment of customers; and independence and adequacy of the compliance function. *(RD 3 March 2011).*

[30] In practice, the FSMA does not provide an "opinion," but informs the NBB if the records of the FSMA contain any negative information concerning the candidate.

	approximately one new entrant and eight applications for extension of authorisation to other classes of insurance by authorised insurers. No authorisations have been granted to non-EEA applicant. The NBB has not established a policy on inspecting newly authorised insurers to check that authorisation requirements continues to be met and to verify information submitted in the application.
Assessment	Observed.
Comments	Insurance activities within Belgium can only be conducted by authorized insurers/ reinsurers. The NBB is the licensing authority and the requirements and procedures for obtaining authorisation are clearly defined, objective and public. While regulated insurance activities is not defined positively in the Insurance Law, the NBB makes reference to definition of "insurance contract" under the Law on Terrestrial Insurance Contract and has provided binding ruling on insurance activities. A multidisciplinary team evaluate applications for authorization in accordance with established internal procedures, taking account of the FSMA's opinion. A draft Royal Decree has been prepared to provide partial exemptions to mutual insurance associations and cooperative societies that limit their activities to the municipality where their registered office is located, or to that municipality and neighbouring municipalities. The NBB has not taken action against the non-compliance with the authorisation requirement by certain mutual insurance associations and cooperative societies on the basis of that their operations are limited in scale; and these institutions would not fall within the scope of the draft Royal Decree nor the future Solvency II rules. The authorities are advised to expedite the finalisation of the draft Royal Decree establishing proportionate regulatory requirements for local mutual insurance associations and cooperative societies.
ICP 5	**Suitability of Persons** The supervisor requires Board Members, Senior Management, Key Persons in Control Functions and Significant Owners of an insurer to be and remain suitable to fulfil their respective roles.
Description	The Insurance Law provides that the NBB shall verify whether Senior Management[31] and non-executive directors of insurers have the required professional integrity and appropriate experience to carry out their functions. Insurers are required to notify the NBB in advance of any proposal for the appointment, renewal (or non-renewal) or dismissal of Board Members or Senior Management. *(Art. 90 & 90bis of IL)*. At the time of assessment, the NBB is reviewing its regulations and plans to include Key Persons in Control Functions[32] in the scope of its fit and proper regulation. Another planned change is to provide more clarity on the criteria for determining "adequate competence and

[31] Senior Management is defined as persons, whether or not members of the Board of directors, whose function implies that they exercise at the highest level a direct and decisive influence on the enterprise's management. Senior Management includes Executive Directors who serve in Board Committees. The NBB may advise insurers on persons who should be considered as Senior Management. *(Circular PPB-2006-13-CPB-CPA)*.

[32] Control functions include risk management, compliance, actuarial and internal audit functions.