



Factsheet on the Right to be forgotten in the EU National Legislations
Legal Background and current status from France, Belgium, Luxembourg and the Netherlands



▪ **FRANCE**

Legal Ref.: Articles L. 1141-5 and L. 1141-6 French Public Health Code; Law no. 2016-41, 26 January 2016 - art. 190 (V); [AERAS Convention](#).

The provision on the right to be forgotten has been introduced in the French regulation in 2016, as part of the Law on the modernisation of the National Health System (Law no. 2016-41, 26 January 2016).

Thanks to the reform, France endorsed the art. 190, now Article L1141-5. The rule states that in the context of insurance or loan contracts, the period beyond which no medical information relating to cancerous pathologies can be collected by insurer organisms may not exceed ten years after the date of the end of the treatment or, for cancerous pathologies occurring before age twenty-one, five years from the end of the therapeutic protocol.

Indeed, in September 2020, French authorities adopted this extension for cancer patients, from eighteen years old to twenty-one.

The terms and deadlines are updated regularly based on therapeutic progress and scientific data.

The content of the provision needs to be integrated by the standards in the AERAS Convention and the other norms in the French Public Health Code (as L. 1141-2).



The AERAS Convention (S'Assurer et Emprunter avec un Risque Aggravé de Santé/Insuring and Loaning with Aggravated Health Risk) represents a national protocol concluded between the State, the professional organizations representing the credit institutions, the finance companies, insurance companies, social security funding bodies and provident institutions as well as national organizations representing patients and users of the health system or representing disabled people. The Convention aims to facilitate access to insurance and loaning for people presenting an aggravated risk due to their state of health or a handicap with. It ensures that credit institutions and finance companies take full account of guarantees alternative to insurance, defining also specific procedures for informing applicants, investigating their files and mediating.

The Convention applies, under certain conditions, to consumers, real estate and professional loan insurance. It fixes for mortgage loans (estate and professionals), the maximum amount to 320,000 euros and any condition of the loan duration is removed when the borrower is not more than 70 years old at the end of the loan. For consumer loans, the maximum amount of the loan granted without a health questionnaire is 17,000 euro.

A "reference table" incorporated into the AERAS (Obtaining Insurance and Credit with an Increased Health Risk agreement) defines, for each pathology, the period after which former patients can take out an insurance policy without any cover exclusions or having to pay an extra premium, under the same conditions as people who have not suffered from one of these illnesses. According to the law, the terms and time frames are regularly updated in line with advances in treatment and scientific data.

A monitoring committee ensures the proper application of the provisions of this Convention and respect for the commitments of the parties. Alongside this organism, it has been established also a Committee for studies and researches, responsible for collecting and studying the available data on mortality and morbidity caused by the main pathologies. A mediation committee is in charge of the examination of the individual complaints by loan applicants.

At the beginning of 2017, France adopted a new decree (Decree 2017-147 of 7 February 2017) to implement the obligation of information for insurers. By law, the insurer is responsible for giving an "information document on the right to be forgotten" to applicants for credit repayment insurance, at the same time as the normal risk declaration form.

The regulation has been implemented by the Decree no. 2017-173 of 13 February 2017, that relates to the penalties applicable to any insurers that do not conform to the legal time limit for the collection of medical information.

Since July 2019, kidney cancer, leukaemia, prostate cancer, cystic fibrosis and hepatitis C are among the new types of pathologies included in the referred table of the AERAS Convention. These measures have been pursued in 2020.



▪ **BELGIUM**

Legal Ref. : Law no. C – 2019/40839, 4 April 2019.

Promulgated in April 2019 and entered in force in February 2020, the Law modified the Insurance regulation (Loi relative aux assurances, C – 2014/11239, 4 Avril 2014) and reformed the article 61.

The provisions are applicable to insurance contracts concerning mortgage and professional loans.

The new provisions in article 61/1 and 61/2 introduced the interdiction for insurance companies to take into account previous cancer pathologies after 10 years from the end of the successful treatment and the absence of relapse within the same period. It is considered a successful treatment the period from the end of the active treatment and the absence of a new manifestation of the pathology.

In May 2019, according to the provisions in article 61/3, the regulation has been implemented through the adoption of a reference table (Doc. No. C – 2019/12990). It determined a reduced time limit to access to the right to be forgotten for specific cancer pathologies.

Every two years, the Belgian Health Care Knowledge Centre (KCE) assesses the reference table based on the medical progress and the available scientific data relating to the pathologies referred. The Belgian monitoring office of pricing (*Bureau du suivi de la tarification*) is in charge of the disputes relating to the application of the concerned provisions.

The Belgian regulation does not provide a limitation related to the amount covered by loans or insurance contracts.

▪ **LUXEMBOURG**

Legal Ref.: [Convention « Droit à l'oubli » - S'assurer et emprunter avec un risque de santé aggravé en raison d'une pathologie cancéreuse ou d'une infection virale à l'hépatite C ou d'une infection par le VIH](#)

Since the 1st January 2020, Luxembourg has introduced the “right to be forgotten” to facilitate insurance access for cancer survivors.

The initiative has been formalized through a Convention between Luxembourg's Ministry of Health, the Luxembourg Insurance and Reinsurance Association (ACA) and eight insurance companies.

The Convention applies only and exclusively to the balance outstanding insurance for a loan or estate loans for the acquisition of the main residence or professional facilities and whose maximum amount does not exceed 1,000,000 euros.

It does not apply to the acquisition of a second home or rental investments.

For the same person concerned, it applies only within the limit of the maximum amount of 1,000,000 euros of cover.



According to the provisions of this Convention, the applicant cured of cancer is entitled not to declare his pathology when the therapeutic protocol relating to this cancerous pathology has ended for 10 years (end of active treatment of cancer by surgery, radiotherapy, chemotherapy); or the therapeutic protocol relating to this cancerous pathology has ended for 5 years, for cancer diagnosed before the age of 18.

During the mentioned timeframe, the absence of relapse is needed.

Apart from this specific condition, the right to be forgotten is supplemented by some exceptions, related to the Right to be forgotten with the obligation to declare, without additional premium.

When applying for balance outstanding insurance for a mortgage loan, the applicant cured of specific cancers (10 specific types of cancer) or viral hepatitis C, must declare his pathology, but if certain conditions are met, the insurer cannot exclude the insurance candidate or request a premium.

The Convention provides the establishment of a monitoring committee, made by experts, to ensure its proper application of the provisions and the respect of the commitments of the parties. For this, it has the competence to examine the individual complaints addressed to it by the applicants.

▪ **THE NETHERLANDS**

Legal Ref.: [Decree of 2 November 2020, containing rules for insurance examinations of ex-cancer patients for the purpose of taking out life insurance and funeral insurance \(Decree on insurance examinations for ex-cancer patients\)](#)

The Netherlands approved a set of rules to protect the privacy of consumers and limit insurers to ask about a person's illness history for a certain period of time after someone is cancer-free. The rule applies to life insurance policy for applicants before the age of 71; and to funeral insurance policy that are entered into or concluded before the person to whose life the insurance relates reaches the age of 61.

The article 2 of the Decree states that the question whether cancer has been diagnosed in the past in a candidate may represent the risk of disproportionate violation of the privacy within the meaning of Article 3, first paragraph, of the Medical Examinations Act. For that reason, ensuring the balance between different interests of parties, the decree rules that it is no longer allowed to ask whether someone has had cancer in the past when, according to the opinion of the care provider who treated the candidate, there was complete remission, and calculated from the moment when complete remission within the meaning of part a is established, no recurrence of cancer has been diagnosed for an uninterrupted period of ten years.

According to the explanatory memorandum of the Decree, if an insurer nevertheless asks these questions, Article 11 of the Wmk stipulates that the examiner has the right to refuse to cooperate. In concrete terms, this means that a former cancer patient does not have to provide information about this illness history if a life insurance company or funeral insurance company asks for it in violation of this decision. The applicant can submit any disputes about this to the Financial Services Complaints Institute.



In case, the insurance company may already be aware that his client has undergone cancer treatment, it may not include this information in its decision on an application to take out a new insurance policy or to change an existing insurance policy. The data may also not be used when setting the premium.

The norm establishes also that if the candidate is younger than 21 at the time the cancer was diagnosed, the term referred to in the first paragraph of this article is five years.

A further derogation concerns the application of shorter periods after which a candidate may no longer be asked whether he has suffered from a certain form of cancer in the past for forms of cancer for which, according to generally accepted medical insights and actuarial and statistical data, the chance of that cancer returning after a short period of time is so small that the prudential interest of the insurer is no longer compelling enough to still go to that form of cancer to ask. In this regard, agreements have been made between representative organizations of patients and insurers about the time limits to be used with regard to that form of cancer.

The Decree on insurance examinations for cancer survivors will enter into force on 1 January 2021.

Annex

Reference Table (updated June 2020)*

*The document contains the common cancer pathologies included into the regulations from France, Belgium and Luxembourg with shorter delays than 10 years

Type of Pathology	Histological types and stages - pre-therapeutic stages	Access time from the end of active treatment of cancer pathology and without relapse
TESTICULAR CANCER	Pure seminoma, stage I	3 years
	Pure seminoma, stage II	6 years
	Non-seminomatous tumours or mixed, stage I and II	6 years
BREAST CANCERS (IN SITU)	Ductal Carcinoma in situ	1 year
	Locular Carcinoma in situ	
MELANOMA OF SKIN	Melanoma in situ or Level Clark I	1 year
	Complete exeresis	
	Absence of dysplastic nevus syndrome	
CERVICAL CANCER	CIN III (or HSIL) or in situ	1 year
KIDNEY CANCER	Renal cell carcinoma (RCC) of clear cell morphology, diagnosed after the age of 50 years, T1N0M0 level of the Fuhrman grade classification I and II	8 years
		5 years



	Chromophobe renal cell carcinoma, T1N0M0 level	
COLON AND RECTAL CANCER	<p>Stage Tis (stage 0):</p> <ul style="list-style-type: none"> - Diagnosed after the age of 50 years old 	1 years
	<p>Stage I: T1N0M0:</p> <ul style="list-style-type: none"> - diagnosed after the age of 50 years - histologic type: adenocarcinoma 	2 years
	<p>Stage I: T2N0M0:</p> <ul style="list-style-type: none"> - Diagnosed after the age of 50 years - Histologic type: adenocarcinoma 	8 years
THYROID CANCER	Papillary/Vesicular <45 year at the diagnosis, stage I	3 years
	Papillary/ vesicular 45 or older at diagnosis, stage I or II	3 years
	Papillary/vesicular, stage III	6 years
HODGKIN'S LYMPHOMA	Hodgkin's lymphoma stage 1A after a post-treatment follow-up	6 years / 8 years (for Luxembourg)
	Hodgkin's lymphoma stage 1B and 2A after post-treatment follow-up	8 years / 10 years (for Luxembourg)
ACUTE PROMYELOCYTIC LEUKAEMIA/ LAP/ LAM3	<p>Regardless of the number of leukocytes at diagnosis</p> <p>Treatment performed</p>	3 years / 5 (for Luxembourg)