

Factsheet on the Right to be forgotten* for cancer survivors in the EU National Legislations

Legal Background and current status from France, Belgium, Luxembourg, the Netherlands and Portugal



The Right to be forgotten for cancer survivors should not be confused with the same terminology used in the context of the EU General Data Protection Regulation (GDPR). Under GDPR, the term refers to the right to have certain data deleted from records held by a data controller.

Applied to cancer survivors, this concept means the right not to be discriminated when a former cancer patient asks for financial services, more specific credit insurances and life insurances. In practice, it implies that after a certain amount of time (depending on national statistics on cancer mortality and survivorship), insurances or banks should not take into consideration the previous experience of cancer in their risk assessments for providing their services.

▪ 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 Right to be forgotten has been endorsed as a legal provision in France 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.

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 agreement between the State, the professional organizations representing the credit institutions, the finance companies, insurance companies, social security and provident institutions as well as patients national organizations. The Convention aims to facilitate access to insurance and loaning for people presenting an aggravated risk due to their state of health or handicap. It ensures that credit institutions and finance companies take full account of alternative guarantees to insurance, defining also procedures for informing applicants, investigating their files and mediating.

The Convention applies, under certain conditions, to consumers, real estate and professional loan insurance. For consumer loans, the maximum amount of the loan granted without a health questionnaire is € 17,000.

The system has been supplemented by the establishment of shorter terms adapted for specific cancer diseases. In this regard, former cancer patients who have suffered from a pathology that falls within the framework of the reference grid can obtain an insurance contract under standard conditions after a time adapted to each pathology from the end of the therapeutic protocol. Although in these circumstances, for them exist the obligation to declare the diseases, and the insurance amount cannot exceed €320,000. According to the law, the diseases and the corresponding time frames for the applicability of the provision are regularly updated, in line with advances in treatments and scientific data.

A monitoring committee ensures the application of the 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 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 provision has been further enforced by Decree no. 2017-173 of 13 February 2017, which 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.

In November 2021, the French Bank Crédit Mutuel decided to withdraw the medical questionnaire to get access to credit to buy a property as a principal residence for its customers.

▪ **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 assurance, C – 2014/11239, 4 Avril 2014) and reformed article 61.

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



The new provisions in articles 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 article 61/3, the regulation has been implemented through the adoption of a reference table (Doc. No. C – 2019/12990). It determined a reduced term to apply the Right to be forgotten for specific cancer diseases.

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 for the amount covered by insurance repayment contracts.

On February 8, 2021, the Belgian association of insurers, Assuralia, adopted a code of conduct extending the application of the Right to be forgotten also to guarantee income insurance for people cured of cancer. The guaranteed income (or incapacity for work) insurance is insurance which, in the event of illness or accident, provides full or partial compensation for the reduction or loss of professional income due to the incapacity for work of the insured person (Article 201, §1, 2) of the Law of 4 April 2014 on insurance).

The code of conduct will come into force on 1 February 2022, covering all guaranteed income insurance, whether or not linked to a professional activity. It will be binding on all insurance companies that are members of Assuralia, stipulating insurers are no longer able to take into account a cancerous disease if a person wishes to obtain guaranteed revenue insurance. Belgium represents the first EU country to adopt such a code of conduct.

▪ 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 access to payment protection insurance 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 loan to acquire the main residence or professional facilities. For the same person concerned, it applies only within the limit of the maximum amount of €1,000,000.

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

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

During the mentioned timeframe, the absence of relapse is a requirement.



This Convention also includes a "list of exceptions" for specific cancer diseases corresponding to shorter terms for the application of the Right to be forgotten. In this regard, it exists an obligation to declare the disease and the protection from being charged with extra premium.

The system includes the establishment of a monitoring committee. This body is made by experts, with the power to examine individual complaints from rejected applicants, and ensure the respect of the provisions.

▪ **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 after someone is cancer-free. The rule applies to life insurance policies for applicants before the age of 71, and to funeral insurance policies that are entered into or concluded before the person to whose life the insurance relates reaches the age of 61.

Article 2 of the Decree states that the question of whether cancer has been diagnosed in the past in a candidate may represent the risk of disproportionate violation of 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 its 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 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 entered into force on 1 January 2021.



▪ **PORTUGAL**

Legal Ref.: [Projeto de Lei 691/XIV/2](#) Reforça a proteção da pessoa segurada, proibindo práticas discriminatórias, melhorando o acesso ao crédito e contratos de seguros por pessoas que tenham superado riscos agravados de saúde, consagrando o “direito ao esquecimento”

The Draft Law 691/XIV/2.^a ***Strengthens the protection of insured persons by prohibiting discriminatory practices, improving access to credit and insurance contracts for people who have overcome aggravated health risks, enshrining the 'right to be forgotten'*** was adopted by the Portuguese Parliament on 22 October 2021 and promulgated by the President of the Republic on 11 November 2021.

The text amends the Law nr. 46/2006 and the legal regime of the insurance contract.

In article 2, the text establishes the Right to be forgotten for people who have overcome or mitigated situations of aggravated health risk or disability when contracting housing credit and consumer credit, as well as when contracting compulsory or optional insurance associated with such credit. The law ensures that this group of people cannot be subject to an increase in insurance premium and/or exclusion of insurance contract guarantees and that, no health information regarding the medical condition giving rise to the aggravated health risk or disability may be collected or processed by credit institutions or insurers in a pre-contractual context.

The Law provides three different timelines, after which no health information regarding aggravated health risk or disability may be collected by credit institutions or insurers:

- a) Ten years from the end of the therapeutic protocol, in the case of aggravated health risk or overcome disability; or
- b) Five years since the end of the therapeutic protocol, in case the disease occurred before twenty-one years of age.
- c) Two years of ongoing effective therapeutic protocol in the case of aggravated health risk or mitigated disability.

In article 3, the text points out that persons at aggravated health risk" means persons suffering from any pathology which determines a long-term, evolving, potentially incapacitating, organic or functional alteration that alters the bearer's quality of life at a physical, mental, emotional, social and economic level and is a potential cause of early disability or a significant reduction in life expectancy". Moreover, in article 6 it states that "Persons who have overcome disability" means persons who can be shown to have been 60% or more disabled and who have recovered their psychological, intellectual, physiological or anatomical structures or functions, reducing their disability below this threshold. Besides, "Persons who have mitigated situations of aggravated health risk or disability" defines who are undergoing treatment proven to significantly and durably limit the effects of their aggravated health risk or disability situation.

Further details on the legal disposal need to be clarified, as for the reference table. An agreement shall define a procedure for the establishment of the grid that allows the terms and deadlines referred for each pathology or disability, in line with therapeutic progress, scientific data and knowledge of the health, credit or insurance risk that each pathology or disability represents. The reference table shall be updated every two years and shall be public.

This Portuguese law will enter into force on 1 January 2022.

Annex

REFERENCE TABLE (updated March 2021)*

*The document contains a comparison summarising the cancer diseases included in the “list of exemptions” with shorter delays than 10 years terms, from the RTBF initiatives in France, Belgium and Luxembourg.

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 Complete exeresis Absence of dysplastic nevus syndrome	1 year
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



	Chromophobe renal cell carcinoma, T1N0M0 level	5 years
COLON AND RECTAL CANCER	Stage Tis (stage 0): - Diagnosed after the age of 50 years old	1 years
	Stage I: T1N0M0: - diagnosed after the age of 50 years - histologic type: adenocarcinoma	4 years
	Stage I: T2N0M0: - 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	Regardless of the number of leukocytes at diagnosis Treatment performed	3 years / 5 (for Luxembourg)

ANNEX II

REFERENCE TABLE FOR THE DUTCH DECREE ON INSURANCE EXAMINATIONS OF FORMER CANCER PATIENTS

(Update January 2021)

The table below lists the cancers for which a shorter term applies in the Netherlands. The ten-year period continues to apply for cancers not listed in the table.

Melanoma	Stadium 1	7 years
Testicular cancer	Stadium 1	5 years
Seminoma, tumor markers negative	Stadium 2 A and Stadium 2 B	6 years
	Stadium 2 C	8 years
Testicular cancer	Stadium 1 and stadium 2A	6 years
Seminoma, tumor markers negative	Stadium 2B and stadium 2C	8 years
Cervical cancer	FIGO-stadium 1A1	3 years
	FIGO-stadium 1A2	5 years
	FIGO-stadium 1B	7 years
Vaginal cancer	FIGO-stadium 1	8 years
Thyroid cancer	T1N0M0	3 years
	T2N0M0	



Hürthle cell, follicular and papillary cancer, including hybrid forms Age at diagnosis < 45 years	T3N0M0 T1N1M0 T2N1M0 T3N1M0	6 years
Colon and rectal cancer Adenocarcinoma	T1N0M0 and T2N0M0	9 years
Stomach cancer	Stadium 1A	8 years