



**MINISTRY OF INDUSTRY, BUSINESS
AND FINANCIAL AFFAIRS**

European Commission
DG for Financial Stability, Financial Services and Capital Markets Union
Dir. D Regulation and prudential supervision of financial institutions
Att. Mr. Didier Millerot, Head of Unit, D4 - Insurance and Pensions

21 March 2022

Dear Mr. Millerot

We have previously reached out to you in December 2020, as Denmark is in the process of reviewing the national regulation on ancillary activities of insurance undertakings in respect to the interaction of the Directive 2009/138/EC (Solvency II) and of the Commission Delegated Regulation 2015/35 supplementing the Solvency II Directive.

We are thankful for the guidance you provided us with in your reply¹. Further, you kindly affirmed in your reply that you remain at our disposal for further queries.

In the political process of our review of the national regulation, a further question has arisen in regards to the treatment of industrial forestry (silvicultural activities).

Article 18(1)(a) of the Solvency II Directive states that “the home Member State shall require every undertaking for which authorisation is sought in regard to insurance undertakings, to limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business”. Furthermore, recital 16 of the Solvency II Directive states, “the main objective of insurance and reinsurance regulation and supervision is the adequate protection of policy holders and beneficiaries”.

It is our interpretation of article 18(1)(a) that industrial forestry (silvicultural activities) is not an operation arising directly from the business of insurance. This interpretation does not limit insurance undertakings from investing in companies carrying out industrial forestry, as long as the investment is in line with the investment rules in Solvency II, i.e. articles 132-135 and connected articles in the Solvency II regulation. This interpretation does however limit insurance undertakings from carrying out industrial forestry (silvicultural activities) within the insurance undertaking itself, i.e. by owning the forest directly and managing it industrially (or outsourcing the management).

Article 1(53) of the Solvency II Regulation states the following definition: “‘ancillary services undertaking’ means a non-regulated undertaking the principal activity of which consists of owning or managing property, managing data-processing services, health and care services or any other similar

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¹ ARES(2021)936444 – 03/02/2021.

activity which is ancillary to the principal activity of one or more insurance or reinsurance undertakings”.

Three questions have arisen in regards to this definition in relation to industrial forestry (silvicultural activities) and the definition of ancillary services undertaking:

- 1) Can industrial forestry (silvicultural activities) be considered to fall under the explicit mention of "managing property" in the definition?
- 2) If no to question one, could industrial forestry (silvicultural activities) be considered to be a "similar activity" and thus still fall under the definition?
- 3) Lastly, would it be possible with reference to the general investment rules for an insurance undertaking in any circumstance to conduct industrial forestry (silvicultural activities) in a subsidiary, i.e. where the insurance undertaking has a controlling interest?

In relation to question 1, our preliminary view is that industrial forestry (silvicultural activities) entails operational risks that differentiate it from the normal management of property, but we would appreciate your guidance in the matter.

In relation to question 2, our preliminary reading of the regulation – also based on your earlier guidance – is that industrial forestry have features that mean it is difficult to consider it a "similar activity" ancillary to the principal activity of one or more insurance or reinsurance undertakings, but also here we would appreciate your guidance.

In relation to question 3, our preliminary understanding is that investments must respect both investment rules and the regulation on ancillary activities. However, we would much appreciate your guidance on this and particularly if it is possible for an insurance undertaking to invest so much in one industrial forest company that the insurance company gains controlling interest (thus making the industrial forestry company a subsidiary to the insurance undertaking) without the industrial forestry company being considered an ancillary services undertaking.

Both regarding 2 and 3, our preliminary reading is based on your earlier guidance, article 18(1)(a), and the fact that insurance undertakings should limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business.

We would be grateful for any guidance you can give us in regards to your interpretation in relation to the questions above and any other considerations that the Commission may find relevant in this regard.

If needed, my services and I stand ready to answer any questions in relation to the above that you may have.

Yours sincerely,

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