

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 15
Exelco NV,)	Case No. 17-12409 ()
Debtor in a Foreign Proceeding. ¹)	

**MOTION OF FOREIGN REPRESENTATIVE FOR ENTRY OF PROVISIONAL AND FINAL
ORDERS GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND CERTAIN
RELATED RELIEF PURSUANT TO SECTIONS 362, 1517,
1519, 1520, 1521, AND 105(a) OF THE BANKRUPTCY CODE**

Frans De Roy and Benny Goossens are the duly appointed foreign representatives (the “Foreign Representatives”) of Exelco NV (“Exelco” or the “Debtor”) in connection with the pending liquidation proceeding (the “Belgian Proceeding”) filed under the Bankruptcy Act of 1977 (the “Belgian Bankruptcy Act”) in the Commercial Court of Antwerp, Antwerp Division (the “Belgian Court”) in Antwerp, Belgium (“Belgium”). The Foreign Representatives have commenced this chapter 15 case ancillary to the Belgian Proceeding by the filing of (i) the verified chapter 15 petition for recognition under chapter 15 of the Bankruptcy Code (the “Petition”), with accompanying documentation, pursuant to sections 1504 and 1515 of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and rule 1007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Foreign Representatives refer the Court to the statements and arguments contained in the *Declaration of Frans De Roy in Support of Chapter 15 Proceedings for Exelco NV* (the “Declaration in Support”), which has been filed contemporaneously herewith and is incorporated herein by reference, and further respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the*

¹ The last four digits of the Debtor’s commercial number are 1071. The Debtor’s main corporate and mailing address is Schupstraat 9-11 Box Nr. 75, Antwerp 2018.

District of Delaware, dated as of February 29, 2012. This case has been properly commenced pursuant to 11 U.S.C. § 1504 by the filing of a petition for recognition of the Belgian Proceeding pursuant to 11 U.S.C. § 1515 of the Bankruptcy Code.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P), and pursuant to Rule 9013-1(f) of the *Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware* (the “Local Rules”), the Foreign Representatives consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

BACKGROUND

4. Debtor will provide a brief factual summary but the Court is respectfully referred to the Declaration in Support for a further description of the Belgian Proceeding and the Debtor’s activities, business, corporate organization, capital structure, and circumstances leading to the filing of the chapter 15 case.

5. Exelco is a Belgian company owned by Exelco International Ltd. (2%), Lior Kunstler, and Jean Paul Tolkowsky (“Mr. Tolkowsky”).

6. Presently, Exelco, Exelco North America, Inc. (“Exelco NA”), FTK Worldwide Manufacturing BVBA (“FTK”), Ideal Diamond Trading USA, Inc. (“Ideal Diamond”), and Ideal Diamond Trading Limited (“Ideal Limited”) are debtors-in-possession in five chapter 11 cases pending before this Court which were filed on September 26 and October 13, 2017 (each a “U.S. Proceeding,” and collectively, the “U.S. Proceedings”). Exelco is not a subsidiary of any of the other debtors in the U.S. Proceedings.

7. At the time the U.S. Proceeding for Exelco was filed, Exelco remained subject to two pending insolvency proceedings in Belgium: (i) a voluntary insolvency proceeding which Exelco had

commenced on July 26, 2017, in Belgium (the “Belgium Reorganization Proceeding”); and (ii) an involuntary bankruptcy proceeding commenced on September 13, 2017, by one of Exelco’s main secured creditors, KBC Bank NV (“KBC”) (the “KBC Involuntary Proceeding”). Although Exelco attempted to renounce the Belgium Reorganization Proceeding in Belgium on September 26, 2017, prior to seeking relief under the Bankruptcy Code in the U.S., the Belgian Court had not yet ruled on Exelco’s renunciation request as of the chapter 11 case commencement in the U.S. The Belgian Court first recognized Exelco’s renunciation of the Belgium Reorganization Proceeding on September 29, 2017, three days after Exelco commenced its chapter 11 case in the U.S. At this time, the Belgian Court entered an interim order closing the Belgium Reorganization Proceeding *but* adjourning existing debates concerning the KBC Involuntary Proceeding until the next hearing scheduled for October 11, 2017.

8. Subsequent to the filing of the U.S. Proceeding, the Belgian Court, on the request of the Public Prosecutor of the Court of First Instance of Antwerp (the “Belgian Prosecutor”), appointed Mr. Eddy Van Camp as the Provisional Administrator to assume control of Exelco’s affairs (the “Administrator Order”). The basis for the appointment was, among other things, the apparent loss of \$15 million worth of diamonds with no apparent decrease in the company’s liabilities in just a six month period and the multiple (and in some cases, conflicting) filings made by Exelco in the various proceedings. Mr. Van Camp communicated his appointment to the purported counsel for Exelco in the U.S. Proceeding demanding that their representation of Exelco cease immediately. Counsel for Exelco in the U.S. Proceeding disregarded Mr. Van Camp’s request.

9. Under Belgian law, Mr. Van Camp’s appointment as Provisional Administrator was a temporary position held for a 15-day period. During this period, the Belgian Prosecutor initiated a proceeding to determine whether a liquidation proceeding should be commenced with respect to Exelco. On November 2, 2017, the Belgian Court granted and issued an order (i) finding Exelco to be bankrupt (the “Liquidation Order”), and (ii) appointing the Foreign Representatives as permanent trustees in bankruptcy of Exelco.

10. In the meantime, counsel for the debtors in the U.S. Proceeding petitioned the Belgian Court for recognition of certain orders entered in the U.S. Proceedings in Belgium. On November 3, 2017, the Belgian Court denied the request and refused to declare the enforceability in Belgium of the judgments rendered in the U.S. Proceedings (the “Enforceability Order”). The grounds for the denial of recognition, among other things, were the pending Belgian Proceeding, Exelco’s business activities and employees being located in Antwerp, Exelco being a Belgian company, and the determination that the center of primary interests is Belgium. The Belgian Court having found that the Center of Main Interest of Exelco is in Belgium, determined that the Belgian Court continues to retain jurisdiction over Exelco.

11. On November 8, 2017, the Belgian Court issued a certification of the Foreign Representatives’ authority to act in all matters on behalf of Exelco by specifying that “the trustees in bankruptcy have full powers under the Belgian bankruptcy law in order to manage the bankruptcy of Exelco NV, to seize, and take care of the realization of all assets of that [c]ompany wherever they are located...” (the “Certification Order”).

12. The Belgian Court has also indicated a serious concern as to the truthfulness of Exelco’s representations in the U.S. Proceeding for Exelco. The Belgian Court noted in a related filing in connection with the appointment of Mr. Van Camp (the “Opposition Judgment”) that “Exelco has fraudulently abused the possibility under the American law and [that] Exelco has given chronological fundamental lies to the American court.” Opposition Judgment, at 16. The Belgian Court made a finding that the Belgian Reorganization Proceeding was “still pending when Exelco filed for chapter 11 on the 26 of September” and that the Belgian Court had jurisdiction over Exelco’s reorganization action. Opposition Judgment, at 17. Furthermore, the Foreign Representatives have also been notified that the Belgian Prosecutor “is conducting a criminal investigation into Exelco...” and that, “based on the findings by [Mr. Van Camp], the [Belgian Prosecutor] has strong indications of embezzlement of the assets of Exelco NV ... and misappropriation of seized assets...” (the “Notice of Criminal Investigation”).

Notice of Criminal Investigation, at 1. The Foreign Representatives also have a serious concern that some of Exelco's assets were transferred to one or more of the non-Exelco debtors in the U.S. Proceedings.

RELIEF REQUESTED

13. Pursuant to sections 362, 1517, 1519, 1520, 1521, and 105(a) of the Bankruptcy Code, the Foreign Representatives seek (a) entry of a provisional order (the "Provisional Order") (i) enforcing in the United States, on an interim basis, the commencement order issued on November 2, 2017 (the "Belgian Commencement Order") by the Belgian Court and the stay under Belgian law, by applying section 362 of the Bankruptcy Code in this chapter 15 case on an interim basis to any parties with regard to Debtor's assets as well as the pending U.S. Proceedings for Debtor, Exelco NA, FTK, Ideal Diamond, and Ideal Limited pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and (ii) granting such other and further relief as the Court deems just and proper; and (b) a final order (the "Final Order"), after notice and a hearing (i) granting the chapter 15 petition in this case and recognizing the Belgian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States of America (the "U.S.") to the Belgian Commencement Order, including any and all extensions or amendments thereof authorized by the Belgian Court and extending the protections of the Belgian Commencement Order to the Debtor on a final basis, (iii) applying section 362 of the Bankruptcy Code in this chapter 15 case on a final basis to any parties with regard to Debtor's assets as well as the pending U.S. Proceeding for Exelco pursuant to section 1521 of the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper.

14. A proposed form of order approving the relief requested herein on an interim basis is annexed hereto as **Exhibit A** (the Provisional Order) and, pending a final hearing on the Motion, on a final basis as **Exhibit B** (the Final Order).

BASIS FOR RELIEF

15. As discussed in the Declaration in Support, and similar to the protection provided to a debtor under U.S. bankruptcy law, upon commencement of the Belgian Proceeding, all of Exelco's creditors were stayed from taking litigation actions against Exelco and its assets, wherever located pursuant to Article 16-26 of Chapter II of the Belgian Bankruptcy Act. Furthermore, in accordance with the Belgian Commencement Order and applicable Belgian law, the Foreign Representatives are the sole representatives who can act on behalf of Exelco and they have not authorized the continuation of the U.S. Proceeding for Exelco commenced in this Court nor the retention of counsel. Notwithstanding the worldwide application of the stay imposed by the Belgian Proceeding, there is a risk that Exelco's unauthorized former officers, their designees, appointed representatives, or any other parties acting in similar capacity for Exelco may continue to ignore the instructions of the Foreign Representatives by continuing the current U.S. Proceeding for Exelco and attempting to administer assets under the legal control of the Foreign Representatives. To protect against this risk, the Foreign Representatives commenced this chapter 15 case and, by this Motion, are seeking a final order (i) granting recognition of the Belgian Proceeding, (ii) giving full force and effect in the U.S. to the Belgian Commencement Order, and (iii) applying section 362 of the Bankruptcy Code to this chapter 15 case to, among other things, prohibit parties to take any actions with regard to Debtor's assets as well as the pending U.S. Proceeding for Exelco. The entry of a final order granting such relief would, among other things, recognize the Foreign Representatives as the lawful representatives of Exelco and preserve any unlawful dissipation of Exelco's assets as well as extend the protections of the stay to Exelco's assets located in the U.S.

16. In addition to the final order, Exelco is seeking, on an interim basis, an order (i) applying section 362 to ensure that any actions with regard to Debtor's assets as well as the pending U.S. Proceeding for Exelco are stayed; and (ii) enjoining any parties, except the Foreign Representatives, from taking any action with respect to any assets of Debtor.

I. The Belgian Proceeding Is Entitled to Recognition as a Foreign Main Proceeding

17. Pursuant to this Motion, the Foreign Representatives seek, pursuant to sections 1517 and 1520 of the Bankruptcy Code, recognition and enforcement of the Belgian Commencement Order. The Belgian Proceeding is entitled to recognition as a “foreign main proceeding” under chapter 15 of the Bankruptcy Code because, among other things:

- a. the Belgian Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code because the Belgian Proceeding is in a jurisdiction where the Debtor maintains the center of its main interests;
- b. the Foreign Representatives are each a “person” within the meaning of section 101(41) of the Bankruptcy Code and a “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code;
- c. the Petition was filed in accordance with sections 1504 and 1509 of the Bankruptcy Code; and
- d. the Petition meets the requirements of sections 1504 and 1515 of the Bankruptcy Code.

A. This Case Concerns a “Foreign Proceeding”

18. The Belgian Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code, which provides, in pertinent part, that:

The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). These requirements are satisfied by the Belgian Proceeding.

19. First, the Belgian Proceeding is a collective judicial proceeding in Belgium related to insolvency for the purpose of “liquidation.” As set forth in the Declaration in Support, the Debtor commenced the Belgian Proceeding on the independent request of the Belgian Prosecutor and the Belgian Court found that Exelco stopped paying its obligations as they became due and payable and that its credit was shaken, resulting in the Belgian Court’s adjudication that Exelco was bankrupt. *See* Belgian

Commencement Order, at 2-3. Accordingly, it cannot be seriously disputed that the Belgian Proceeding qualifies as a foreign proceeding under the definition set forth in section 101(23) of the Bankruptcy Code.

B. These Cases were Commenced by a “Foreign Representative”

20. This chapter 15 case was commenced by the duly-appointed “foreign representatives” of the Debtor within the meaning of section 101(24) of the Bankruptcy Code. That section defines a “foreign representative,” in pertinent part, as a “person or body... authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24). In this case, the Foreign Representatives were appointed and authorized by the Belgian Court to act as the Debtor’s foreign representatives in accordance with the Belgian Bankruptcy Act. *See* Belgian Commencement Order, at 2–3.

21. Given the Foreign Representatives’ appointment as the custodians of the Debtor in the Belgian Commencement Order, they qualify as “foreign representatives” of the Debtor. The Court is entitled to presume that the representatives identified in the Belgian Commencement Order are “foreign representatives” under section 1516(a) of the Bankruptcy Code. Accordingly, the Foreign Representatives are proper “foreign representatives” within the meaning of section 101(24) of the Bankruptcy Code.

C. This Case was Properly Commenced under Chapter 15

22. The Foreign Representatives duly and properly commenced the chapter 15 case, as required by sections 1504 and 1509 of the Bankruptcy Code, by filing the Petition for recognition of a foreign proceeding under section 1515(a) accompanied by all documents and information required by section 1515(b) and (c). *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008) (“A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code.”). Because the Foreign Representatives have

satisfied the requirements set forth in section 1515 of the Bankruptcy Code, they have properly commenced this chapter 15 case.

D. The Belgian Proceeding Should be Recognized as a Foreign Main Proceeding

23. The Belgian Proceeding should be recognized as a “foreign main proceeding,” as defined in sections 101(23) and 1502(4) of the Bankruptcy Code. A foreign proceeding will be recognized as a foreign main proceeding if “it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1). Bankruptcy Code section 1516 establishes a rebuttable presumption that the debtor’s registered office is the debtor’s center of main interests (“COMI”). *See* 11 U.S.C. § 1516. When considering a debtor’s COMI, courts may consider the analogous concept of an entity’s “principal place of business” or “nerve center.” *Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 n.10 (2d Cir. 2013). As such, courts will look to factors such as the location of the debtor’s headquarters, the location of those who actually manage the debtor, and the location of the debtor’s primary assets, among other things, to determine the foreign debtor’s COMI. *Id.* at 130. Furthermore, in the present case, the Belgian Court has already made a determination that the Debtor’s COMI is Belgium. *See* Opposition Judgment, at 17. The above factors conclusively support a finding that the Debtor’s COMI is Belgium. The Debtor’s headquarters is located in Antwerp, Belgium. All corporate-level decision-making and corporate administrative functions affecting the Debtor is or were centralized in Antwerp, the Debtor’s employees are based in Antwerp, all of its principal creditors are located in Belgium, and the Debtor is incorporated under the laws of Belgium. As such, the Belgian Proceeding constitutes a foreign main proceeding.

E. The Foreign Representatives are Entitled to an Order Granting Recognition

24. As evidenced above, the Belgian Proceeding is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, the Foreign Representatives applying for recognition are “foreign representatives” within the meaning of section 101(24) of the Bankruptcy Code, and the Petition meets the requirements of section 1515 of the Bankruptcy Code. Section 1517(a) of the

Bankruptcy Code provides, in pertinent part, that “[s]ubject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if - (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515.” 11 U.S.C. §1517(a); *see also* H.R. Rep. 109-31(I), 109 Cong., Sess. 2005, *reprinted in* 2005 U.S.C.C.A.N. 88, 169 at 175 (noting, in enacting chapter 15, that the “decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition”). The Foreign Representatives submit that recognizing the Belgian Proceeding as a foreign main proceeding is consistent with the purpose of chapter 15 and U.S. public policy. Accordingly, the Foreign Representatives respectfully submit that the Court should enter an Order recognizing the Belgian Proceeding as a “foreign main proceeding” pursuant to the Bankruptcy Code.

II. Additional Relief Pursuant to Section 1521 Is Warranted and Appropriate

25. In addition to the relief automatically provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding, the Foreign Representatives request additional relief pursuant to section 1521 of the Bankruptcy Code to protect Exelco’s assets. Section 1521 of the Bankruptcy Code provides, in relevant part, that the court may grant a foreign representative “any appropriate relief,” including “any relief that may be available to a trustee,” subject to certain limitations (which do not apply here) where necessary to effectuate the purpose of chapter 15 and to protect the debtor’s assets and creditors’ interests. 11 U.S.C. § 1521(a)(7). Accordingly, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Foreign Representatives request that the Court extend the protections afforded by section 362 of the Bankruptcy Code to the Debtor such that no parties can take any action with respect to Exelco’s assets or the U.S. Proceeding for Exelco.

III. Provisional Relief Within the Scope of Section 1519 of the Bankruptcy Code Is Necessary and Appropriate Under the Circumstances

26. By this Motion, the Foreign Representatives seek entry of an interim order enforcing the Belgian Commencement Order by making section 362 of the Bankruptcy Code applicable in this chapter 15 case as well as staying the U.S. Proceedings and enjoining any parties from taking any action with respect to any assets of Exelco or the U.S. Proceeding for Exelco on a provisional basis pending entry of the Final Order. As noted above, preserving the status quo and applying the protections of section 362 of the Bankruptcy Code to the Debtor is crucial to prevent irreparable injury to the value of Exelco's assets.

27. Pursuant to section 1517, an order recognizing a foreign proceeding may only be entered after notice and a hearing. 11 U.S.C. § 1517(a). Pursuant to Bankruptcy Rule 2002(q), the notice period must be at least 21 days. Fed. R. Bankr. P. 2002(q). Upon recognition of a proceeding as a foreign main proceeding, among other things, section 362 (the automatic stay) applies. 11 U.S.C. § 1520(a)(1). Absent provisional relief, there is no stay applicable in the U.S. during the period between filing the chapter 15 petition and entry of the recognition order. Therefore, interim relief is necessary to protect Exelco and its assets from diminution in value caused by efforts in the U.S. Proceeding for Exelco to administer, dispose, or sell assets or by collection or enforcement efforts of creditors or affiliated entities' efforts prior to the disposition of the Petition. This includes (i) staying the commencement or continuation of actions against Exelco and its assets under section 362; (ii) staying all proceedings in the U.S. Proceeding for Exelco; and (iii) enjoining any parties from taking any action with respect to any assets of Exelco. Accordingly, certain provisional relief is necessary.

A. Provisional Relief Is Available

28. Section 1519(a)(3) of the Bankruptcy Code authorizes the Court to grant, on a provisional basis, any relief available pursuant to section 1521(a)(7). 11 U.S.C. § 1519(a)(3). As noted above, section 1521(a)(7) provides that the Court may grant a foreign representative any relief available to a trustee, subject to certain exceptions not relevant here. 11 U.S.C. § 1521(a)(7). The automatic stay

of section 362 is an essential feature of the Bankruptcy Code that clearly falls within this provision. Moreover, the relief authorized by the Belgian Commencement Order and under Belgian law is substantially similar to the relief available to a trustee under the Bankruptcy Code. In addition, section 105(a) of the Bankruptcy Code further allows the Court to “issue any order . . . necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). Furthermore, preserving the status quo of the Debtor and its affiliated entities until the Court has an opportunity to conduct a hearing on the Petition ensures that there will not be any dissipation of Debtor’s assets as well as any decisions taken by the purported representatives of Exelco in the U.S. Proceeding for Exelco which will undermine the Belgian Proceeding.

29. Courts within this jurisdiction frequently grant provisional relief similar to that which is sought herein, including recognition and enforcement of an order entered in the foreign proceeding and application of section 362 of the Bankruptcy Code. *See, e.g., Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS), D.I. 30 (Bankr. D. Del. Nov. 10, 2015) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of sections 362, 364(e) and 365(e)); *In re Lone Pine Res. Inc.*, Case No. 13-12487 (BLS), D.I. 64 (Bankr. D. Del. Oct. 24, 2013) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of section 362); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW), D.I. 22 (Bankr. D. Del. Jan. 19, 2012) (order granting provisional relief, including application of sections 362 and 365(e)); *In re Arctic Glacier Int’l Inc.*, Case No. 12-10605 (KG), D.I. 28 (Bankr. D. Del. Feb. 23, 2012) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, and application of sections 362, 364(e) and 365(e)); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS), D.I. 25 (Bankr. D. Del. Mar. 21, 2012) (order granting provisional relief, including application of section 362); *In re Cinram Int’l Inc.*, Case No. 12-11882 (KJC), D.I. 30 (Bankr. D. Del. June 26, 2012) (order granting provisional relief, including recognition and enforcement of the initial order entered in a foreign proceeding, protections provided by section 364(e) and application of sections 362 and 365(e)); *In re Angiotech Pharm. Inc.*, Case

No. 11-10269 (KG), D.I. 26 (Bankr. D. Del. Jan. 31, 2011) (order granting provisional relief, including application of sections 362 and 365(e)); *In re MAAAX Corp.*, Case No. 08-11443 (CSS), D.I. 22 (Bankr. D. Del. July 14, 2008) (order granting provisional relief, including section 365(e)).

B. Provisional Relief Is Necessary to Prevent Irreparable Harm and Is Consistent with Public Interest

30. Relief pursuant to section 1519 of the Bankruptcy Code is available where the foreign representative can satisfy the standard for injunctive relief. 11 U.S.C. § 1519(e); *In re Innua Canada Ltd.*, No. 09-16362, 2009 WL 1025088, at *3 (Bankr. D.N.J. Mar. 25, 2009). In the Third Circuit, the factors considered for injunctive relief include (i) the moving party has a likelihood of success on the merits; (ii) the moving party will suffer irreparable harm if the requested injunction is denied; (iii) granting preliminary relief will not result in greater harm to the nonmoving party; and (iv) the public interest favors such relief. *U.S. v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing *ACLU of N.J. v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1477 n.2 (3d Cir. 1996)); *see also Rogers v. Corbett*, 468 F.3d 188, 192 (3d Cir. 2006) (citations omitted); *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citations omitted). The Foreign Representatives submit that this standard is satisfied here and, therefore, the Debtor is entitled to the requested provisional relief pursuant to section 1519 of the Bankruptcy Code, including entry of the Provisional Order.

1. There Is a Substantial Likelihood of Recognition of the Belgian Proceeding as a Foreign Main Proceeding and Application of Requested Additional Bankruptcy Code Provisions

31. There is a compelling case for recognition of the Belgian Proceeding as a foreign main proceeding. It is clear that the Belgian Proceeding is a “foreign main proceeding” and Mr. Frans De Roy and Mr. Benny Goossens are “foreign representatives” as those terms are defined in the Bankruptcy Code. In addition, the chapter 15 case was duly and properly commenced by filing the verified chapter 15 petition accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules. Upon recognition of the Belgian Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in this chapter 15 case pursuant to section

1520(a)(1) of the Bankruptcy Code. 11 U.S.C. § 1520(a)(1). Accordingly, it is likely that Exelco will receive final approval of all of the relief requested on an interim basis.

2. Exelco Will Suffer Irreparable Harm Absent Provisional Relief

32. Application of provisional relief requested herein is critical to the prevention of irreparable damage to Exelco's Belgian Proceeding. This chapter 15 case was commenced for the purpose of obtaining the assistance of this Court in respect of the Belgian Proceeding to give effect in the U.S. to the Belgian Commencement Order, and other orders of the Belgian Court as well as staying the U.S. Proceeding for Exelco until the Petition is heard. Although the Belgian Commencement Order implements a stay preventing parties from taking actions against Exelco and its assets wherever located, Exelco has assets in the U.S. that may be removed or sold by parties such as Exelco's purported representatives in the U.S. Proceeding for Exelco who may not believe they are bound by the Belgian Commencement Order.² *See In re Daebo Int'l Shipping Co.*, 543 B.R. 47, 54 (Bankr. S.D.N.Y. 2015)

33. As noted in the Declaration in Support, Exelco is believed to have some assets located in the U.S. which may be currently in the possession of one of the U.S. Proceedings debtors. Unless the Provisional Order is granted and all parties are enjoined from taking any action with respect to Exelco's assets and the U.S. Proceeding for Exelco, Exelco faces the risk that parties, including but not limited to, the debtors in the U.S. Proceedings, may take adverse actions against Exelco's assets, which could diminish the value of Exelco's assets and cause significant delay and disruption to Exelco's liquidation process commenced by the Belgian Proceeding. The relief requested herein is necessary to protect against these risks. The purpose of chapter 15 is to provide such protection by, among other things, ensuring that all of a debtor's creditors are enjoined from taking action against the debtor's assets, thereby preventing some creditors or other parties in interest from getting an unfair advantage over others. *See* 11 U.S.C. § 1501.

² The Foreign Representatives reserve all rights and remedies with respect to any party that takes action against Exelco or its assets inconsistent with the Belgian Commencement Order and Belgian law.

34. Courts regularly recognize the need to provide provisional relief in order to ensure the orderly distribution of a debtor's assets in a single proceeding, and prevent piecemeal enforcement against a debtor's assets across multiple jurisdictions. *See, e.g., Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS), D.I. 30 (Bankr. D. Del. Nov. 10, 2015); *In re Daebo Int'l Shipping Co.*, Case No. 15-10616 (MEW), D.I. 21 (Bankr. S.D.N.Y. Mar. 19, 2015); *In re Lone Pine Res. Inc.*, Case No. 13-12487 (BLS), D.I. 64 (Bankr. D. Del. Oct. 24, 2013); *In re STX Pan Ocean Co., Ltd.*, Case No. 13-12046 (SCC), D.I. 30 (Bankr. S.D.N.Y. July 10, 2013); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW), D.I. 22 (Bankr. D. Del. Jan. 19, 2012); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG), D.I. 28 (Bankr. D. Del. Feb. 23, 2012); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS), D.I. 25 (Bankr. D. Del. Mar. 21, 2012); *In re Cinram Int'l Inc.*, Case No. 12-11882 (KJC), D.I. 30 (Bankr. D. Del. June 26, 2012); *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG), D.I. 26 (Bankr. D. Del. Jan. 31, 2011); *In re Daewoo Logistics Corp.*, Case No. 09-15558 (CGM), D.I. 15 (Bankr. S.D.N.Y. Sept. 24, 2009); *In re MAAX Corp.*, Case No. 08-11443, D.I. 22 (CSS) (Bankr. D. Del. July 14, 2008). The provisional relief requested herein is necessary on an immediate basis to protect against potential destruction of asset value, and interference with the Belgian Proceeding liquidation efforts by Exelco's purported representatives in the U.S. Proceeding for Exelco pending entry of the Final Order. Absent this relief, Exelco and its creditors may suffer irreparable harm.

3. Provisional Relief Will Benefit Creditors

35. In contrast to the hardships described above, preservation of the status quo through imposition of the automatic stay while the Foreign Representatives and Exelco undertake the liquidation process in the Belgian Proceeding will not prejudice creditors. Indeed, creditors as a whole will benefit from such relief. The relief requested in this Motion is intended to be temporary, extending only through the disposition of the petition for recognition and ensures that Exelco's assets stay in place until a Final Order is entered. As such, granting the request for provisional relief will benefit Exelco's creditors as it will ensure the value of Exelco's assets is preserved, protected, and maximized for the

benefit of and fair distribution to all creditors, as well as provide some temporary calm and guidance, particularly considering the substantial uncertainty about the propriety of the U.S. Proceeding for Exelco.

4. Public Interest Favors Granting Provisional Relief

36. As noted above, the requested interim relief is consistent with the policies underlying the Bankruptcy Code, including the provision of a preservation of Debtor's assets and the equitable treatment of all creditors. Additionally, granting the requested relief is in the public interest because it will facilitate Exelco's efforts to continue with its Belgian Proceeding for the benefit of its creditors and other stakeholders (including those in the U.S.). See *Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); *Am. Film Techs, Inc. v. Taritero (In re Am. Film Techs., Inc.)*, 175 B.R. 847, 849 (Bankr. D. Del. 1994) ("It is 'one of the paramount interests' of this court to assist the Debtor in its reorganization efforts.") (quoting *Gathering Rest., Inc. v. First Nat'l Bank of Valparaiso (In re Gathering Rest., Inc.)*, 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986)). Moreover, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. 11 U.S.C. § 1501(a).

37. For the reasons set forth herein, the Foreign Representatives respectfully request that, pending the hearing on the Final Order, the Provisional Order be approved in all respects and that the terms and provisions of the Provisional Order be implemented and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provision of the Final Order be implemented. As noted above, this Court and others have frequently granted requests for similar provisional relief in chapter 15 cases. See, e.g., *Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS), D.I. 30 (Bankr. D. Del. Nov. 10, 2015); *In re Daebo Int'l Shipping Co.*, Case No. 15-10616 (MEW), D.I. 21 (Bankr. S.D.N.Y. Mar. 19, 2015); *In re Lone Pine Res. Inc.*, Case No. 13-12487 (BLS), D.I. 64 (Bankr. D. Del. Oct. 24, 2013); *In re STX Pan Ocean Co., Ltd.*, Case No. 13-12046 (SCC), D.I 30 (Bankr. S.D.N.Y. July 10, 2013); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW), D.I. 22 (Bankr. D. Del. Jan. 19, 2012); *In*

re Arctic Glacier Int'l Inc., Case No. 12-10605 (KG), D.I. 28 (Bankr. D. Del. Feb. 23, 2012); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS), D.I. 25 (Bankr. D. Del. Mar. 21, 2012); *In re Cinram Int'l Inc.*, Case No. 12-11882 (KJC), D.I. 30 (Bankr. D. Del. June 26, 2012); *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG), D.I. 26 (Bankr. D. Del. Jan. 31, 2011); *In re Daewoo Logistics Corp.*, Case No. 09-15558 (CGM), D.I. 15 (Bankr. S.D.N.Y. Sept. 24, 2009); *In re MAAX Corp.*, Case No. 08-11443, D.I. 22 (CSS) (Bankr. D. Del. July 14, 2008).

CONCLUSION

38. The Foreign Representatives respectfully submit that the Belgian Proceeding should be recognized as a foreign main proceeding, it is appropriate to apply section 362 in this chapter 15 case, and the provisional relief requested herein is necessary to prevent harm to Exelco and its assets and, therefore, should be approved.

NOTICE

39. The Foreign Representatives shall provide notice of the Motion to the following parties, or their counsel, if known: (i) all persons or bodies authorized to administer foreign proceedings of the Debtor; (ii) all entities against whom provisional relief is being sought pursuant to section 1519 of the Bankruptcy Code, including, but not limited to, purported counsel and any other purported representatives for Exelco, Exelco NA, FTK, Ideal Diamond, and Ideal Limited in the U.S. Proceedings; (iii) all known creditors of Exelco in the United States; (iv) all parties to litigation pending in the United States to which the Debtor is a party at the time of the filing of the Petition; (v) the Office of the United States Trustee for the District of Delaware and; (vi) all other parties which have requested notice in this case as of the date of such service. The Foreign Representatives propose to further notify all creditors and parties in interest of the filing of the chapter 15 petition and the Foreign Representatives' request for entry of the Final Order in the form and manner set forth in the Motion of Foreign Representatives for Entry of Order Scheduling Hearing and Specifying Form and Manner of Service of Notice Pursuant to Sections 1515 and 105(a) of Bankruptcy Code and Bankruptcy Rules 2002 and 9007, which was filed concurrently

herewith. In light of the nature of the relief requested, the Foreign Representatives submit that no further notice is required.

WHEREFORE, the Foreign Representatives respectfully request that the Court: (a) enter the Provisional Order, substantially in the form attached hereto as **Exhibit A**; (b) enter the Final Order, upon notice and a hearing, substantially in the form attached hereto as **Exhibit B**; and (c) grant such other and further relief as it deems just and proper.

Dated: November 10, 2017
Wilmington, DE

/s/ J. William Boone
JAMES-BATES-BRANNAN-GROOVER-LLP
J. William Boone (*Pro Hac Vice Pending*)
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-and-

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Counsel for the Trustees in Bankruptcy

EXHIBIT A

Provisional Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 15
)	
Exelco NV,)	Case No. 17-_____ ()
)	
Debtor in a Foreign Proceeding. ¹)	
)	

**PROVISIONAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING
AND CERTAIN RELATED RELIEF PURSUANT TO SECTIONS 362, 1517, 1519, 1520, 1521,
AND 105(a) OF BANKRUPTCY CODE**

Upon the motion (the “Motion”)² of Mr. Frans De Roy and Mr. Benny Goossens, the duly appointed foreign representatives (the “Foreign Representatives”) of Exelco NV (“Exelco” or the “Debtor”), for entry of provisional (this “Order”) and final orders pursuant to sections 362, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code (the “Bankruptcy Code”): (i) enforcing in the United States (the “U.S.”), on an interim basis, the initial order issued by the Belgian Court (the “Belgian Commencement Order”), by applying section 362 of the Bankruptcy Code in the chapter 15 case on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and enjoining any and all parties, including but not limited to the purported chapter 11 representatives of Exelco, North America, Inc. (“Exelco NA”), FTK Worldwide Manufacturing BVBA (“FTKA”), Ideal Diamond Trading USA, Inc. (“Ideal Trading”), and Ideal Diamond Trading Limited (“Ideal Limited”) from taking any actions with respect to Exelco’s assets, or the chapter 11 proceeding for Exelco (the “U.S. Proceeding”), and granting such other and further relief as this Court deems just and proper; and (b) a final order after notice and a hearing (the “Final Order”) (i) granting the petition in this case and recognizing the Belgian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the U.S. to the Belgian Commencement Order,

¹ The last four digits of the Debtor’s commercial number are 1071. The Debtor’s main corporate and mailing address is Schupstraat 9-11 Box Nr. 75, Antwerp 2018.
² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

including any and all extensions, amendments and/or supplements thereto authorized by the Belgian Court and extending the protections of this Order to Exelco on a final basis, (iii) applying section 362 of the Bankruptcy Code in this chapter 15 case on a final basis pursuant to section 1521 of the Bankruptcy Code to prevent any parties from taking any actions with respect to Exelco's assets or the U.S. Proceeding for Exelco, and (iv) granting such other and further relief as this Court deems just and proper, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and Exelco having consented to the Court's authority to enter a final order consistent with Article III of the U.S. Constitution; and venue being proper before this Court pursuant to 28 U.S.C. § 1410; and due and proper notice of the provisional relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the Declaration in Support, and the verified chapter 15 petition, filed contemporaneously with the Motion, the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the

extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

D. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

E. The Foreign Representatives have demonstrated a substantial likelihood of success on the merits that (a) the Belgian Proceeding is a “foreign main proceeding” as that term is defined in section 1502(4) of the Bankruptcy Code, (b) the Foreign Representatives are each a “foreign representative” as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the Belgian Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code, (d) upon recognition of the Belgian Proceeding as a foreign main proceeding, section 362 of the Bankruptcy Code will automatically apply in this chapter 15 case pursuant to section 1520(a)(1) of the Bankruptcy Code, and (e) the interim relief provided herein is entirely consistent with the injunctive relief afforded by the automatic stay under section 362.

F. The Foreign Representatives have demonstrated that (a) the commencement or continuation of any proceeding or action in the U.S. against Exelco, including but not limited to the U.S. Proceeding, and its business and all of its assets should be stayed pursuant to sections 1519, 1521, and 105(a) of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the Belgian Proceeding for the benefit of all stakeholders, and (b) the relief requested in the Motion will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

G. The Foreign Representatives have demonstrated that without the protection of section 362 of the Bankruptcy Code, Exelco's assets may be dissipated and the purported representatives for Exelco in the U.S. Proceeding will continue thwarting the Foreign Representatives efforts to liquidate Exelco's assets and challenge their authority with respect to Exelco. Such would severely impair Exelco's liquidation efforts and result in irreparable damage to the value of Exelco's assets, and substantial harm to Exelco's creditors and other parties in interest.

H. The Foreign Representatives have demonstrated that absent the relief granted herein, there is a material risk that one or more parties in interest, but the purported representatives for Exelco in the U.S. Proceeding, will take action against Exelco or its assets. As a result, Exelco may suffer immediate and irreparable injury, loss, or damage for which there is no adequate remedy at law and therefore it is necessary that this Court grant the relief requested in the Motion without prior notice to parties in interest or their counsel. Further, unless this Order is entered, Exelco's assets could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in Exelco suffering immediate and irreparable injury, loss or damage by, among other things, creditors (a) interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and (b) interfering with or undermining the success of the Belgian Proceeding.

I. The Foreign Representatives have demonstrated that no injury will result to any party that is greater than the harm to Exelco's business, assets, and property in the absence of the relief requested in the Motion.

J. Exelco's creditors will not suffer any significant harm by the requested provisional relief, as the relief will merely preserve the status quo during the short time necessary for the Court to rule on the verified chapter 15 petition. The provisional relief sought will benefit Exelco's creditors because it will ensure the value of Exelco's assets are preserved, protected and maximized for the benefit of all creditors.

K. The interests of the public and public policy of the U.S. will be served by entry of this Order.

L. The Foreign Representatives and Exelco are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Belgian Commencement Order is hereby given full force and effect on an interim basis, including, without limitation, staying the commencement or continuation of any actions by any parties, other than the Foreign Representatives, against Exelco or its assets (except as otherwise expressly provided herein), and shall be given full force and effect in the U.S. until otherwise ordered by this Court.
3. While this Order is in effect, the Foreign Representatives and Exelco are entitled to the full protections and rights pursuant to section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against Exelco's assets within the territorial jurisdiction of the U.S. (except as otherwise expressly provided herein).
4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 of the Bankruptcy Code is hereby made applicable in this case to Exelco, the property of Exelco within the territorial jurisdiction of the U.S., and the U.S. Proceeding for Exelco. Specifically, all entities (as that term is defined in section 101(15) of the Bankruptcy Code and including the purported representatives for Exelco in the U.S. Proceeding for Exelco), other than the Foreign Representatives and their expressly authorized representatives and agents, are hereby enjoined from:
 - a) execution against any of Exelco's assets;
 - b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation, the U.S. Proceeding, any and all unpaid judgments, settlements, or otherwise against Exelco in the U.S.;

- c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against Exelco or any of its property;
- d) transferring, relinquishing, or disposing of any property of Exelco to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representatives;
- e) commencing or continuing an individual action or proceeding concerning Exelco's assets, rights, obligations, or liabilities; and
- f) terminating contracts or otherwise accelerating obligations or exercising remedies thereunder *provided*, in each case, that such injunction shall be effective solely within the territorial jurisdiction of the U.S.

5. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code, or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

6. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Order. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule of Civil Procedure 65(c) are hereby waived, to the extent applicable.

7. The Foreign Representatives, Exelco, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

8. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Foreign Representatives are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2017
Wilmington, DE

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 15
Exelco NV,)	Case No. 17-_____ ()
)	
Debtor in a Foreign Proceeding. ¹)	
)	

**FINAL ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND
CERTAIN RELATED RELIEF PURSUANT TO SECTIONS 362, 1517, 1519, 1520, 1521, AND
105(a) OF BANKRUPTCY CODE**

Upon the motion (the “Motion”)² of Ms. Frans De Roy and Mr. Benny Goossans, the duly appointed foreign representatives (the “Foreign Representatives”) of Exelco NV (“Exelco” or the “Debtor”), for entry of provisional and final (this “Order”) orders pursuant to sections 362, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code (the “Bankruptcy Code”): (i) enforcing in the United States (the “U.S.”), on an interim basis, the initial order issued by the Belgian Court (the “Belgian Commencement Order”), by applying section 362 of the Bankruptcy Code in this chapter 15 case on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and granting such other and further relief as this Court deems just and proper; and (b) a final order after notice and a hearing (i) granting the petition in this case and recognizing the Belgian Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the U.S. to the Belgian Commencement Order, including any and all extensions, amendments and/or supplements thereto authorized by the Belgian Court and extending the protections of this Order to Exelco on a final basis, (iii) applying section 362 of the Bankruptcy Code in this chapter 15 case on a final basis pursuant to section 1521 of the Bankruptcy Code enjoining any and all parties from taking any

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actions with respect to Exelco's assets, or the pending before this Court chapter 11 proceeding for Exelco (the "U.S. Proceeding"), and (iv) granting such other and further relief as this Court deems just and proper, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and Exelco having consented to the Court's authority to enter a final order consistent with Article III of the U.S. Constitution; and venue being proper before this Court pursuant to 28 U.S.C. § 1410; and due and proper notice of the provisional relief sought in the Motion having been provided; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the Declaration in Support, and the verified chapter 15 petition, filed contemporaneously with the Motion, the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the provisional relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

D. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

E. The Belgian Proceeding is a “foreign proceeding” pursuant to section 101(23) of the Bankruptcy Code.

F. The Foreign Representatives are the duly appointed “foreign representatives” of Exelco within the meaning of section 101(24) of the Bankruptcy Code and the sole parties with full control over Exelco and its assets and authority to manage the liquidation of Exelco.

G. This chapter 15 case was properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

H. The Foreign Representatives have satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

I. The Belgian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

J. Belgium is the center of main interests of each of the Debtors, and accordingly, the Belgian Proceeding is a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

K. The Foreign Representatives are entitled to all the relief available pursuant to section 1520 of the Bankruptcy Code including, without limitation, application of the automatic stay pursuant to section 362 of the Bankruptcy Code.

L. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the U.S., and warranted pursuant to section 1517, 1520, and 1521 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The verified chapter 15 petition and the Motion are granted as set forth herein.
2. The Belgian Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.
3. The Belgian Commencement Order, including any extensions, amendments, or modifications thereto, is hereby enforced on a final basis and given full force and effect in the U.S. (except as otherwise expressly provided herein).
4. All relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to the Belgian Proceeding, Exelco, and the Foreign Representatives as applicable.
5. Section 362 of the Bankruptcy Code shall hereby apply with respect to Exelco and the property of Exelco that is within the territorial jurisdiction of the U.S. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representatives and their expressly authorized representatives and agents, are hereby enjoined from:
 - a) execution against any of Exelco's assets;
 - b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation the U.S. Proceeding, any and all unpaid judgments, settlements, or otherwise against Exelco in the U.S.;
 - c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against Exelco or any of its respective property;
 - d) transferring, relinquishing, or disposing of any property of Exelco to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representatives;

- e) commencing or continuing an individual action or proceeding concerning Exelco's assets, rights, obligations, or liabilities; and
- f) terminating contracts or otherwise accelerating obligations or exercising remedies thereunder *provided*, in each case, that such injunction shall be effective solely within the territorial jurisdiction of the U.S.

6. Subject to sections 1520 and 1521 of the Bankruptcy Code, the Belgian Proceeding and the Belgian Commencement Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the U.S. to the same extent that they are given effect in Belgium, and each is binding on all creditors of Exelco and any of their successors and assigns.

7. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to Exelco or the Foreign Representatives by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

8. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code, or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

9. The Foreign Representatives, Exelco, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

10. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. The Foreign Representatives are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

12. The Foreign Representatives, Exelco and/or each of their successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

13. A copy of this Order, confirmed to be true and correct, shall be served, within three business days of entry of this Order, by facsimile, electronic mail, or U.S. or international first class mail, upon all persons or bodies authorized to administer foreign proceedings of Exelco, all entities against whom provisional relief was granted pursuant to section 1519 of the Bankruptcy Code, all parties to litigation pending in the U.S. in which any of the Debtors were a party at the time of the filing of the verified chapter 15 petition, the Office of the U.S. Trustee for the District of Delaware, and such other entities as this Court may direct. Such service shall be good and sufficient service and adequate notice for present purpose.

14. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2017
Wilmington, DE

UNITED STATES BANKRUPTCY JUDGE