At a glance

February 2018

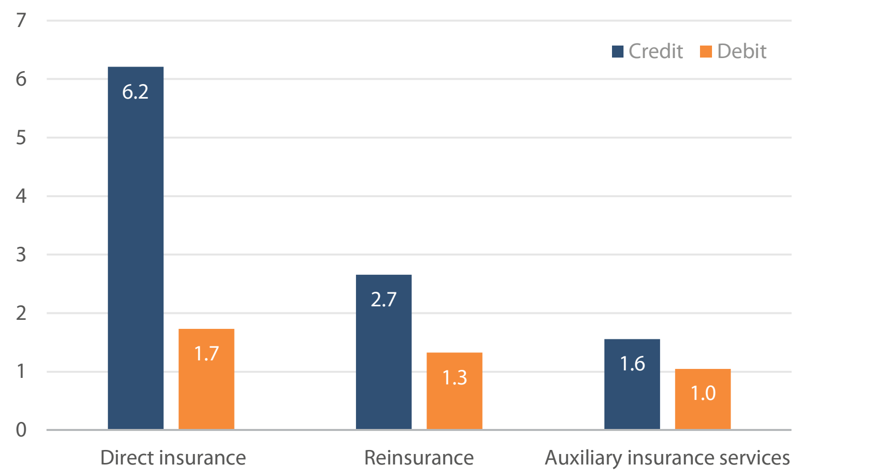
EU-US bilateral agreement on prudential measures regarding insurance and reinsurance

The EU-US agreement on insurance and reinsurance was signed in September 2017. It aims at eliminating some key trade barriers in the sector, in particular collateral and local presence requirements. The agreement also tackles the issue of supervisory authority and exchange of information. The European Parliament is due to vote on giving its consent to the Council for the conclusion of the agreement during its February II plenary session.

Background

Reinsurance is insurance purchased by an insurance company (hereafter the ceding company) acting directly in the reinsurance market or via a broker. The insurance company takes out reinsurance in order to mitigate its risks and in order to remain solvent especially when facing major disasters (such as hurricane, and earthquakes). The reinsurer will, in exchange for payment of a reinsurance premium, pay a share of the claims incurred by the ceding company. The EU and US are major trading partners in reinsurance services. EU reinsurance exports (credits) to the US amounted to €2 655 million in 2015, which represented 46.5 % of all extra-EU reinsurance exports. EU reinsurance imports (debit) from the US amounted to around €1 322 million, representing 28.3 % of all extra-EU reinsurance imports (Eurostat data, see Figure 1).

Figure 1 – EU trade in insurance services with the US, 2015 (in € billion)



Source: Eurostat.

In the US, state insurance laws require non-US reinsurers to post 100 % collateral for the risks reinsured from US ceding companies. Only four EU Member States (France, Germany, Ireland and United Kingdom) were previously recognised as 'qualified jurisdictions' in order to obtain a reduction of the collateral requirement. The collateral requirement ensured that US ceding companies would recover promptly and fully the share of the claims that were reinsured. However, according to the European Commission, this practice represented an opportunity cost of circa €400 million a year to EU reinsurers. Other costs from non-cooperation between EU and US regulators included: localisation requirements (this could include local asset requirements or local presence requirements) and the overlapping supervisory requirements for (re)insurance groups operating in both jurisdictions (duplicating administrative procedures and increasing administrative burden for such firms).

EU harmonisation of insurance regulation (with the implementation of the Solvency II Directive) allowed the launch of negotiations with the US on an agreement on prudential measures regarding insurance and reinsurance in 2015. Negotiations on the agreement were completed in January 2017.

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Content of the agreement and reactions

The agreement aims at achieving a level playing field and reciprocity. Subject to conditions, Article 3 of the agreement **prohibits** the party where the ceding company is domiciled, or has its head office:

- **to introduce any collateral requirements** (or measures having equivalent effect) in connection with cessions from the ceding company to the reinsurer in the other party, either as condition for the re-insurer to enter into a reinsurance agreement or as a condition for the ceding company to take credit for the reinsurance, which would result in less favourable treatment of the other party's reinsurer company with respect to domestic reinsurance companies.
- **to introduce local presence requirements** for the reinsurer as a condition for entering a reinsurance agreement with the ceding company or to introduce any other requirements that would have the same effect as requiring local presence, which would result in less favourable treatment.

The above prohibitions apply only if the insurer complies with certain financial and market conduct conditions, inter alia: a minimum amount of own funds or capital surplus, a certain level of solvency ratio, prompt payment of the claims under the reinsurance agreement and acceptance of specific clauses related to dispute settlement resolution. 100 % collateral must still be provided in case the reinsurer enters into any solvent scheme arrangement involving the domestic ceding company. Collateral of all outstanding liabilities may be required if the ceding insurer is subject to a legal process of resolution or winding-up. The parties to a specific reinsurance agreement can also voluntarily agree on the requirement for collateral in the terms of their reinsurance agreement.

On supervision, the agreement determines that the party where the reinsurance company has its parent is the responsible supervisory authority, though the other party may step in under certain circumstances. While respecting confidentiality rules, the agreement encourages exchange of information between supervisory authorities, with the objective being to avoid collecting information twice from insurers operating in both countries. EU and US regulators will meet regularly within a Joint Committee to discuss the implementation of the agreement. In case of disputes, a consultation mechanism is provided for.

Stakeholders

Stakeholders, on both sides of the Atlantic, have welcomed the agreement overall. For EU companies, elimination of the collateral requirement will eliminate a key barrier to cross-border expansion. On the US side, the National Association of Insurance Commissioners (NAIC) and US state regulators expressed reservations with respect to the supervision provision. However, the US Congress did not oppose the agreement within the 90-day review period, and the US was therefore able to sign the agreement in September 2017 after issuing a clarification to regulators on its implementation.

Conclusion and signature of the agreement

The Council of the EU adopted an amended decision to sign the agreement on 29 May 2017, in particular modifying the legal basis for signing the agreement. The agreement now falls under internal market competence instead of the trade policy competence set out in the original Commission proposal. Notwithstanding the change in legal basis, the adoption of the agreement remains an exclusive external EU competence, as the agreement's content is covered by EU legislation in the framework of the internal market. Thus, the agreement does not need national ratification. The agreement requires the consent of the European Parliament in order for the Council to conclude it.

The EU and the US signed the agreement on 22 September 2017, allowing for partial provisional application. Only Articles 4 to 7 of the agreement (covering provisions on: group supervision, exchange of information and the joint committee) are applied on a provisional basis by the EU. Once ratified by the EU, the agreement will enter into force after a period of five years starting from the date of signature. The US will require state legislative changes in order to remove collateral requirements inconsistent with the agreement. 42 months after the signature of the agreement, the US government could consider evaluating the need to pre-empt, after the five-year transition expires, any state-level measures inconsistent with the agreement and resulting in less favourable treatment of EU insurers.

On 24 January 2018, Parliament's Committee on Economic and Monetary Affairs (ECON) adopted its recommendation (rapporteur: Roberto Gualtieri, S&D, Italy) that the European Parliament give its consent to the Council's decision on the conclusion of the agreement. This recommendation will now be considered in plenary during the February II session.