



Brussels, 10.9.2017
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2017/0229 (NLE)

Proposal for a

COUNCIL DECISION

amending Council Decision (EU) 2017/... of 27 May 2017 on the signing, on behalf of the European Union, and provisional application of the Bilateral Agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The Council Decision of 21 April 2015¹ authorised the Commission to start negotiations with the United States of America (US) for the conclusion of an Agreement on insurance and reinsurance. Pursuant to this decision and the negotiating directives, the European Commission negotiated a Bilateral Agreement with the US on prudential measures regarding insurance and reinsurance in the course of 2016.

This Bilateral Agreement covers three areas, group supervision, reinsurance and exchange of information between supervisors:

- It sets out the conditions for group supervision in both Parties of their respective insurance and reinsurance groups. EU and US insurance and reinsurance groups active in both jurisdictions will not be subject to certain requirements with respect to group supervision for their worldwide activities, but supervisors retain the ability to request and obtain information about worldwide activities which could harm policyholders or financial stability.

- It lays down the prudential conditions to be applied for the removal of local presence and collateral requirements for reinsurers regulated and supervised in the other Party.

- It contains provisions and, in an annex, a model memorandum of understanding for the exchange of information between supervisory authorities in the EU and the US. Supervisory authorities will be encouraged to use these provisions to ensure a high standard of professional secrecy in any exchange of confidential information necessary for carrying out their general supervisory activities.

The Agreement thereby lays down an appropriate prudential framework to be applied to insurers and reinsurers from both Parties.

This proposal for an amendment to Council Decision of 27 May 2017, which constitutes the legal instrument for the signature and provisional application of this Bilateral Agreement, clarifies that the Agreement can be signed in English and is drawn up in the 23 EU languages by the EU and should be authenticated by the Parties by exchange of diplomatic notes.

• **Consistency with existing policy provisions in the policy area**

EU legislation in the area of insurance lays down a prudential framework for the protection of policyholders and for financial stability. This Agreement further contributes to ensuring a high level of policyholder protection in the EU, notably via increased cooperation and exchange of information between supervisors, whilst also ensuring that both Parties' duly regulated and supervised insurance and reinsurance undertakings are not subject to undue burden.

¹ Council Decision authorising the opening of negotiations on behalf of the European Union with the United States of America for the conclusion of an agreement on reinsurance, 31 March 2015, ST 7320 2015 INIT.

- **Consistency with other Union policies**

In line with the objectives of the Investment Plan for Europe and the Capital Markets Union, this Agreement will facilitate investment by reinsurers².

This Agreement is without prejudice to negotiations on a Transatlantic Trade Investment Partnership with the US.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the Union to act is Article 207 TFEU read in conjunction with Article 218(5) TFEU.

- **Subsidiarity (for non-exclusive competence)**

This initiative falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

This EU action, laying down prudential rules for insurers and reinsurers, is in line with the principles of Directive 2009/138/EC of the European Parliament and of the Council³ ("Solvency II") and does not go beyond what is necessary to achieve its aims.

3. STAKEHOLDER CONSULTATIONS

- **Stakeholder consultations**

The negotiations were conducted in consultation with Member States through the relevant Council special committee (the Council Working Party on Financial Services)⁴ and Member States were regularly informed about the progress of the negotiations. The European Parliament has also been informed about the progress of the negotiations⁵.

Industry stakeholders on both sides have voiced their support for this Agreement and in particular with respect to the supervision of cross-border insurance and reinsurance groups and for the removal of reinsurance collateral requirements.

- **Collection and use of expertise**

Prior to the start of this negotiation, the EU and the US have been closely following developments in each other's jurisdictions, exchanging information on regulatory developments, and have identified specific aspects of each other's regulatory systems as potentially problematic for insurers or reinsurers operating in the other jurisdiction.

² EU reinsurers estimate that they have about \$40 billion of collateral posted in the USA, which could be used more effectively in other investments. The opportunity cost is estimated at around \$400 million per year.

³ OJ L 335, 17/12/2009, p. 1.

⁴ The Council Special Committee was consulted on 14 March, 13 June, 29 June, 7 September, 30 September, 18 October, 9 November, 29 November, 9 December, 16 December and 19 December 2016 as well as on 10 January 2017.

⁵ The Chair and Members of the European Parliament's ECON Committee were debriefed *in camera* on 29 June, 11 October, 16 November and 30 November 2016.

This was in particular conducted through the EU-US Dialogue project, which brought together EU and US officials as well as EU and US supervisory authorities.

The European Insurance and Occupational Pensions Authority participated as an observer to these negotiations.

4. BUDGETARY IMPLICATIONS

No impact on the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Agreement provides for the set-up of a Joint Committee, which will provide a forum for the EU and the US to consult and to exchange information on the administration of the Agreement and its proper implementation.

Member States will also need to undertake the necessary actions to ensure implementation of this Agreement.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of this proposal amends the Council Decision of 27 May 2017 authorising the signing of this Agreement to introduce an Article 3a setting out that the Agreement shall be signed in English and that the Agreement is also drawn up by the EU in the 22 other EU languages. These additional language versions should be authenticated by an exchange of diplomatic notes between the United States and the European Union. It also provides that all authenticated versions shall be of equal value.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 read in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 21 April 2015, the Council authorised the Commission to open negotiations with the United States of America for an Agreement on reinsurance⁶. The negotiations were successfully concluded by an exchange of letters between the lead negotiators on 12 January 2017.
- (2) The Agreement should be signed on behalf of the European Union in English, subject to its conclusion at a later date. For this purpose, Council Decision (EU) 2017/... of 27 May 2017 should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Council Decision (EU) 2017/... of 27 May 2017 on the signing, on behalf of the European Union, and provisional application of the Bilateral Agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance, Article 3a is added as follows:

"This Agreement shall be signed in English. Pursuant to EU law, this Agreement is also drawn up by the EU in the Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages. These additional language versions should be authenticated by an exchange of diplomatic notes between the United States and the European Union. All authenticated versions shall be of equal value."

⁶ Council Decision authorising the opening of negotiations on behalf of the European Union with the United States of America for the conclusion of an agreement on reinsurance, 31 March 2015, ST 7320 2015 INIT.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*