



Hearing Statement of the Honorable Dirk Kempthorne
President and Chief Executive Officer
The American Council of Life Insurers
Before the
U.S. House of Representatives Committee on Financial Services
Subcommittee on Housing and Insurance

“Assessing the U.S.-EU Covered Agreement”

February 16, 2017

On behalf of the American Council of Life Insurers (ACLI), I am pleased to submit this statement for the hearing record in support of the U.S.-EU covered agreement. We thank Chairman Sean P. Duffy (R-WI) and Ranking Member Emanuel Cleaver (D-MO) for holding this important hearing. ACLI supports the covered agreement because it strengthens U.S. competitiveness. In the negotiation of the covered agreement, we supported participation of state insurance regulators. We look forward to their active involvement in its implementation and administration.

The ACLI is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States.

ACLI Supports the Covered Agreement.

The covered agreement will make U.S.-based insurers and reinsurers more competitive. It respects our state-based system of insurance regulation. It facilitates and encourages coordination and cooperation between U.S. insurance regulators and EU insurance supervisors, which reduces regulatory burdens for the insurance industry on both sides of the Atlantic. It maintains protections for U.S. insurers that buy reinsurance from EU-based reinsurers. It preserves the sovereignty of our U.S. regulators to impose corrective measures on an EU-based reinsurer if it fails to respect any judgment. It also preserves U.S.

regulators' authority to impose corrective measures on any EU-based insurer if its financial condition threatens policyholder protection or financial stability.

The Covered Agreement Makes U.S.-Based Insurers and Reinsurers More Competitive, Now.

The covered agreement was negotiated to provide significant immediate benefits to U.S.-based insurers and reinsurers. With this agreement, EU supervisors will not require U.S.-based insurers to be subject to global group reporting, governance, or capital requirements. That represents significant savings to U.S.-based insurers doing business in EU member states.

U.S.-based reinsurers also benefit immediately because the EU will allow them to sell reinsurance cross-border now, with this agreement, without requiring a local presence. It has also agreed to change its laws within 24 months to permit U.S.-based reinsurers to sell reinsurance cross-border. The agreement says that if the EU fails to change its laws within that time, then the United States can impose global group capital requirements on EU insurers doing business in the United States. That pledge by the EU is very valuable to U.S.-based reinsurers doing business in any EU member country.

U.S.-based insurers and reinsurers also benefit from the predictability that the covered agreement gives to those doing business in EU member states. Before the agreement, each EU member state could impose its own requirements on U.S.-based insurers doing business in that country. That lack of predictability and certainty caused much concern and expense since Solvency II came into effect January 1, 2016. ACLI members will benefit from the predictability and certainty that the covered agreement brings to EU member states' implementation of Solvency II. That predictability and certainty will promote their competitiveness.

The Agreement Respects Current State-Based Insurance Regulation.

The covered agreement specifically states its respect for our system of state-based insurance regulation. It also demonstrates that respect by:

- Deferring to the current state-based method of group supervision and policyholder protection;

- Recognizing the states' existing authorities to implement remedial and corrective measures; and

- Promoting the uniform application of the NAIC Credit for Reinsurance Model Law and Regulation.

Both EU and U.S. negotiators have affirmed that the agreement was not intended to and does not require any change to the current U.S. system of insurance group supervision.

This is a critical point. The EU has accepted the current U.S. system of indirect group supervision.

The Agreement Provides Reinsurance Collateral Parity.

U.S. insurance regulators have worked diligently for many years to reduce collateral required of reinsurers based in other countries and doing business in the United States. In 2011, the NAIC unanimously adopted a model law and accompanying regulation that allowed collateral to be reduced to zero (for very solvent reinsurers from well regulated countries) from the 100% level that had historically been required of all reinsurers. Thirty-five states have adopted the model law; twenty-five states have adopted the regulation.

Some EU member states have nonetheless maintained collateral requirements for U.S.-based 'foreign' reinsurers doing business in that country. The covered agreement assures that U.S. reduction in collateral is not unilateral—requiring that all EU member states reduce collateral to zero on the same timetable for very solvent U.S.-based reinsurers. This will make U.S.-based reinsurers more competitive.

The Agreement Preserves Protections for U.S. Insurers and Policyholders.

The NAIC model law and regulation on credit for reinsurance contain many protections for U.S. insurers and policyholders. The covered agreement maintains these protections, including state regulators' authority to require any reinsurer to submit to its authority, report on its financial condition and its payment practices, pay any final judgements, and post collateral retroactively. The agreement does not compromise state insurance regulators' authority to protect U.S. insurers and U.S. policyholders.

Any Preemption Is Remote and May Not Be Necessary.

ACLI supports the U.S. system of state-based insurance regulation. ACLI supports the Dodd-Frank Act's restrictions on the authority of the Federal Insurance Office to act generally as a regulator. ACLI supports the Act's strict limitations on preemption and its cautious and deliberative approach to any discussion of preemption. These Dodd-Frank Act provisions preserve the primacy of our national system of state-based insurance regulation.

There is no question of any preemption with respect to the covered agreement's text on group supervision or on the supervisory exchange of confidential information. The EU has accepted the U.S. approach to group supervision, and U.S. regulators and EU supervisors agree on how to exchange non-public supervisory information.

The covered agreement does raise the possibility of preemption in its text on reinsurance collateral. We believe that possibility is quite limited, if not remote. The NAIC has established its model law and regulation on credit for reinsurance as an accreditation

standard as of January 2019, meaning that state regulation is well-positioned to implement any revisions.

The Dodd-Frank Act has substantial protections against any preemption. No preemption is allowed unless the state requirement treats non-U.S. insurers less favorably than U.S. insurers licensed in that state. The new requirement must provide a substantially equivalent level of protection for consumers. The Act also has substantial process protections. The federal government must consult with the state and the public and consider their input before any preemption. The federal government must also notify the committees of jurisdiction in Congress upon any preemption. Finally, the Act allows de novo judicial review of any preemption.

ACLI believes that the benefits of the covered agreement to the competitiveness of the U.S. insurance industry and to state regulation are immediate and substantial. We urge Members of Congress to support it.

Again, ACLI appreciates the opportunity to offer this statement in support of the U.S.-EU covered agreement.

Sincerely,



GOVERNOR DIRK KEMPTHORNE