

Dear Dan,

In the European Commission we have reviewed the revised texts of the draft model law and regulation circulated on May 1, in light of the Commission's comments on the previous drafts (letter of Martin merlin to Superintendent Vullo of March 28. Our conclusion is that all of our comments in that letter have been incorporated satisfactorily in the May 1 drafts with the exception of two, concerning section 2F(7) of the draft model law and section 9(C)2(c) of the draft model regulation. These are discussed below

Section 2F(7) of the draft model law effectively contains two different requirements, joined by the word "and" in the middle of the paragraph, which is highlighted below

Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, **and** only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to Section 2F(1) herein, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

Regarding the first requirement of that paragraph (to the words "under this subsection"), we are satisfied that the requirement, while not based on any explicit text in the Covered Agreement, is compatible with it, in as much as the requirements for assuming (re)insurers laid down in article 8.4 of the Agreement must be defined as applying at a certain defined moment in time, and the first part of paragraph 2F(7) does that.

Regarding the second requirement laid down in 2F(7) ("only with respect to losses incurred and reserves reported"), we consider that this constitutes an additional cumulative temporal application of the requirements for assuming (re)insurers contained in article 8.4 of the Agreement. The language is taken from article 3.8 of the Agreement, but that language was not intended to be used as a temporal reference for the ongoing application of the requirements in 3.4 but rather on a one-off basis for the entry into application of the entire Agreement in a specific territory (such as a US State or an EU Member State). Its application to the requirements for assuming (re)insurers therefore constitutes an extension of the application of those requirements beyond what is contained in the Agreement and is thus incompatible with the Agreement.

On that basis, we conclude that, in order to ensure compatibility with the Agreement, paragraph 2F(7) should end after the words "under this subsection", or else, failing that, be modified as follows:

Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, and only with respect to losses incurred and reserves reported on or after ~~the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to Section 2F(1) herein, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.~~

Regarding section section 9(C)2(c) of the draft model regulation, we consider that in order to ensure compatibility of the Covered Agreement a statement is necessary that where relevant, the conversion rates laid down in an applicable Covered Agreement should be used.

Yours sincerely,

Didier MILLEROT