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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

IMPACT ASSESSMENT - HT.4012 - IBER

[…]

Executive Summary Sheet

Impact Assessment on Insurance Block Exemption Regulation

A. Need for action

Why? What is the problem being addressed?

The "Insurance Block Exemption Regulation" (**IBER**), first adopted in 1992 and prolonged in 2003 and in 2010 (Commission Regulation (EC) No. 267/2010) currently exempts (subject to narrow and strict conditions) certain categories of agreements and cooperations between insurers to (1) exchange data for joint joint compilations, tables and studies and to (2) jointly insure and re-insure certain types of risk in a "pool". The IBER automatically expires on 31 March 2017 as foreseen in a sunset clause (Article 9). In 1992, the purpose of adopting the IBER was to save administrative cost for companies and the Commission at a time when restrictive agreements between competitors still had to be notified to the EU Commission for prior approval. The modernisation of antitrust control in 2004 removed this purpose by phasing out the notification requirement. Since 2004 companies must self-assess their agreements for compliance with Article 101 TFEU. In 2010 the Commission significantly reduced the scope of the IBER when prolonging it for the second time and allowed two of the four block exempted categories lapse. As regards the other two block exemptions, the reasons for prolonging them in 2010 no longer prevail today. The number of pools actually covered by the IBER has dropped considerably since 2010. Pools are upon review also for the most part too heterogeneous in terms of function and operations for a general block exemption (risk of a misapplication). Moreover, since 2011, the new Horizontal Guidelines on horizontal cooperation agreements contain significant guidance to assess the compatibility of information exchanges between competing undertakings with EU antitrust law. This guidance also applies to compilations, tables and studies and makes a specific block exemption redundant.

What is this initiative expected to achieve?

The objective of the IBER review was to strike a balance between the need for effective protection of competition, prices and innovation on the one hand and on the other hand the needs of the insurance industry to continue certain forms of co-operations that have a potential to restrict competition. Moreover, the review focused on avoiding inconsistencies with the overall competition enforcement system, establishing a level playing field between comparable forms of cooperation, maintaining legal certainty while ensuring proportionality and subsidiarity.

What is the value added of action at the EU level?

The special circumstances which justified the adoption of the IBER in 1992 and its subsequent prolongations in 2003 and 2010 are no longer present today. If the IBER expires, this would align the approach in the insurance sector to the one in most other sectors introduced already in 2004, namely a case-by-case review supported by respective guidelines without sector specific rules and exceptions.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

In order to provide continuing effective protection of competition in the insurance sector while ensuring that the beneficial aspects of co-operations remain, the Commission considered several policy options. These were to (1) let the IBER expire as foreseen in a sunset clause (baseline scenario), (2) to prolong the IBER for another ten years or (3) to prolong the IBER for either of the two exemptions. Unless any action is taken the IBER will expire on 31 March 2017. In its Report to the European Parliament and the Council on the functioning and future of IBER (COM(2016)153) the Commission already presented its preliminary view to let the IBER lapse because several of the considerations which let to the adoption and later prolongation of the IBER are no longer present today. The subsequent public consultation, empirical fact finding and concluding Impact Assessment have reinforced this preliminary orientation. The preferred policy option is therefore to let the IBER expire.

Who supports which option?

National competition authorities do not oppose the expiry of the IBER and those with concrete experience with the IBER explicitly support its expiry (Option 1). Only few customers answered to the public consultation. Those that replied support the expiry of the IBER (Option 1). Insurers prefer the IBER to be prolonged (Option 2). They claim legal certainty reasons and increased compliance cost if their co-operations had to be assessed under the 2011 Horizontal Guidelines instead of under the IBER.

C. Impacts of the preferred option

What are the benefits of the preferred option?

Key benefits of OPTION 1 are that co(re)insurance agreements and information exchanges would be assessed more precisely in their concrete market context on a case by case basis. This is because an assessment under the Horizontal Guidelines always presupposes a look at the concrete market context while the assessment under the IBER is more categorising and takes less into account the concrete market context. The market based

assessment under the Guidelines is the safest way to ensure that consumers will be better off. The key principles of the IBER are otherwise similar to those of the Horizontal Guidelines.
What are the costs of the preferred option?
Only one insurance association responding to the IBER public consultation provided also data on the potential cost of the IBER expiry. The association indicated that after the IBER expires, they would re-assess the compilations, tables and studies against the principles of the Horizontal Guidelines. This would lead to a one-off cost that is potentially 10%-20% higher than the cost it incurred in the past under the IBER. The association underlined that this was a worst case estimate. Due to the very limited cost increase for the competition assessment, it is not expected that the cost for insurance premiums would increase after the IBER expiry.
How will businesses, SMEs and micro-enterprises be affected?
Incremental legal compliance cost for insurers to verify co-operations under the Horizontal Guidelines are commensurate and will not remove insurers' incentives to cooperate. First, insurers incur some cost for self-assessing compliance with the IBER. Second, such compliance cost can be spread across many insurers: compilations, tables and studies are typically processed by one body (typically an insurance association) which can buy legal advice on the account of all insurers involved. The same applies for the self-assessment of risk pooling which can be done by the lead insurer or pool manager. Such cost would not disproportionally affect SME insurers above large corporations. SMEs (as policyholders) and vulnerable consumers are not expected to suffer from higher prices or lower insurance coverage because of the lapsing of the IBER as pro-competitive co-operations will not cease and the natural incentives of insurers to cooperate remain in place and because the cost of a self-assessment under the Horizontal Guidelines is close to neutral to those under the IBER.
Will there be significant impacts on national budgets and administrations?
No. The lapsing of the IBER will not trigger significant costs for national budgets and administrations.
Will there be other significant impacts?
No.
D. Follow up
When will the policy be reviewed?
The Commission will monitor the impact of the lapsing of the IBER after March 2017. In particular during the initial 12-month period after the IBER expiry the Commission will observe and review whether the expiry leads to pronounced legal uncertainty. If that is the case, the Commission will explore the need for further guidance.