

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Review of Commission Regulation (EU) No 267/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG COMPETITION – UNIT D.2 (ANTITRUST : FINANCIAL SERVICES)	DATE OF ROADMAP	August 2015
LIKELY TYPE OF INITIATIVE			
INDICATIVE PLANNING	<i>Insert hyperlink to forecast report</i>		
ADDITIONAL INFORMATION	<p>In order to be able to deal with feedback effectively in the further process of the initiative, we highly recommend to provide feedback within 4 weeks after the publication of this inception impact assessment.</p> <p><i>Insert link to "Commission decides" or to the specific website for the initiative</i></p>		
<p>This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context, Subsidiarity Check and Objectives

Context
<p>According to Article 101 (1) TFEU, agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market are in principle prohibited. However, certain types of agreements can create benefits to the internal market, as they increase efficiencies and ultimately benefit consumers. Article 101 (3) TFEU provides an exemption to the above mentioned prohibition if the agreement meets certain conditions, and in particular if its benefits outweigh its anti-competitive effects. It is for the insurers to carry out a self-assessment to determine whether their cooperation agreements fall within the exemptions. A BER is a facility that automatically exempts from the above-mentioned prohibition certain specified categories of agreements.</p> <p>In 1991, Council Regulation (EEC) No 1534/91 empowered the Commission to exempt from the prohibition of Article 101(1) TFEU, by means of a regulation, certain categories of agreements, decisions and concerted practices in the insurance sector. The Council regulation specifies that the types of cooperation for which the Commission may issue a block exemption under Article 101(3) TFEU are:</p> <ul style="list-style-type: none"> (a) the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims; (b) the establishment of common standard policy conditions; (c) the common coverage of certain types of risks; (d) the settlement of claims; (e) the testing and acceptance of security devices; (f) registers of, and information on, aggravated risks, provided that the keeping of these registers and the handling of this information is carried out subject to the proper protection of confidentiality. <p>Since then, the Commission has enacted three Block Exemption Regulations for the Insurance sector (IBER). The current IBER [Commission Regulation (EU) No 267/2010 on the application of Article 101(3) of the TFEU to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 83, 30.3.2010, p. 1)] was adopted on 24 March 2010 and will expire on 31 March 2017. The IBER exempts two types of cooperation between (re)-insurers:</p> <ul style="list-style-type: none"> (i) joint compilations, tables and studies, and (ii) common coverage of risks through "co(re)-insurance pools". <p>It should be noted that in 2010 the Commission decided not to renew the exemption for two types of cooperation agreements that had been covered by the previous block exemption regulations, namely agreements on standard policy conditions and agreements on security devices. It was found in the Report and Working Document on the Functioning of the Insurance Block Exemption Regulation on the previous IBER (http://bookshop.europa.eu/en/report-and-working-document-on-the-functioning-of-the-insurance-block-</p>

[exemption-regulation-pbKD80096677](#)) that the exemptions for these agreements were not needed any longer because these types of agreements are not specific to the insurance sector and there was sufficient guidance provided under alternative instruments to the IBER such as the Horizontal Guidelines.

A BER is an exceptional instrument. The insurance sector is one of three sectors (the other two being maritime liner shipping and motor vehicle distribution) that still benefits from a block exemption regulation, since the other sector-specific exemptions expired over the last decade.

In accordance with Article 8 of the enabling Council Regulation (EEC) No 1534/91 the Commission will submit to the Council and European Parliament a Report on the functioning and future of the IBER (by March 2016). The report will be underpinned by a more detailed evaluation Staff Working Document, which will bring together the evidence on the performance of the current IBER. This will include the results of the open public consultation, information provided by the national competition authorities, the results of a study on co(re)-insurance pools and ad-hoc co(re)-insurance agreements on the subscription markets as well as other relevant evidence.

This review process is in line with the Commission's procedural policy in the area of antitrust and follows the Commission's policy on better regulation.

Issue

The purpose of the initiative is to examine the functioning of the current IBER and decide whether sector-specific block exemptions from the abovementioned prohibition are still necessary for joint compilations, tables and studies and for the common coverage of certain types of risks and, if so, to which extent.

Moreover, in accordance with Article 8 of the enabling Council Regulation (EEC) No 1534/91, no later than six years after its entry into force the Commission has to submit to the Council and European Parliament a Report on the functioning and future of the IBER, namely in March 2016 for the current IBER.

A range of stakeholders might be affected including in particular insurance and re-insurance companies, customers/policy holders and consumers as well as national competition authorities and national courts.

Subsidiarity check

Under Article 105 TFEU the Commission is entrusted with the task of ensuring the application of the principles laid down in Articles 101 TFEU and therefore is responsible for defining and implementing the EU competition policy. The Commission has been empowered by Article 1 of Council Regulation (EEC) No 1534/91 to issue block exemption regulations in the insurance sector.

Main policy objectives

The overall policy objective is to promote effective competition and innovation in the insurance sector for the benefit of consumers. The policy objectives do not imply developing EU policy in new areas, since a Commission Block Exemption Regulation for this sector already exists.

B. Option Mapping

The current IBER will expire on 31 March 2017. The Commission is considering the following options in the review of the IBER (the order does not reflect ranking or any preference):

- (1) non-renewal (including, where appropriate, relevant guidance);
- (2) partial renewal (that is renewing only one exemption); and
- (3) renewal.

In case of "renewal" and "partial renewal" the Commission will also determine whether to amend the structure or wording of the current exemptions. In addition to these options for the IBER, the Commission will consider changes to the Communication from the Commission on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the

insurance sector (OJ C 82, 30.3.2010, p. 20) which further clarifies the provisions of IBER.
Baseline scenario
The IBER has limited validity, since it contains a sunset clause stipulating that the regulation will expire on 31 March 2017 (Article 9 of IBER). The regulation will lapse unless sufficient evidence indicates that a sector-specific regulation is needed. The baseline scenario therefore is non-renewal of the IBER. The alternative options will be compared against this scenario.
Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation
Alternative policy approaches
Alternative policy instruments
The instruments considered could be a Commission Communication or another 'soft law' instrument that is not sector-specific.
Alternative/differentiated scope
Options that take account of new technological developments
Preliminary proportionality check
Non-renewal of IBER would imply that the types of agreements covered by the instrument will be covered by general antitrust rules. This means less legislation. Renewal or partial renewal will target a specific situation still necessitating a block exemption and in any way limited by the scope of the enabling regulation.
C. Data Collection and Better Regulation Instruments
Data collection
A detailed study was carried out for the Commission in 2012-2013 on the common coverage of certain types of risks (a new edition was published on the Commission's website in July 2014). The study was followed up by a workshop where the study's findings were discussed with insurers, insurance pools, practitioners, academics and other stakeholders. http://ec.europa.eu/competition/sectors/financial_services/KD0414707ENN.pdf The study is part of the monitoring of the IBER application and it provides an overview of the functioning of co(re)-insurance pools and ad-hoc co(re)-insurance agreements on the subscription market across the EU. Apart from the findings of the study, the Commission will also consider elements from its market monitoring and earlier research into the insurance sector, in particular the findings from the Commission sector enquiry into business insurance. The Commission has consulted the national competition authorities of the Member States as well as the EFTA Surveillance Authority in 2014. The Commission Report on the performance of IBER and Impact Assessment will also include the results of the open public consultation (http://ec.europa.eu/competition/consultations/2014_iber_review/) and targeted questionnaires to other important stakeholders such as insurance intermediaries/brokers, pools, customers and mutual insurance associations. In addition to the above, the Commission will carry out studies on topics related to the IBER review http://ec.europa.eu/competition/calls/tenders_open.html

Consultation approach
<p>The review was and will be conducted according to the following plan:</p> <ul style="list-style-type: none"> - The national competition authorities reported on their experience at an ECN working group's meeting in the first half of 2014. - An initial public consultation regarding stakeholders' experience in applying the IBER was carried out from August to November 2014. - Following the initial public consultation, the Commission sent at the end of 2014 targeted questionnaires to stakeholders affected by IBER such as insurance intermediaries/brokers, pools, customers and mutual insurance associations. - In the course of 2015 the Commission is holding bilateral meetings with stakeholders and if necessary will launch additional consultations. - In the second half of 2016 the Commission will undertake a public consultation of the policy option chosen.
<p>Following the Impact assessment, the Commission will launch in 2016 a public consultation regarding the policy option proposed</p>
Will an Implementation plan be established?
<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>The IBER as a regulation is directly applicable and does not require transposition.</p> <p>In case of "non-renewal" the Commission will consider a Communication if the non-sector-specific guidance currently available on the compatibility of these types of agreements were not sufficient. Communications under competition rules provide guidance to stakeholders and national competition authorities that do not require an implementation plan.</p>
D. Information on the Impact Assessment Process
<p>The IA Steering Group was set up and met for the first time in July 2014. The IASG will meet whenever appropriate as the review process unfolds, and in any event not less than three times.</p> <p>DG AGRI, DG CLIMA, DG ECFIN, DG ENER, DG ENTR (now DG GROW), DG ENV, DG JUST, JRC, LS, DG MARKT (now DG FISMA), DG MOVE, DG RTD, DG SANCO (now DG JUST), SG have been invited</p>
E. Preliminary Assessment of Expected Impacts
Likely economic impacts
<p>The agreements currently falling under the IBER are declared compatible with the internal market because they are deemed to produce in theory net positive economic effects in terms of better and more accurate risk pricing and increase of available insurance capacity that ultimately produce more effective competition, cost savings and reduction of commercial premiums.</p> <p>A potential non-renewal of the IBER (baseline scenario) will not mean that these agreements are prohibited, nor will it mean that the Commission changes necessarily the compatibility approach in the relevant fields, but only that the relevant agreements may be subject to potential individual scrutiny by competition authorities based on their actual individual effects, instead of being considered upfront as compatible because of their subject matter. If the non-sector-specific guidance currently available on the compatibility of these types of agreements were not sufficient, the Commission might decide where appropriate to complement it to offset any potential impacts in case it decides not to renew the IBER.</p>
Likely social impacts

N.A.
Likely environmental impacts
There is at present on the market cooperation between insurers to pool insurance capacity to jointly cover certain environmental risks. However, the relevant pools, because of their characteristics, appear not to benefit at present from the IBER exemption. Hence, a non-renewal of the IBER is not likely to produce any environmental impacts.
Likely impacts on simplification and/or administrative burden
Even if a BER exists, insurers are not relieved at present from their obligation to carry out a self-assessment whether their cooperation agreements on exchange of information or pooling are compatible with competition rules, in particular under the IBER provisions. If the Commission were to let the IBER lapse, insurers will continue being required to keep self-assessing the compatibility of their relevant agreements on the basis of Article 101 (3) TUE, in combination with Regulation 1/2003. If the non-sector-specific guidance currently available on the compatibility of these types of agreements were not sufficient, the Commission might decide where appropriate to complement it to offset any potential impacts in case it decides not to renew the IBER.
Likely impacts on SMEs
The exchange of information between competitors and the common coverage of risks in the form of pools are deemed, subject to certain conditions, to facilitate entrance of smaller players into the insurance market. The currently available competition guidelines and notices already provide a regime for cooperation between SMEs. Furthermore, as previously explained, the Commission might decide where appropriate to complement the guidance available. Therefore, no negative impacts on SMEs can be anticipated at this stage, if the IBER lapses.
Likely impacts on competitiveness and innovation
At this stage, a potential lapsing of the IBER does not appear to be capable of producing negative impacts on competitiveness and innovation. The currently existing horizontal competition rules' instruments already provide a high degree of legal certainty for cooperation beneficial to competitiveness and innovation. Where necessary, the Commission might decide to complement this framework to offset any potential negative impacts in case it decides not to renew the IBER.
Likely impacts on public administrations
The likely impact on public administrations seems limited.
Likely impacts on third countries, international trade or investment
N.A.