

client alert

COMPETITION | EU REGULATORY | INSURANCE

24 MARCH 2016

The European Commission releases its preliminary report and recommends not renewing the Insurance Block Exemption Regulation

editorial

Richard Ghueldre & Benoît Le Bret
Partners, Gide Paris & Brussels

On 17 March 2016, the European Commission issued its preliminary report on the functioning of the Insurance Block Exemption Regulation (Regulation n° 267/2010, the IBER). This Regulation exempts certain practices from the general prohibition of anticompetitive behaviour set out in Article 101 TFEU, provided they meet the requirements defined by the Regulation.

Two types of restrictions are exempted: (i) agreements between insurers or reinsurers to exchange information in the form of joint compilations, tables and studies; and (ii) the common coverage of certain types of risks by means of coinsurance pools or coreinsurance pools.

The IBER entered into force on 1 April 2010 and is bound to expire on 31 March 2017. Ahead of its expiry, the Commission engaged in 2014 a consultation process, asking stakeholders for their views on the efficiency and the viability of the IBER. National competent authorities as well as insurance sector operators and consumers contributed to this process. On the basis of these contributions, the Commission issued its report on the functioning of the IBER and notified it to the European Parliament and the Council of the European Union.

In this report, the Commission raises two key questions: first whether cooperation among insurers is needed in view of the characteristics of the insurance sector, and second, whether such cooperation still requires a specific legal instrument in the form of a block exemption regulation.

Although the Commission acknowledges the enhanced need for cooperation in the insurance sector, it takes a clear stand against the renewal of the IBER.

This client alert presents the main elements identified by the Commission, its conclusions, as well as the next steps on the IBER.

THE COMMISSION ACKNOWLEDGES THE NEED FOR COOPERATION...

Due to the nature of their activity, insurers need precise statistical information. Without such information, it would not be possible to operate on certain insurance markets. Indeed, an insurer alone may not be in possession of the risk data to assess the risks and calculate appropriate premiums. The Commission briefly mentions the new Solvability II prudential framework, as well as the need to rely on pools to cover certain non-conventional risks. The Commission concludes therefore that the two forms of cooperation set out in the IBER are specific to the insurance sector.

...BUT QUESTIONS THE NECESSITY OF RELYING ON A BLOCK EXEMPTION

In its analysis, the Commission highlights the fact that insurers provided only general remarks regarding the potential impact of a non-renewal of the IBER. The Commission underlines the fact that costs (and the impact on premiums) stemming from a potential non-renewal have not been quantified. In its view, exchanges of information as set out today in the IBER could be addressed via the existing rules, since the 2011 Guidelines on horizontal cooperation agreements mirror the principles established in the IBER.

As far as pools are concerned, the Commission stresses the absence of tangible evidence on the alleged adverse consequences of a non-renewal of the IBER. The Commission refers to a 2013/2014 study on pools and *ad hoc* groups of coinsurance and coreinsurance. First, this study pointed out that there is a heterogeneous practice in the joint coverage of certain types of risks by insurers and reinsurers. Moreover, the study underlined the fact that current cooperation practices between insurers and reinsurers very often do not actually fulfil the criteria established in the IBER, and that alternative forms of cooperation developed outside of the IBER framework. In the light of these elements, the Commission considers that pools have only a very marginal relevance.

TOWARDS A SELF-ASSESSMENT OF AGREEMENTS BETWEEN INSURERS?

The European Commission therefore suggests not renewing the IBER. The Commission clarifies nevertheless that a non-renewal of the IBER would not lead to a general prohibition of all cooperation and agreements between insurers. The Commission suggests replacing the current IBER with the general self-assessment. Such self-assessment would be carried out on a case-by-case basis according to the principles laid out in the 2011 Guidelines on horizontal cooperation agreements. If the IBER exemptions were not renewed, the Commission could still adopt additional guidelines, specifically for the insurance sector, so as to further clarify how to implement this new approach and to provide guidance on the self-assessment mechanism.

Next steps: stakeholder discussions will be take place on 26 April 2016, within the Commission's impact assessment on the IBER. Two additional studies are also under way. On the basis of these elements, the Commission will make its final proposals on the future of the IBER in early 2017.

CONTACTS

BENOIT LE BRET

lebret@gide.com

RICHARD GHUELDRE

ghueldre@gide.com

RUPERT REECE

reece@gide.com

You can also find this legal update on our website in the News & Insights section: gide.com

This newsletter is a free, periodical electronic publication edited by the law firm Gide Loyrette Nouel (the "Law Firm"), and published for Gide's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee. In accordance with the French Data Protection Act, you may request access to, rectification of, or deletion of your personal data processed by our Communications department (privacy@gide.com).