

# Insurance Day

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## Still time to influence EC decision on BER renewal

Below are some other views from the legal world on the European Commission report on the implications of renewing the insurance block exemption regulation (BER)

**STEPTOE & JOHNSON LLP:** Guy Soussan and Yves Botteman, attorneys in the Brussels office of Steptoe & Johnson LLP, say, surprisingly, the report supports renewal of the BER in respect of joint calculations, tables and studies and co-(re)insurance pools. It finds no support for renewal on standard policy conditions (SPCs).

Regarding joint calculations and studies, the European Commission (EC) largely embraces the concerns raised by insurance buyers during the consultation that the BER is necessary to protect smaller players and new entrants against the risk of exclusion by large insurers.

Absent the BER, the latter may not have the necessary incentives to engage in an information exchange under fair and non-discriminatory terms. A second reason for extending the BER is Solvency II.

The EC does not rule out that the new BER will narrow the scope of data exchange or require participation of consumer organisations or private individuals.

On insurance pools, it is expected that the whole regime will be revamped. The report recalls that the BER does not exempt the subscription market, which generated much attention during the sector inquiry.

The commission finds that the BER has mistakenly been used as a "blanket" licence to pool insurance capacity. The commission urges insurers to commit more time and resources to ensure that the organisation, structure and conditions under which they operate comply with the BER.

Rejecting calls from the industry for a more flexible regime, the report engages in a "stick and carrot" approach. On the one hand, the BER will clarify the existing rules and provide additional guidance to insurers. On the other, pools will most likely be subject to stricter conditions, in particular in relation to the market share thresholds and the definition of new risks beyond which self-assessment is mandated.

Finally, the report finds that renewing the BER for SPCs is not necessary. Insurers will therefore have to self-assess the compatibility of their co-operation under the general framework of EC competition rules.

While the current BER may have some value in the next few years, the industry should push for guidance by the commission to facilitate self-assessment and ensure enforcement consistency across the European Union (EU).

At the commission's public hearing on June 2 and subsequently, insurers and stakeholders



The European Commission is making progress on its tortuous way through the BER maze: June 2 may help

should explain whether and how rules on information exchange and pools could be improved.

Whatever form the new BER will ultimately take in both areas, the industry is put on notice that an exemption will most likely be granted at the expense of stricter conditions and, by the same token, heightened scrutiny.