

EU Insurance and Competition Advisory

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New Insurance Exemption Adopted

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By Guy Soussan and Yves Botteman of Steptoe's EU Insurance and Competition Practice

Today, the European Commission adopted a [new insurance block exemption](#) regulation ("BER"). The BER sets forth conditions under which certain forms of cooperation among insurers and reinsurers will benefit from a safe harbour from the application of general EU competition rules. The BER will apply from 1 April 2010 for a period of seven years.

The new safe harbours will require insurers and reinsurers to conduct a fresh assessment of their cooperation. They are given six months to carry out this exercise and, if need be, to adapt their existing practices to the new regime.

Introduction

Following a public hearing in June and a last round of public consultation on a draft insurance block exemption regulation that was completed at the end of November 2009, it was apparent that the existing exemption would undergo significant amendments.

In particular, the Commission would no longer provide a safe harbour to cooperation arrangements on non-binding standard policy conditions. As to the other two forms of cooperation that were previously covered by the block exemption, namely joint compilation of calculations on pure premiums, tables and studies and co-(re)insurance pools, the Commission indicated that renewal of the exemption would be subject to additional conditions.

Below, we provide an overview of the main changes introduced by the new BER.

Exemption of cooperation on joint calculations on pure premiums, tables and studies

The new BER continues to exempt cooperation agreements among (re)insurers, which are intended to generate joint calculations on pure premiums, tables and studies.

The main novelty resides in the fact that consumer or customer organisations may request access to such compilations, tables and studies “under specific and precise terms for duly justified reasons”, except where public security justifies non-disclosure (e.g., nuclear power plants or security of large infrastructures).

New rules for co-(re)insurance pools

In the Communication accompanying the new BER, the Commission confirms that the new rules do not apply to the subscription market (i.e., the so-called ad hoc co-(re)insurance agreements which are commonly used in the London and continental markets). However, the Communication falls short of providing additional guidance on how agreements will need to be appraised under general competition rules.

Under the new rules, the circumstances in which existing co-(re)insurance pools will benefit from the BER’s safe harbour may be fairly limited for the following reasons:

- Similar to the previous regime, pools covering new risks are not subject to a market share ceiling for an initial period of three years. Hence, irrespective of the pool’s share, it benefits from the exemption, albeit for a short period of time. The novelty resides in the fact that the BER broadens the definition of “new risks” to include existing risks whose nature has changed so materially that it is difficult to forecast the required subscription capacity to cover such a risk (e.g., those arising from climate change or from breakthroughs in technological evolution). However, it remains to be seen how this extension of the definition will be reflected in practice.
- As to all other risks, the BER provides that the market share test will apply by including the turnover achieved by each of the members outside of the pool or in a competing pool in the same insurance market. While this approach is consistent with general EU competition rules, it may be expected that existing pools will exceed the threshold more often than under the old BER.

In many cases, pools will fall outside the regime of the exemption. It does not mean that they are automatically illegal. Their compatibility will need to be assessed under general EU competition rules. The individual review will focus on whether any restricting effect resulting from the operation of the pool is outweighed by overriding efficiencies inherent to the pool.

Non-renewal of exemption for standard policy conditions ('SPCs')

The new BER no longer provides for safe harbours in relation to cooperation agreements on standard policy conditions. The Commission indicates, however, that guidance to assess the compatibility of SPCs will be provided in the upcoming horizontal guidelines, a draft of which will be submitted for public consultation in the first half of this year.

Contact

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