

Case Id: 9d7ecd40-966c-493c-860e-f6b40b9f984f

Consultation on the Insurance Block Exemption Regulation



1 Context

1.1 Aim of the public consultation

The Insurance Block Exemption Regulation[1] ("IBER") is a sector-specific legal instrument that allows (re)insurers to benefit from an exemption to the prohibition of anti-competitive arrangements laid down in Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU). At present, the exemption covers two types of agreements between (re)insurance undertakings:

1. Agreements with respect to joint compilations, joint tables and studies; and
2. Common coverage of certain types of risks [co (re)insurance pools].

The insurance sector is one of three sectors[2] that still benefits from a block exemption regulation, since the concept of the direct applicability of the exemption of Article 101 (3) TFEU was introduced with Council Regulation 1/2003. The IBER expires on 31 March 2017 and the Commission will consider whether any parts of it would merit a renewal. In this regard, the Commission is required to submit a report on the functioning and the future of the IBER to the European Parliament and the Council by March 2016. The Commission is therefore gathering views and market information to carry out its assessment.

[1] *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*, OJ L 83, 30.3.2010, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:083:0001:0007:EN:PDF>

[2] *The two other sectors are the maritime liner shipping and the motor vehicle distribution sector, cf. Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:256:0031:0034:EN:PDF>, OJ L 256, 29.09.2009, p. 31, and Commission Regulation No 461/2010 of 27 May 2010 on the application of*

Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF> OJ L 129, 28.05.2010, p. 52

1.2 Target audience of this public consultation

To that purpose the Commission has drawn up the enclosed questionnaire and invites all stakeholders to submit all relevant information on the functioning of the IBER, as well as their views on whether the Commission should renew any of the IBER provisions in a new block exemption regulation. Input from stakeholders will be a key element for the Commission's assessment. The Commission welcomes comments in particular from (re)insurance undertakings, industry associations, insurance intermediaries, public authorities, consumer organisations and customers, as well as competition practitioners, researchers and think tanks. Comments from other stakeholders who have direct experience with the application of the IBER are also welcome.

1.3 Submission of the contribution

You are invited to reply to this public consultation preferably by answering the online questionnaire. To facilitate the analysis of your replies we would kindly ask you to keep your answers concise and to the point - Not all questions need to be answered. You may include documents and URLs for relevant online content in your replies.

Alternatively, you can send your contribution by post to the following address:

European Commission
Directorate-General for Competition
(for the attention of the Antitrust Registry)
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

using the following reference : "HT.4012 Insurance BER Review".

For your information, you have the possibility to save your questionnaire as "draft" and continue replying later. In order to do this you have to click on "Save as Draft" (see end of questionnaire) and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access again and continue replying to your questionnaire.

Your draft has been saved. You can open it again using the following link:

http://ec.europa.eu/eusurvey/Insurance_Block_Exemption_Regulation/management/test/?draftid=f467b83a-98b9-4e31-afcb-4c9756a1ceab

1.4 Confidentiality

In the responses to this questionnaire the identity of the stakeholder should be clearly indicated in the "Profile" section. If available, the ID number of the EU Transparency Register should also be provided (For registration please follow this link <http://ec.europa.eu/transparencyregister/info/homePage.do>). The responses received will be published by the Commission on the internet, unless they are claimed to be treated as "anonymous" or clearly labelled "confidential". In case a stakeholder claims anonymity or confidentiality, a non-confidential version of the response should be provided for publication.

Protection of Personal Data http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

Privacy statement:

Privacy statement.pdf

1.5 Deadline

The consultation runs from 5 August 2014 to 4 November 2014.

Nothing in this questionnaire may be interpreted as stating an official position of the European Commission.

2. Questionnaire

2.1 Stakeholder Profile

1. You are a/an:

- Insurance undertaking
- Reinsurance undertaking

- Industry association
- Insurance intermediary
- Consumer organisation
- Competition practitioner
- Public authority
- Researcher
- Citizen
- Insured entity
- Other

Please specify briefly:

Cefor is a Nordic marine insurance association working to secure our members' interest by promoting quality marine insurance. The members of Cefor engage in: hull and machinery insurance (ocean and coastal), protection and indemnity (P&I) insurance, cargo insurance, loss of hire insurance, legal defence, war risk insurance, offshore energy insurance and builders' risks insurance.

Eligible members are Nordic insurance companies engaged in the said branches of insurance pursuant to the legislation pertaining to insurance companies in the Nordic country where the company has its head office, for foreign insurance companies engaged in the said branches of insurance in one of the Nordic countries, and management companies for such insurance companies.

Cefor currently has members in the following three EU Member States in addition to Norway: Denmark, Finland and Sweden.

2. Contact details

Name:

The Nordic Association of Marine Insurers (Cefor)

ID in the EU Transparency Register:

Your identification number should be formed of 11 or 12 digits, followed by a dash and then 2 digits.

95305551131-75

Contact person:

Helle Hammer

Telephone:

+47 23 08 65 57

Postal address:

POBox 2550 Solli, NO-0202 Oslo, Norway

E-mail:

helle.hammer@cefor.no

3. Are you a Small or Medium sized Enterprise (SME)?

Please note: The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

For further information regarding the definition of enterprise, the calculation of staff headcount and the financial thresholds, please see the Commission Recommendation concerning the definition of micro, *small and medium-sized enterprises*.^[3]

^[3] Commission Recommendation (EC) No 361/2003 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, Council and Commission documents OJ L 124, 20.5.2003, p. 36, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:EN:PDF>

- Yes
 No
 N/A

4. Do you meet the requirements of Article 4 of Directive 2009/138^[4] to be excluded from the Solvency II regime?

^[4] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) OJ L 335, 17.12.2009, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:EN:PDF>

- Yes
 No
 N/A

5. Are you active in more than one State within the EU and/or the EEA?

- Yes
 No
 N/A

6. Which services do you provide?

- a) Non-life insurance
 b) Life insurance
 c) Reinsurance
 d) Other

2.2 Market Developments

7. How would you describe the current competitive situation in the (re) insurance markets with particular regard to the segments where you operate/are concerned with? What are the changes in market structure over the last ten years? Have there been any new entries? Are they greenfield? Have they been facilitated by the IBER?

Strong competition with plentiful capacity within the marine, energy and transport insurance markets.

If you have any further information, please upload it here:

8. Has there been any innovation or market development in the insurance sector in the last ten years that could have had an impact on the (re)insurers' cooperation in the area of joint studies, tables and compilations?

Larger and more expensive risks to insure. This also increases the volatility of claims as one serious incident may result in random fluctuations from one year to another in an individual insurance company's statistics. The joint calculations and tables allowed under the BER even these out and provide a better tool for determining the right premium level and loss prevention actions based on a portfolio approach in which extreme events also are included.

If you have any further information, please upload it here:

9. Has there been any innovation or market development in the insurance sector in the last ten years that could have had an impact on the (re)insurers' cooperation in the area of cooperation in (re)insurance pools?

If you have any further information, please upload it here:

10. Has your business strategy or the way you compete (on price, quality, brand, coverage, etc) in the (re)insurance sector evolved in the last ten years and how? If you are not an (re)insurance undertaking: Are you aware of any developments in the conduct of (re)insurance undertakings during the last ten years which are relevant for the review of the IBER? Please describe and provide examples.

If you have any further information, please upload it here:

11. In your view, did the previous IBER^[5] or does the current IBER contribute to the evolution described under question (10)? Please state the reasons for this.

^[5] Commission Regulation (EC) No 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to

certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 53/8 of 28.2.2003)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:053:0008:0016:EN:PDF%20>

If you have any further information, please upload it here:

12. In your view, did the previous IBER[6] or does the current IBER hamper the evolution described under question (10)? Please state the reasons for this.

[6] Commission Regulation (EC) No 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 53/8 of 28.2.2003)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:053:0008:0016:EN:PDF%20>

If you have any further information, please upload it here:

13. Do you consider that the existence of the IBER has improved your capability to accurately price risks or allowed you to enter any specific insurance segment in which you would otherwise not be active? Has the existence of the IBER provided you with a better footing to penetrate other Member States' markets? Please illustrate your reply with case-specific examples.

If you have any further information, please upload it here:

14. Are there in your view markets that would not exist without the exemptions foreseen in the IBER?

- Yes
- No
- Don't know

If you have any further information, please upload it here:

15. Would premiums be appreciably higher without the IBER exemptions?

- Yes
- No
- Don't know

Please reason your answer and provide examples and data to the extent available.

If you have any further information, please upload it here:

16. Would customer choice and supply diversity be appreciably reduced without the IBER

exemptions?

- Yes
- No
- Don't know

Please reason your answer and provide examples and data to the extent available.

If you have any further information, please upload it here:

17. Do you consider that the IBER protects competition and effective innovation in the insurance sector or not? In your view, does the IBER succeed in creating/maintaining a level playing field? Please reason your answer and give case-specific examples if any.

Published claims statistics through a trade association is available to all insurance undertakings. Hence, it lowers the barriers for entry into new markets and provides a more level playing field both between those already active and those considering a new market.

If you have any further information, please upload it here:

18. Do the recent developments in competition rules, e.g. the Commission Horizontal Guidelines[7], and the recent developments in the relevant national/EU case-law affect your commercial behaviour? Please describe and give case-specific examples.

[7] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, Council and Commission documents OJ C 11, 14.01.2011, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF%20%20>

If you have any further information, please upload it here:

2.3 Application of the IBER in practice

19. Do you make use of the exemptions foreseen in the IBER?

- Yes
- No
- N/A

Please specify whether it concerns:

- Exemption of agreements with regard to joint compilations, joint tables and studies
- Exemption of agreements with regard to common coverage of certain types of risks ("co(re)insurance pools")

Please give case- specific examples on how you make use of the respective exemptions.

By compiling historical claims information in order to produce and publish aggregated statistics on average costs related to various risks (not on an individual basis but rather referring to categories such as groundings, ice etc. / vessel types such as tankers, bulkers etc.)

If you have any further information, please upload it here:

20. Does the IBER affect the business conduct in your daily practice and how? Please describe and give case-specific examples.

If you have any further information, please upload it here:

21. Have you been involved in litigation and/or competition investigations concerning the IBER? Please specify and provide any relevant decisions, reports or other relevant information.

No

If you have any further information, please upload it here:

22. Study on co (re)-insurance pools and on ad-hoc co (re)-insurance agreements on the subscription market:

In 2013 the Commission published a study on co (re)-insurance pools and on ad-hoc co (re)-insurance agreements on the subscription market and a new edition in 2014 (http://ec.europa.eu/competition/sectors/financial_services/KD0414707ENN.pdf). It provides among other an overview of co (re)-insurance pools after the adoption of the new BER. Following the study the Commission held a workshop in March 2013 where the findings of the study were presented and discussed.

Below we present some of the findings of the study and the workshop concerning the IBER and would appreciate your feedback:

The study reports that "There are uncertainties as to definition, with a risk of mismatch between industry perceptions of pools and the intentions of the BER, which may indicate a need for clarification: these affect both the identification of pools themselves and the definition of the relevant market. There are also questions as to the boundaries of the definition where pool-like arrangements are set up by parties other than insurers, particularly intermediaries, which may warrant study outside the scope of this report."

Do you share this view or not? Please explain why and how the following could be improved?

(i) definition of "pools";

(ii) determination of the relevant market.

If you have any further information, please upload it here:

23. Do you encounter any difficulties in applying the IBER rules? Please explain and provide case-specific examples.

If you have any further information, please upload it here:

2.4 Policy options

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

- (i) Non-renewal of the IBER
- (ii) Partial renewal
- (iii) Renewal of the current IBER

Which one of the abovementioned options is in your view justified for objective reasons and better suited for improving the functioning of the insurance markets, stimulating product innovation and increasing consumer's choice in any specific insurance segment?

- Non-renewal
- Partial renewal: renewal of the exemption for cooperation in the area of joint studies, tables and compilations
- Partial renewal: renewal of the exemption for cooperation in (re)insurance pools
- Do not have a view

Please provide a detailed reasoned argumentation for your position.

If you have any further information, please upload it here:

25. Are there in your view other options which the Commission should consider?

If you have any further information, please upload it here:

26. The existence of a block exemption does not relieve undertakings from their obligation to carry out a self-assessment on the admissibility of their cooperation under competition rules.

If the Commission would not renew the IBER, insurers would have to carry out the self-assessment of their cooperation in information exchange and joint commercialisation under the principles of the horizontal cooperation guidelines, instead of under the provisions of the IBER.

Do you consider that sector-specific regulation such as the IBER is necessary for the insurance sector? If so, which distinct features of the insurance market would make a sector-specific block exemption regulation necessary in the current enforcement system where Article 101 (3) TFEU is directly applicable by virtue of Article 1 of Council Regulation (EC) No 1/2003 and where guidance is provided by means of appropriate horizontal instruments?

Please reason your answer and give case-specific examples.

If you have any further information, please upload it here:

27. Were there any developments over the last years that affect the IBER and would require in your view a change in the rules? What are these developments and the necessary ensuing changes? Please explain and provide specific examples.

If you have any further information, please upload it here:

28. Can you provide examples of specific conduct of undertakings that currently fall within the scope of the IBER but which in your view should no longer be subject to a block exemption? Please provide specific reasons for your answer.

If you have any further information, please upload it here:

29. Can you provide examples of behaviour that currently fall outside but which in your view should fall inside? Please provide specific reasons for your answer.

If you have any further information, please upload it here:

2.5 Impacts

For each of the different changes in your conduct and ultimate impacts on the market that you will identify in the answers to the questions contained in this section, please rate their importance according to the following scale: Slight, Moderate, Appreciable.

30. In your view, does the IBER provide additional substantial legal certainty to (re)insurance undertakings on top of the (directly applicable) exemption of Article 101(3) TFEU and the guidance given by the Commission on horizontal cooperation agreements?

- Slight
- Moderate
- Appreciable

Please reason your answer:

If you have any further information, please upload it here:

31. If the IBER was not renewed, would your compliance costs increase?

- Slight
- Moderate
- Appreciable

Please reason your answer and provide a detailed description of such costs compared with those you already incur for your self-assessment, as well as an estimate of their value.

If you have any further information, please upload it here:

32. If the IBER was not renewed, would your compliance costs decrease?

- Slight
- Moderate
- Appreciable

Please reason your answer and provide a detailed description of such costs compared with those you already incur for your self-assessment, as well as an estimate of their value.

If you have any further information, please upload it here:

33. What would be the changes in your conduct if the cooperation between insurers in joint compilation, tables and studies were assessed exclusively under the provisions on information exchange of the Commission guidelines on horizontal co-operation agreements[8]?

Please elaborate on the changes, using a separate box and rating per change you identify.

[8] *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF%20>*

Change 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Change 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Change 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

34. What would be the changes in your conduct if the cooperation between insurers in pools were assessed exclusively under the provisions on commercialisation agreements of the Commission guidelines on horizontal co-operation agreements[9]? Please elaborate on the changes, using a separate box and rating per change you identify.

[9] *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF%20>*

Change 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Change 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Change 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

35. What would be the impacts on the relevant markets of the above-mentioned changes in your conduct if the cooperation between insurers in joint compilation, tables and studies were assessed exclusively under the provisions on information exchange of the Commission guidelines on horizontal co-operation agreements[10]? Please elaborate on the impacts, using a separate box and rating per impact you identify.

[10] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF%20>

Impact 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 2

- Slight

- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

36. What would be the impacts on the relevant markets of the above-mentioned changes in your conduct if the cooperation between insurers in pools were assessed exclusively under the provisions on commercialisation agreements of the Commission guidelines on horizontal co-operation agreements[11]? Please elaborate on the impacts, using a separate box and rating per impact you identify.

[11] Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, p. 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF%20>

Impact 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

37. What are in your view the overall likely impacts of each of the policy options mentioned in Section "2.4 Policy options" above? Are they likely to induce any specific changes in business practices or impact consumers? Please explain the likely economic effects of such changes in terms of competition, market structure, supply, entry barriers, competitiveness of smaller insurers, customers, level of customer mobility, social and environmental impacts, etc. Please elaborate on the impacts, using a separate box and rating per impact you identify.

Non-renewal**Impact 1**

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

Partial renewal: renewal of the exemption for cooperation in the area of joint studies, tables and compilations

Impact 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

Partial renewal: renewal of the exemption for cooperation in the (re)insurance pools

Impact 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

Renewal:

Impact 1

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 2

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

Impact 3

- Slight
- Moderate
- Appreciable

Please elaborate:

If you wish to comment on more than 3 changes, please create a document and upload it.

If you have any further information, please upload it here:

38. Please rate the importance of the likely overall impact of each of the policy options mentioned in Section "2.4 Policy options".

Non-renewal

- Slight
- Moderate
- Appreciable

Partial renewal: renewal of the exemption for cooperation in the area of joint studies, tables and compilations

- Slight
- Moderate
- Appreciable

Partial renewal: renewal of the exemption for cooperation in (re)insurance pools

- Slight
- Moderate
- Appreciable

Renewal

- Slight
- Moderate
- Appreciable

If you have any further information, please upload it here:

2.6 Other information / views

39. Please provide any other information and/or views which you consider relevant for the Commission's review of the functioning and future of the IBER. Please provide any relevant

documents, e.g. complaints, decisions, market studies, administrative practice, court cases and/or arbitration awards, scientific research, workshop reports, etc.

If you have any further information, please upload it here:

40. Please point out any specific competition rules, administrative practice or jurisprudence in non-EU jurisdictions concerning the insurance sector which the Commission in your view should also consider.

If you have any further information, please upload it here:

Contact

COMP-IBER-REVIEW@ec.europa.eu
