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# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## On the functioning of Commission Regulation (EU) No 267/2010 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

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**On the functioning of Commission Regulation (EU) No 267/2010 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**

## 1. INTRODUCTION

1. Pursuant to Article 101(3) of the Treaty on the Functioning of the European Union (TFEU), agreements between undertakings that restrict competition within the meaning of Article 101(1) TFEU may be declared compatible with the internal market if they contribute to promoting technical or economic progress or to improving the production or distribution of goods while allowing consumers a fair share of the resulting benefit, provided that the restrictions are limited to what is strictly necessary (principle of proportionality) and that they do not eliminate competition in respect of a substantial part of the relevant product market.

2. By Regulation (EEC) No 1534/91[1] (the Empowering Regulation), the Council empowered the Commission to adopt regulations on the application of Article 101(3) TFEU to certain types of agreement between undertakings, decisions of associations of undertakings and concerted practices in the insurance sector. On 24 March 2010, on the basis of the Empowering Regulation, the Commission adopted Regulation (EU) No 267/2010[2] (the Insurance Block Exemption Regulation (IBER)) exempting two categories of agreement in the insurance sector.

3. Subject to certain conditions, the IBER exempts agreements between (re)insurers to exchange information in the form of joint compilations, tables and studies, and the common coverage of certain types of risk by means of 'co-(re)insurance pools'. The current IBER entered into force on 1 April 2010 and will expire on 31 March 2017. It aims to ensure effective protection of competition while providing benefits to consumers and adequate legal security for undertakings.

4. Pursuant to Article 8 of the Empowering Regulation, the Commission must submit a report on the functioning and future prospects of the IBER no later than six years after its entry into force.

5. The insurance sector is one of three sectors (the other two being maritime liner shipping and motor vehicle distribution) that still benefit from a block exemption regulation (BER). There have been other sectors (such as maritime and air transport) for which the relevant BER was not renewed. The first insurance block exemption regulation was adopted in 1992 and renewed twice, with amendments, in 2003 and 2010. In particular, in 2010 the Commission reduced the number of categories of

[1] OJ L 143, 7.6.1991, p.1.

[2] OJ L 83, 30.3.2010, p. 1.

exempted agreements from four to the current two and adopted a Communication providing guidance on the application of the IBER (the IBER Communication).[3]

6. The Commission is carrying out a full impact assessment of possible policy options before the current IBER lapses: non-renewal, partial renewal (one exemption only and/or renewal with amendments) and renewal.[4]

7. A formal review of the use and functioning of the IBER started in February 2014, with the national competition authorities (NCAs)[5] being consulted by means of a questionnaire, followed in May 2014 by the publication of a roadmap. A meeting with the NCAs took place in June 2014. A public consultation was carried out from August to November 2014 and in December 2014 complementary targeted questionnaires were sent to pools, customers, intermediaries' federations/brokers and mutual insurance associations. From November 2014, bilateral meetings and telephone conferences were held with specific stakeholders, notably national insurance associations and pools.

8. The purpose of this Report is to present the Commission's preliminary views on the functioning and future prospects of the IBER at this stage. In no way does this prejudge the Commission's final decision following completion of the impact assessment. The report is one step in a comprehensive consultation process to which all stakeholders are invited to contribute. It should be read in conjunction with the accompanying Commission staff working document,which sets out in more detail the Commission staff views on the points made here.

9. The review will continue until early 2017 and the conclusion of the impact assessment. The Commission has commissioned two studies on issues pertaining to the functioning of the IBER that stakeholders have raised in the context of the consultation: supply-side substitutability in insurance and the effects of the different forms of co-(re)insurance available on the market.[6] These studies will contribute to the comprehensive overview of the market on the basis of which the Commission will make its final proposals on the future of the IBER.

## 2. MAIN FINDINGS AND ASSESSMENT

10. In order to assess the functioning of the IBER and later determine whether it should be renewed and, if so, to what extent, the Commission sought to address two basic and related questions:

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3 Commission *Communication 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. 2).

4 Details of this process are set out in the relevant impact assessment inception form: http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_comp_001_review_iber_en.pdf.

5 The NCAs of the 28 EU Member States and the EFTA Surveillance Authority.

6 http://ec.europa.eu/competition/calls/tenders_open.html.

*Question 1: Is the insurance sector still characterised by distinct features that present a heightened need for cooperation in the fields in which the remaining IBER exemptions apply?*

*Question 2: If so, is an exceptional instrument such as a BER still needed in order to protect that enhanced need for cooperation?*

11. The public consultation in 2014, and the subsequent evidence-gathering, were structured and carried out so as to answer these two questions and to support the upcoming impact assessment of policy options for the future of the IBER.

12. In May 2015, the European Commission adopted a new Better Regulation approach aimed at more systematic and transparent consulting of stakeholders, improved impact assessments and drawing lessons learned from past experience. Given that the work on the IBER review started already in early 2014, the process did not follow all the steps set out in the new Better Regulation Guidelines. However, the Review has been conducted in an open, transparent manner and key elements of retrospective evaluation have been respected. Thus, the analysis of the enhanced need for cooperation has allowed the Commission to look at the relevance, while the analysis of the need for a BER has taken into account the coherence, efficiency and effectiveness of such an approach.

13. The main findings at this stage in the review process and their assessment are set out below:

**(a) Enhanced need for cooperation**

Information exchange: compilations, tables and studies

14. Subject to certain conditions, Article 2(a) of the IBER exempts agreements between undertakings in the insurance sector which relate to *'the joint compilation and distribution of information necessary for the following purposes: (i) the calculation of the average cost of covering a specified risk in the past (hereinafter compilations); and (ii) construction of mortality tables, and tables showing the frequency of illness, accident and invalidity in connection with insurance involving an element of capitalisation'*. Article 2(b) exempts, also subject to certain conditions, *'the joint carrying out of studies on the probable impact of general circumstances external to the interested undertakings, either on the frequency or scale of future claims for a given risk or risk category or on the profitability of different types of investment and the distribution of the results of such studies'*.

15. In order to price risks, insurers generally seek to reduce the disparity between the real value of claims, on the one hand, and the premiums paid by the insured, on the other. Insurance is a product that covers future risks, the cost of which is unknown when the insurance contract is concluded. Consequently, the availability of adequate and accurate past statistical information on the actual cost of risk classes is crucial to operations in various segments of the insurance business. Moreover, it appears that no

one insurer is in possession of sufficient statistical risk data to carry out such calculations accurately.

16. By exchanging information in the form of joint compilations, tables and studies, insurers are able to collate more reliable statistics and develop a better understanding of the insured risks. This understanding allows them to rate risks more reliably and, as a result, to reduce mark-ups and ultimately the prices paid by consumers. The exchange of past statistical data is thus conducive to the efficient functioning of the insurance sector. Furthermore, by undertaking such studies jointly, insurers become more aware of the likely future development of the risks in question. This reasoning cannot be applied to the joint carrying out of studies on the profitability of different types of investment. Firstly this category is not covered by the 1991 Empowering Regulation. In addition, the profitability of investments is unrelated to the knowledge of an insured risk or to the formulation of risks premiums. In fact, the analysis of alternative investment decisions is not exclusive to the insurance sector but common to all undertakings regardless of sector.

17. The Solvency II Directive on insurance and reinsurance[7], which came into effect on 1 January 2016, sets out stricter risk-capital requirements and obliges (re)insurers to calculate 'best-estimate' liabilities, thus potentially heightening the need for insurers to maintain more precise and accurate information on risks in order to calculate sufficient reserves in their balance sheets.

Common coverage of certain types of risk (pools)

18. Article 5 of the IBER exempts agreements for the setting-up and operation of pools of insurance undertakings (co-insurance pools) or of insurance undertakings and reinsurance undertakings (co-reinsurance pools) for the common coverage of risks, subject to certain conditions, in particular that they do not exceed a certain market share (20 % for the former and 25 % for the latter). In addition, Article 6 exempts co-(re)insurance pools covering new risks for three years from the date of first establishment.

19. At this stage, evidence gathered during the review indicates that insurers often need to cooperate in order to cover certain large unconventional risks relating, in particular, to terrorism, nuclear power production and environmental protection, where the size and spread of risks render them more difficult or impossible to insure individually, as opposed to smaller and more conventional risk classes, such as motor vehicle and life insurance, where insurers usually underwrite risks independently. Where the nature of the risk is such that no one insurer can provide the necessary capacity, co-(re)insurance allows insurers to cover a sufficient number of risks so that the risk profile of the portfolio corresponds to the totality of the relevant risk category.

20. Indications to date are that, over the last decade, the insurance market has developed more competitive ways of co-(re)insuring risks, such as broker-led co-(re)insurance or line-slips. These are viable alternatives to the institutionalised co-(re)insurance pools

[7] 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 (OJ L 335, 17.12.2009, p. 1).

exempted by the IBER. In addition, insurance is not the only sector in which undertakings tend to cooperate on specific large projects to spread the costs and risks involved (this also applies, for example, to large construction projects).

21. However, in sum this finding may not entirely negate the existence of a more general enhanced need to cooperate in order to cover large unconventional risk categories in the insurance sector.

Conclusion

22. Accordingly, the Commission's view at this stage is that the two forms of cooperation covered by the IBER appear to be specific to the insurance sector, with the excepction of studies on the profitability of their different types of investment. Therefore, whether there are objective reasons to keep the rules set out in Chapter II or III of IBER in place depends in the end on whether either categories of agreements, decisions and concerted practices addressed in those Chapters need to be protected by an exceptional legal instrument such as a BER or whether appropriate guidance would suffice.

**(b) Necessity of a BER**

Information exchange: compilations, tables and studies

23. In the public consultation, in order to carefully gauge the effects of the potential non-renewal of the IBER exemption, the Commission invited stakeholders to give a detailed account of potential concrete changes to their business conduct and to quantify, or at least rank, the additional costs they would incur as a result and the ultimate impact on premiums. However, the vast majority of stakeholders failed to quantify the anticipated impact of non-renewal, limiting themselves to general observations about the potential effects of less cooperation.

24. Those stakeholders (namely insurance companies and associations of insurers) who took a view on the future of the exemption for joint compilations, tables and studies were in favour of maintaining it, but provided only general arguments to support this view. For instance, a number of them claimed that non-renewal would create legal uncertainty as to the admissibility of cooperation and that the Commission's current Horizontal Guidelines[8] do not provide appropriate guidance for self-assessment (because they do not take sufficient account of the distinguishing characteristics of the insurance sector).

25. According to the respondents, this perceived lack of legal certainty would have several negative effects, including higher compliance costs and, potentially, less cooperation. These stakeholders also suggest that bigger incumbents who may not need additional statistical data to rate risks accurately could be discouraged from sharing this information with smaller insurers and potential new entrants, who face greater difficulties in estimating risks due to their limited or non-existent market presence. This could diminish competition and harm consumers' interests. In their view, the

[8] *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements*; Commission Communication 2011/C 11/01 (OJ C 11, 14.1.2011, p. 1).

IBER requirement that anonymised and aggregated statistical information on risks be made available on reasonable, affordable and non-discriminatory terms ensures a level playing-field between smaller and bigger insurers, and facilitates market entry.

26. These stakeholders also claim that, if less risk information were available, this could reduce confidence in insurers' compulsory 'best-estimate' calculations of their liabilities and lead to more provisions to build up sufficient reserves for uncertainties and contingent liabilities.

27. However, the Commission finds that appropriate guidance exists to ensure the benefits of information exchange.

28. The Commission's Horizontal Guidelines, adopted after the entry into force of the IBER, have a specific chapter on information exchange agreements. This sets out principles that are fully applicable to the insurance sector and provide a good basis for carrying out a self-assessment of the admissibility of the joint creation and distribution of compilations, tables and studies.

29. The Guidelines explicitly recognise that *'[e]xchanges of genuinely aggregated data, where the recognition of individualised company-level information is sufficiently difficult, are much less likely to lead to restrictive effects on competition than exchanges of company level data'.*[9] Furthermore, *'[c]ollection and publication of aggregated market data (such as sales data, data on capacities or data on costs of inputs and components) by a trade organisation or market intelligence firm may benefit suppliers and customers alike by allowing them to get a clearer picture of the economic situation of a sector. Such data collection and publication may allow market participants to make better-informed individual choices in order to adapt efficiently their strategy to the market conditions. More generally, unless it takes place in a tight oligopoly, the exchange of aggregated data is unlikely to give rise to restrictive effects on competition'.*[10]

30. In addition, the Guidelines acknowledge that *'[e]xchange of consumer data between companies in markets with asymmetric information about consumers can also give rise to efficiencies. For instance, keeping track of the past behaviour of customers in terms of accidents or credit default provides an incentive for consumers to limit their risk exposure. It also makes it possible to detect which consumers carry a lower risk and should benefit from lower prices. In this context, information exchange can also reduce consumer lock-in, thereby inducing stronger competition. This is because information is generally specific to a relationship and consumers would otherwise lose the benefit from that information when switching to another company. Examples of such efficiencies are found in the banking and insurance sectors, which are characterised by frequent exchanges of information about consumer defaults and risk characteristics'.*[11]

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9 Paragraph 89.

10 Paragraph 89.

11 Paragraph 97.

31. The Guidelines protect the existence of this type of cooperation in the insurance sector. The principles mirror those in the IBER and exempt the exchange of information between insurers. Therefore, were the IBER to be discontinued, there would already be equivalent Commission guidance in place to help insurers to self-assess the admissibility of their cooperation. For the same reason, a compliance assessment by national insurance federations, which are at present the main intermediaries for compiling and disseminating risk data, should not bring about a significant change in compliance costs under the Horizontal Guidelines. The relevant federations and intermediaries are obliged, in the framework of the IBER and Regulation 1/2003[12], to ensure that the collection and dissemination of risk data in the form of compilations, tables and studies comply with these substantive provisions.

32. Also, in terms of incentives, the alleged risk of less cooperation on joint compilations, tables and studies if the relevant Chapter of the IBER is not renewed appears to be very low. If cooperation in this area is as indispensable to the insurance industry as maintained by insurance companies in the public consultation, the argued essential need for cooperation is highly unlikely to be outweighed by any reduction in legal certainty as a result of the exemption lapsing.

33. Therefore, at present the need for the continued existence of a BER for joint compilations, tables and studies is questionable, especially when there are alternative guidance instruments (including a Communication) that could be used to complement the relevant provisions of the Horizontal Guidelines, if appropriate. In conclusion, the Commission considers that the need for a specific BER to ensure the proper functioning of the sector and to foster certain types of information exchange is questionable.

Common coverage of certain types of risk (pools)

34. The stakeholders responding to the public consultation (mainly insurance companies and their associations) generally claimed that letting the pools exemption lapse would result in a reduction of legal certainty on the admissibility of cooperation in the form of pools which, in turn, would increase compliance costs for insurers and result in undue caution with regard to the conclusion of certain pooling agreements. It is alleged that this could lead to insurers charging higher premiums and, in some cases, even to the dissolution of existing pools, in particular in the area of aggravated and catastrophic risks, which could mean that certain co-insurance products are discontinued, to the detriment of consumers.

35. However, the participating stakeholders have failed to provide concrete evidence to substantiate these general statements on the alleged negative effects of a potential non-renewal of the pools exemption. Certain sections of the consultation questionnaire asked for a detailed explanation of changes in business conduct as a result of non-renewal and were designed to quantify and rate the ensuing effects on costs and prices; however, these remained unanswered by the vast majority of respondents.

[12] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

36. Prior to the launch of the public consultation, the Commission published a study on co-(re)insurance pools and *ad hoc* co-(re)insurance agreements on the subscription market.[13] This was based on interviews carried out throughout the EU-27. Based on the definition in the IBER, only 46[14] active pools were identified across the entire EU. The study concluded that *'[m]any pools are established to cover catastrophic risk (nuclear, environmental, terrorism) but are not the sole alternative for such risks, as insurance markets and other mechanisms, such as state-guaranteed insurers, also cover some of these risks. Alongside such pools for major risks, other arrangements between insurers exist to deal with risks that the insurance market does not want, or to take advantage of a market niche where insurers combine to provide capacity in the subscription market'.*[15]

37. The number of pools found was significantly lower than initially expected. Of 100 arrangements allegedly considered as being covered by the IBER definition, 39 were eventually excluded from the scope of the study following interviews.[16] The remaining 61 pools were considered to potentially fit the definition, but 15 of these were found to be no longer operative, i.e. in 'run-off'.[17] Almost a quarter of IBER pools had therefore decided to leave the market, further reducing the number that would fit the definition.

38. Regarding the use of the pools exemption, the study also indicated that[18] *'[r]esponse rates to questions relating to self-assessment, relevant market and market shares were disappointing. Some of these pools had not conducted a full self-assessment because they considered themselves exempted for covering new risks or they were confident that their market share was below the 20 % threshold. Overall, awareness of the insurance BER appeared mixed, though those pools that had reassessed their position since the issue of the new BER did not report a change in their compliance status'.*

39. The study showed that[19] *'[t]here are uncertainties as to the 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 where pool-like arrangements are set up by parties other than insurers, particularly intermediaries, which may warrant study outside the scope of this report'.*

40. The study also found that *'the functioning of pools is heterogeneous and each pool requires assessment on its individual merits'.*

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13 *Study on co(re)insurance pools and on* ad hoc *co(re)insurance agreements on the subscription market*; http://ec.europa.eu/competition/sectors/financial_services/KD0414707ENN.pdf.

14 47 at EU-28 level.

15 See Executive Summary of the study, p. ii.

16 See p. 13, para. 59 and p. 309, Table 2.

17 See Executive Summary (p. ii), p. 41, para. 162 and Table 13.

18 See Executive Summary, p. iii

19 See Exectuvir Summary, p. iii

41. The results of the study were discussed in a workshop with stakeholders in March 2013, which confirmed the main findings:

    - forms of cooperation that differ from pools, but play a similar role, already exist on the co-(re)insurance market;
    - there tends to be a lack of clarity on the market as to which of these forms constitute co-(re)insurance pools within the meaning of the IBER and could therefore benefit from the pools exemption;
    - the product and geographical definition of the markets in which the pools are active, and the definition of new risks under the IBER, may not be clear for all market participants; and
    - although market participants think that pools are still necessary for certain risks, they acknowledged that the market could be moving towards more flexible and pro-competitive co-(re)insurance solutions.

42. Article 5 of the IBER stipulates that pool agreements are exempted in respect of the setting-up and operation of pools. The Commission's decisional practice[20] distinguishes between 'setting-up' and 'operation' (functioning). As regards the former, the Commission considers that the mere fact that a pool might be necessary is not sufficient reason to conclude that it does not distort competition. The Commission then looks into the functioning of the pool, examining whether any additional arrangements entered into by its members for its operation are indeed purely ancillary to, and thus necessary for, its functioning. In several cases,[21] the Commission has taken the view that a pool cannot be compatible in overall terms if its viability could be ensured under less restrictive operational conditions; this remains the compatibility standard applied today.

43. The submissions on market trends collected during the review indicate that current cooperation between (re)insurers in order to co-(re)insure risks is very heterogeneous and by no means reliant on the institutionalised pools exempted by the IBER. The review shows a significant, and growing, market trend away from institutionalised pools formed on insurers' own initiatives and towards more pro-competitive forms of cooperation between (re)insurers.

44. These alternative co-(re)insurance arrangements are frequently set-up by intermediaries/brokers who build insurance lines or insurance packages on their own initiative, or at the request of a customer or insurer, often by means of tendering, to meet specific needs. Unlike the traditional institutionalised pools, these more competitive forms of co-(re)insurance are not covered by the IBER, although it could

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[20] *P&I Clubs Decision in 1985 (Cases 30373 and 37143); Assurpol Decision; TEKO Decision; Lloyd's/ILU Decision; four comfort letters for nuclear pools, Svenska Atomförsäkringspoolen (Case COMP/37.363), Pool Italiano Rischi Atomici (Case COMP/34.985), and Aseguradores Riesgos Nucleares (Case COMP/34.558), see XXXIst Report on Competition Policy 2001, para. 203, and Deutsche Kernreaktorversicherungsgemeinschaft (DKVG) (Case COMP/36.053), see XXXIInd Report on Competition Policy 2002, p. 218. See also Commission Staff Working Document accompanying the Report on the IBER from 2009 (SEC(2009) 364), para. 125.* .

[21] For instance, *Assurpol* (OJ L 37, 14.2.1992, p. 16) and *P&I Clubs* (OJ L 125, 19.5.1999, p. 12).

be argued on account of their characteristics that they are more likely to produce shared efficiencies. Such alternative co-(re)insurance arrangements put insurers in competition with each other to varying degrees, depending on the level of coordination between insurers permitted by the intermediary/broker or customer in the course of the negotiations. Since the pools exempted by the IBER are therefore not without alternatives and less restrictive, more pro-competitive means of co-(re)insurance are evidently available, it seems doubtful that the current IBER sufficiently protects effective competition in this field while providing benefits to consumers.

45. The feedback received during the review on the competitive situation was mixed. The majority of insurers and associations claim that markets are competitive. However, the only customer who replied to the public consultation was of the opinion that the existence of pools meant that the market for nuclear risk insurance was not competitive. This view was shared by respondents to a targeted questionnaire sent to customers in the energy sector after the public consultation, all of whom were of the opinion that the IBER had a negative impact when it comes to negotiating premiums.

46. Hence, following an in-depth assessment of the information gathered in the course of the review, the Commission considers at this stage that the general exemption of pools may not be in line with the strict conditions for the creation of an exceptional instrument such as a BER. A BER for a certain category of agreement is justified only when it can be presumed with sufficient certainty that the category genuinely produces benefits that are shared fairly with consumers. The exempted restrictions also have to be indispensable, i.e. it would be impossible to achieve the objectives of the cooperation in a manner that is less restrictive of competition. This assessment of proportionality is delicate and can be carried out only through an individual self-assessment of the functioning of the pool and its effects.

47. Accordingly, in the current market circumstances and in the light of the information available on the use and functioning of the IBER, the Commission considers at this stage that it can no longer be presumed that the restrictive pooling agreements that it covers fulfil the four compatibility conditions laid down in Article 101(3) TFEU.[22]

48. Moreover, the current pools exemption appears to have marginal use-relevance in the co-(re)insurance field. The information available from the review indicates that, in any event, the exemption applies to a limited proportion of the co-(re)insurance market only, mainly catastrophic or aggravated risks. The Commission's study on co-(re)insurance pools identified relatively few (only 46) institutionalised pools that are potentially covered by the IBER exemption. Furthermore, at this stage the review indicates that little use is made of the current exemption, since a significant proportion of the potential beneficiaries declared that they consider themselves outside the scope of the IBER. In particular, two of the four pools that responded to the public consultation and 20 (i.e. two thirds) of the pools that responded to subsequent questionnaires sent to a larger set of pools argued that they do not need the IBER exemption because their cooperation does not restrict competition from the outset.

[22] See paragraph 1.

49. Furthermore, the review also indicates that there are serious concerns about the efficacy of a BER for pools in the insurance sector. The emergence in the insurance market of very heterogeneous and complex settings for co-(re)insuring risks, together with the intrinsic difficulties of defining relevant markets and calculating market shares in the sector, makes it very difficult to determine whether the 'restrictive and clear-cut legal criteria' for the creation of a BER are satisfied. The observations of some stakeholders show that the definition of 'pool' is ambiguous and imprecise, or that it is not clear how to define the relevant markets in insurance. If an exemption is difficult to use, because the two elements that are decisive for its application are uncertain, there must be serious doubts as to whether it is suitable, or justified at all.

## 3. CONCLUSIONS AND PROPOSALS

50. For the reasons set out above, the Commission considers that, although there are indications of an enhanced need for cooperation in the insurance sector in relation to the compilation and distribution of joint calculations, tables and studies, and the co-(re)insurance of specific types of risk, the strict conditions for the creation of a sector-specific BER with respect to these categories of agreement seem no longer to be met.

51. With respect to the compilation and distribution of joint calculations, tables and studies, the added value of a specific block exemption is questionable. The Commission's view at this stage is that the functioning of the insurance industry no longer appears to require an IBER. The Horizontal Guidelines already offer guidance on self-assessing the admissibility of this type of cooperation. Also, the Commission can, if necessary, provide specific guidance, which is an alternative and far more flexible instrument that can be more easily adapted to changing circumstances.

52. With respect to co-(re)insurance pools, the Commission's preliminary view at this stage is that renewal of the IBER is not justified, because of its limited use and relevance and the concrete risks of misapplication. For such an exemption from competition rules to be put in place, the Commission must be able to presume with sufficient certainty that the type of cooperation that it covers satisfies all the necessary conditions for a finding of compatibility with the internal market, especially in terms of effectiveness and efficiency, bearing in mind that the insurance market currently provides a heterogeneous and less restrictive set of alternatives to pools for the purpose of co-(re)insuring risks, potentially in more competitive conditions.

53. It should be noted that the lapsing of the exemption for pools would not mean that they would be prohibited, but that they would be assessed under the same competition rules as other sectors.

54. Thus, the Commission considers at this stage that a case-by-case, self-assessment on the basis of its Horizontal Guidelines, will ensure that they produce net positive effects for consumers and competition within the meaning of Article 101(3) TFEU.

55. It should be noted that all findings and conclusions in this report are preliminary and subject to the Commission's ongoing assessment and discussions with stakeholders. This process will culminate in the presentation of an impact assessment report early 2017.

56. If the IBER exemptions are not renewed, the Commission may decide to adopt additional guidance (in place of the current IBER Communication that will become obsolete once the current Regulation lapses) on the principles of self-assessment for agreements that will no longer benefit from a BER.

57. Following publication of this report, the Commission intends to organise a stakeholder discussion on its preliminary conclusions as part of the impact assessment process.

58. The Commission also intends to publish and, where necessary, discuss with stakeholders the conclusions of the two current studies on issues pertaining to the functioning of the IBER.