



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.

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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-98b9-4e3

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:

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies – the national insurance associations – Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of more than €1 110bn, employ almost one million people and invest over €8 500bn in the economy.

2. Contact details

Name:

Insurance Europe

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.

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Contact person:

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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

Please specify in how many States and in which:

Through its national associations, Insurance Europe represents (re)insurance undertakings active in a single member state of the EU and the EEA, and (re)insurance undertakings active in several member states within the EU and/or the EEA.

6. Which services do you provide?

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

Please Specify what other services:

Through its national associations, Insurance Europe represents (re)insurance undertakings providing non-life insurance, life insurance and reinsurance.

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?

Statistics about developments in the European insurance market are available on the Insurance Europe website (<http://www.insuranceeurope.eu/publications/statistics>).

Insurance Europe's members have reported a number of positive developments enabled by the IBER over the past years concerning the competitive situation in their market and the market structure, including new entries. For example:

- In Italy, the (re)insurance market has become more and more competitive over the last ten years, particularly for motor third-party liability (MTPL), which is the largest class of non-life business.

According to the National Institute of Statistics, the MTPL tariffs have decreased continuously for 22 consecutive months since November 2012. In addition, the duration of the insurance cycle in MTPL has been progressively decreasing since the tariff's liberalisation in 1994 from 7-8 years to, recently, 2-3 years, demonstrating strong competition in the local market.

Moreover, the number of foreign insurance undertakings active in the Italian market has increased by almost 70% from 2003 to 2013, as the number of foreign branches operating in Italy went up from 60 to 100, showing again that the local market is both open and attractive.

The entry and the maintenance of these foreign (and new) insurance branches have been facilitated by the IBER as they were provided with technical data collected by the Italian insurance association (ANIA) facilitated by the exemption on joint compilations, tables and studies.

ANIA has provided statistical data in large classes of business, such as MTPL, as well as smaller classes, such as personal accident insurance, allowing small undertakings and foreign companies to both enter and remain in the Italian market.

- In Malta, a number of new entrants have benefited from the national insurance association's (MIA) joint compilations - without contributing to them. Over the past five years, this has provided them with access to the local general insurance market. These new entries have fostered competition, in particular in the motor insurance market, despite the fact that the loss ratio has deteriorated.

- In the Netherlands, the Dutch insurance association (VVN) has been compiling data from public services and several insurance undertakings in relation to workmen's compensation insurance for about 10 years. This has permitted several insurance undertakings to become and remain active on this market. Without these joint compilations, these undertakings would not have been able to obtain sufficiently representative and reliable data on their own.

- In France, the Economy and Finance Ministry commissioned a report on retail insurance (home and motor insurance) that was published in 2011. The report highlights (i) new entries, (ii) a highly competitive concentration index, and (iii) strong competition based on tariffs (pp 37 and 38). The report can be found here:

<http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/114000047/0000.pdf>

The share of banks as a distribution channel for these retail non-life insurance lines has increased over the last 10 years, from 5.6% for motor insurance and 9.7 % for home insurance in 2002 vs. 10% for motor insurance and 16.9 % for home insurance in 2012. Moreover, the net combined ratios of reinsurance remain at high levels, thus confirming the strong competitive nature of these markets (motor insurance: 103% in 2013; 101 % in 2012; 103% in 2011. Home insurance: 103% in 2013; 105% in 2012; 99% in 2011).

Further information is available in our response to Q13.

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?

With rapid technological developments, exchanging data is becoming increasingly important, in particular to safeguard customers' interests (eg for fraud prevention and detection purposes) and to offer innovative products and services meeting customers' fast evolving needs and demands (eg telematics).

The Italian insurance association (ANIA) reported the sale of telematics

motor third party liability insurance policies as a major innovation that has developed within the Italian market over the last ten years thanks to the IBER. Indeed the diffusion of data collected by ANIA helped a number of insurance companies to penetrate this new segment and to propose these kinds of innovative offers to consumers.

There is no doubt that future technological developments will make it necessary for insurers to continue cooperating in the area of joint compilations, tables and studies. For instance, German personal liability insurers have reported that the claims expenditure of health care risks for medical personnel and for hospitals have grown significantly over the last years. This was the result of steadily increasing corresponding damages claims due to the use of new technologies for the medical care of patients who have suffered injuries caused by faulty medical procedures. Since 2008, the German insurance association (GDV) has been supporting its member companies in dealing with these developments through relevant studies (eg on the development of claims expenditures in hospital liability insurance).

In 2013, in the Netherlands, the Dutch insurance association (VVN) commissioned a joint study about the potential future developments and risks that could affect (re)insurance undertakings in the next 10 years. The study is expected to help (re)insurers prepare themselves for these changes and propose innovative offers to customers.

Furthermore, data from individual companies – even large ones – would be insufficient to allow a proper analysis of risks characterised by a very low occurrence frequency and a very high damage proportion. These would include agricultural risks (hail, frost, etc.) and catastrophic risks (floods, earthquakes, etc.), where the continuous use of joint compilations, tables and studies is essential. An overview of the activities in natural catastrophe insurance in Germany is available in the “Naturgefahrenreport 2014” (report on nature risks, 2014 – see http://www.gdv.de/wp-content/uploads/2014/10/Naturgefahrenreport-2014_Deutsche-Versicherungswirtschaft_GDV.pdf), and in Italy in the report “Danni da eventi sismici e alluvionali al patrimonio abitativo italiano: studio quantitativo e possibili schemi assicurativi” published in 2011 and which is currently being updated (see <http://www.ania.it/export/sites/default/it/pubblicazioni/monografie-ed-interventi/Danni-da-eventi-sismici-e-alluvionali.pdf>).

The Austrian insurance association (VVO) strives to constantly improve the exchange of risk data. The internet-based platform “HORA” (Natural Hazard Overview and Risk Assessment Austria) was created in 2006 and is the most prominent example of this from the last ten years. HORA is a nationwide risk zoning system for natural disasters, currently focussed on floods, earthquakes, hail, lightning, snow pressure and storm (www.hochwasserrisiko.at). This project is a private-public partnership model and is unique in Europe. Over four years, the project has been jointly implemented by the Federal Ministry of Agriculture, Forestry, Environment and Water Management (BMLFUW) and the VVO for more than

25.000 kilometres of river. Besides the public internet-application HORA also features an intranet application providing all participating property insurers with a detailed assessment of natural hazards and a general tool to set individual truly risk-based premiums for the flood risk. In October 2007, HORA was awarded the Austrian “public management award” for its innovative approach to administration. A reasonable coverage of the risk of natural catastrophes requires access to high quality risk data such as that provided by HORA.

Additionally, Insurance Europe would like to highlight that there is a trend toward stronger risk control across all financial services in the aftermath of the financial crisis and in particular the introduction of a new prudential regime for (re)insurers via the Solvency II directive. This makes the use of several instruments for good risk management necessary, one of which could be cooperation in (re)insurance pools as a reinsurance tool.

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?

Insurance Europe would like to highlight that there is a trend toward stronger risk control across all financial services in the aftermath of the financial crisis and in particular the introduction of a new prudential regime for (re)insurers via the Solvency II directive. This makes the use of several instruments for good risk management necessary, one of which could be cooperation in (re)insurance pools as a reinsurance tool.

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.

For the past ten years, Solvency II, a whole new prudential regulation regime, has been under preparation and will come into force as of 1st January 2016.

The core principle of Solvency II is the total balance sheet approach which links up the available and the required capital for solvency purposes to all assets and liabilities that are measured in the regulatory balance sheet of the insurer and the way they interact. This will have direct implications on product pricing and coverage, but also on the choice of risks that insurers will manage. As a result, good risk management will become even more important. This, in turn, necessitates the development of studies and statistics for the industry concerning risks to be insured or taken for both the liability and the asset side of the balance sheet. These studies allow undertakings to comply with all the requirements to be introduced by Solvency II. Furthermore, the new prudential regime makes use of several instruments for good risk management necessary, one of which could be cooperation in (re)insurance pools as a reinsurance tool.

Insurance Europe would also like to highlight the fact that markets that provide information (studies and statistics) are cooperating to make their markets more transparent. This, consequently, facilitates the entry of new insurance companies in these markets by providing them with the same information than the local companies have.

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>

Insurance Europe believes that the IBER has proven beneficial to competition in the insurance market by providing legal certainty to a series of essential agreements. The IBER has a positive effect on prices and insurance coverage, by facilitating the opening up of markets to new players and small and medium-sized insurance undertakings. This enhances the variety of suppliers and of products, to the advantage of customers.

Insurance Europe agrees with the European Commission that:

- Cooperation between insurance undertakings or within associations of undertakings in the field of joint compilations, tables and studies helps improve the knowledge of risks and facilitates the rating of risks for individual companies, allowing them to price risks more accurately. For example, the Italian insurance association (ANIA) reported that new entrants in the local market were recently provided with ANIA's relevant statistics upon request, in line with the IBER conditions for exemption on joint compilations. This enabled them to achieve more accurate risk pricing and to effectively penetrate and remain in the local market. Further examples of the pro-competitive effects of this exemption are provided in our response to Q13.

- With regard to pools, "risk sharing for certain types of risks is crucial in order to ensure that all such risks can be covered" and that pools can allow small and medium-sized insurers to enter and remain in the market, by helping them to gain the necessary experience of risks that they are unfamiliar with. This positive cooperation leads to an increase in the availability of insurance products on the market.

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>

Insurance Europe believes that the IBER has pro-competitive effects (see response to Q11) and is not aware of any cases or situations where (re)insurers' business strategy or the way (re)insurers compete in the insurance sector have been hampered by it.

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.

Insurance Europe believes that the IBER has proven to contribute to (i) insurers' capability to accurately price risks and (ii) the facilitation of new competitors' entry into insurance segment where they would otherwise not be active.

- Exempted form of cooperation on joint compilations, tables and studies

We agree with the European Commission's views that "collaboration between insurance undertakings or within associations of undertakings in the compilation of information (which may also involve some statistical calculations) allowing the calculation of the average cost of covering a specified risk in the past or, for life insurance, tables of mortality rates or of the frequency of illness, accident and invalidity, makes it possible to improve the knowledge of risks and facilitates the rating of risks for individual companies. This can in turn facilitate market entry and thus benefit consumers".

This exemption helps insurance undertakings, in particular small and medium-sized insurance undertakings and new entrants to gain access to and remain in markets (see our response to Q16). It allows them to carry out calculations on a reasoned basis, thus enabling more accurate risk pricing. It also benefits larger undertakings by allowing them to obtain more precise statistics than those they could collect individually. Considering specifically non-concentrated markets, this exemption also benefits all players since each individual operator, regardless of its market share, would not be able to obtain representative and reliable data on its own.

In its response to the EC consultation of 2008, Insurance Europe stressed that the IBER provides an essential legal framework for these cooperation agreements, fosters competition and leads to the opening up of markets. It provided the example of claims cost rates drawn up by the German insurance association (GDV) for the German market, which contribute substantially to the enforcement of competition. The quality of the available data allowed the GDV to draw up detailed cost claims rates, especially in the area of motor insurance (third party liability and own damage insurance). As a consequence, strong competition was fostered between motor insurers on the basis of solid statistical data. Foreign companies are able to request this data and can therefore

quickly start developing tariffs suitable for the market. The GDV has confirmed that these statements are still valid, as motor insurance premiums continue to be close to the technical cost claims rates or even below them, and there are regularly new entrants into the market.

The Italian insurance association (ANIA) reported on having provided two new entrants with motor third-party liability (MTPL) and accident data in 2013 and 2014, in line with the IBER conditions for exemption on joint compilations. As a result, these insurance companies have successfully penetrated the local MTPL market, one of them bringing innovation by selling its MTPL products via a new distribution channel (banks).

In the Netherlands, the Dutch insurance association (VVD) has been compiling data from public services and several insurance undertakings in relation to workmen's compensation insurance for about 10 years. This has permitted several insurance undertakings to become and remain active on this market. Without these joint compilations, these undertakings would not have been able to obtain sufficiently representative and reliable data on their own.

In Malta, a number of new entrants have benefited from the national insurance association's (MIA) joint compilations - without contributing to them. Over the past five years, this has provided them with access to the local general insurance market. These new entries have fostered competition, in particular in the motor insurance market, despite the fact the loss ratio has deteriorated.

The exempted form of cooperation on joint compilations, tables and studies allows operators to price risks more accurately, leads to the opening up of markets and has proven to be useful with regard to cross-border competition, by reinforcing the supply side. The resulting new players in the market enhance the variety of products, and customer choice.

- Exempted form of cooperation on pools

Insurance Europe agrees with the European Commission that "risk sharing for certain types of risks is crucial in order to ensure that all such risks can be covered" and that "pools (...) may, for example, allow their participating undertakings to gain the necessary experience of the sector of insurance involved, or they may allow cost savings, or reduction of commercial premiums through joint reinsurance on advantageous terms". The exemption is subject to strict conditions to ensure it does not benefit to agreements permitting the undertakings involved the possibility of eliminating competition in respect of a substantial part of the products in question. Consumers can benefit effectively from pools only if there is sufficient competition in the relevant markets in which the pools operate".

This leads to an increase in the availability of insurance products on the market.

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

Which ones?

The use of market data can prove essential for niche lines of business, such as crop-hail insurance or transport of freight, aviation, marine and transport policies. Without this data, insurance companies, in particular small and medium-sized insurers, would not have sufficiently precise and representative statistics to offer related-insurance coverage. The absence of the IBER would effectively make it more difficult for small and medium-sized insurers to access these markets. The agricultural sector would be negatively impacted should agriculture firms be unable to access insurance coverage against natural events, such as hail, ice and frost, or droughts.

In the Netherlands, the Dutch insurance association (VVD) has been compiling data from public services and several insurance undertakings in relation to workmen's compensation insurance for about 10 years. This has permitted several insurance undertakings to become and remain active on this market. Without these joint compilations, these undertakings would not have been able to obtain sufficiently representative and reliable data on their own. In other words, without the IBER, there would have been a risk that the demand in relation to workmen's compensation insurance would not have been met due to the absence of suppliers.

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.

Insurance Europe believes that the IBER provides the legal certainty necessary for (re)insurers to engage in cooperation on joint compilations, tables and studies, and on pools. They have proven to be essential with regard to opening up of markets and cross-border competition, with a positive effect on the diversity of suppliers and of products to the benefit of customers.

Without the IBER, operators would have to bear an increased burden of self-assessment to ensure that the cooperation agreement they are engaged in, or consider engaging in, complies with applicable competition law requirements, and falls out of the scope of Article 101(1) or meets the requirements outlined in Article 101(3). This is a long, complex and onerous legal exercise, which would discourage many to engage in such business cooperation.

This is due to the legal uncertainty resulting from the non-renewal of the IBER, which would significantly increase self-assessment costs. Without the IBER, insurers will have to further audit each single activity of cooperation in which they are or they consider to be involved, without having any guarantee as to the validity of the assessment. The costs resulting from the employment of additional legal experts, lawyers and consultants in order to assess – again, without guaranteeing – the legal validity of the envisaged forms of cooperation will increase costs substantially, especially the investment costs for market entry. There is a significant risk that those going through such an exercise would ultimately pass on the related extra costs to customers.

This also applies to small and medium-sized undertakings that may not be able to afford such additional investments as well as to new entrants where the cost effect will be even more critical because they will have to split the costs between fewer clients. Their products will consequently become more expensive and less competitive in comparison to the products of larger insurers or well-established operators, therefore provoking a shift in the relative power of market players to the detriment of small and medium-sized undertakings and new entrants.

More importantly, without the legal certainty provided by the IBER we expect operators to prefer to abandon cooperation for reasons of prudence, ie for fear of being exposed to the risk that the cooperation in which they invest is afterward challenged by the competition authorities.

Should insurance undertakings or associations of undertakings stop cooperating in the field of joint compilations, tables and studies, the knowledge of risks could likely be reduced and the rating of risks would become more difficult for individual companies, depriving them from the possibility of more accurately pricing risks. In this respect, Insurance Europe believes that the European Commission's assessment in 2010, that

the insurance sector is different compared to other sectors, such that it leads to an enhanced need for cooperation amongst (re)insurers in the field of joint compilations, tables and studies is still valid. As the European Commission summarised in its Communication of 2010, “the costs of insurance products are unknown at the time the price is agreed and the risk covered. Calculation of risk is a key issue in pricing all insurance products which appears to be a differentiating factor from other sectors including the banking sector. This makes access to past statistical data in order to technically price risks crucial. Therefore, the Commission considers that cooperation in this area is both specific to the insurance industry and necessary in order to price risks” (for further information, please read our response to Q26).

A decrease in cooperation would also lead to a reduction in financial capacities via a reduction of pools for instance. It would result in an increase in the insurance costs of covering certain categories of risks or even the withdrawal of offers of insurance cover, to the detriment of customers.

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.

Insurance Europe believes that the IBER has contributed to enhancing customer choice and supply diversity.

By contrast, without the legal certainty provided by the IBER, there is a significant risk that insurers would no longer cooperate on joint compilations, tables and studies, and in relation to pools.

The absence of cooperation on joint compilations, tables and studies would result in a reduced knowledge of the risks and, a more restricted choice in terms of providers and of products to the detriment of customers.

Instead of engaging in cooperation, larger or more established insurers may prefer to rely on their own portfolio and collect statistics by themselves, due to the lack of legal certainty.

As a result of the restricted size of their portfolio, small and medium-sized insurance undertakings and new entrants will not possess sufficiently representative and reliable data to enable them to carry out calculations on a reasoned basis and they would therefore be excluded from the market. Considering specifically non-concentrated markets, the absence of such cooperation would also negatively affect all players since each individual operator, regardless of its market share, would not be able to obtain representative and reliable data on its own.

In the absence of pools, certain types of risks may not find any insurance coverage as individual companies would be reluctant to cover the risk individually or unable to insure the entire risk alone, both being to the detriment of customers. The options available to companies for risk sharing would be reduced. In many cases, reinsurance is not a viable alternative and does not increase customer choice and supply diversity.

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.

Yes, Insurance Europe believes that the IBER has contributed to protecting and enhancing competition and effective innovation in the insurance sector.

The IBER also preserves a level-playing field by ensuring legal certainty and a similar level of consistency and uniformity of antitrust rules across the EU.

See our response to Q13.

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>

Insurance Europe believes that the IBER is the only legal instrument that appropriately protects and facilitates the demonstrated enhanced need for cooperation in the insurance sector. Guidance or guidelines would not be adequate substitutes to the current IBER. Unlike the IBER, guidance and guidelines are not legally binding. They would not provide the legal certainty (re)insurers require to engage in cooperation agreements on joint compilations, tables and studies, and on pools. Without the legal certainty that the IBER provides, there is a real risk that insurers may stop cooperating, to the detriment of competition and insurance buyers.

Moreover, the recent ECJ Schenker ruling (C-681/11), stating that an expert legal opinion on the compliance of certain practices with competition law cannot be relied on in good faith, has led to a significant decrease in legal certainty of companies' self-assessment. The legal certainty provided by the IBER is thus even more important.

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

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.

N/A

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.

N/A

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.

Insurance Europe strongly supports the renewal of the current IBER. Insurance Europe believes that the IBER is the only legal instrument that appropriately protects and facilitates the demonstrated enhanced need for cooperation in the insurance sector. Guidance or guidelines would not be adequate substitutes to the current IBER. Unlike the IBER, guidance and guidelines are not legally binding. They would not provide the legal certainty (re)insurers require to engage in cooperation agreements on joint compilations, tables and studies, and on pools. Without the legal certainty that the IBER provides, there is a real risk that insurers may stop cooperating, to the detriment of competition and insurance buyers.

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.

Insurance Europe strongly supports the renewal of the two categories of cooperation covered by the current IBER.

The IBER helps insurers to generate efficiencies through legitimate cooperation.

Without the appropriate legal instrument of the IBER, there are significant risks that (re)insurers stop cooperating in the field of joint compilations, tables and studies, and of pools. See our response to Q15 and Q16.

These forms of cooperation have proven to be pro-competitive and to the benefit of customers and society at large. See our response to Q11 and Q13.

NOTE

The EC online questionnaire does not allow to mark both (i) partial renewal: renewal of the exemption for cooperation in the area of joint studies, tables and compilations and (ii) partial renewal: renewal of the exemption for cooperation in (re)insurance pools. Therefore, we wish to reiterate that we strongly support the renewal of the two exemptions.

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

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

Should the current IBER not be renewed, the European Commission would have to secure the legal validity of the cooperation forms covered by the current IBER via a new legal instrument that ensures a level of legal certainty, consistency and uniformity of antitrust rules across the EU equal to that of the IBER.

Whilst guidance or guidelines that have been properly adapted to the specificities of the insurance sector would be preferable to an assessment within the framework of the Horizontal Guidelines, they would still not be sufficient.

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.

Insurance Europe believes that the European Commission's assessment in 2010, which indicates that the insurance sector differs from other sectors to the extent that it leads to an enhanced need for cooperation amongst (re)insurers, is still valid:

– Cooperation between insurance undertakings or within associations of undertakings in the field of joint compilations, tables and studies: as the European Commission summarised in its Communication of 2010, “the costs of insurance products are unknown at the time the price is agreed and the risk covered. Calculation of risk is a key issue in pricing all insurance products which appears to be a differentiating factor from other sectors including the banking sector. This makes

access to past statistical data in order to technically price risks crucial. Therefore, the Commission considers that cooperation in this area is both specific to the insurance industry and necessary in order to price risks".

- In relation to pools, "the Commission considers that risk sharing for certain types of risks (such as nuclear, terrorism and environmental risks), for which individual insurance companies are reluctant or unable to insure the entire risk alone, is crucial in order to ensure that all such risks can be covered. This makes the insurance sector different to other sectors and triggers an enhanced need for cooperation. Therefore, the new BER also exempts pools under certain conditions".

Insurance Europe agrees with the European Commission that the IBER is tailored to fit the insurance sector's unique market. The business risks for insurance are different to those of other sectors and there are important reasons for the insurance sector's need for the retention of the IBER:

- The inverted production cycle and the consequent requirement of solid databases. The insurance coverage of a risk, the future occurrence of which as well as its scope, intensity, frequency, point in time and duration are uncertain, needs to be based on the insurance technique. Calculating the probability of the insured event occurring as well as estimating its cost, is crucial. Here, the collection of statistical data and information on risk profiles is essential to allow actuarial calculations.

- Asymmetry of information is widespread. This means that the insured party has more information than the insurer leading to problems of moral hazard and adverse selection. In order to counter this situation there is a greater need for information sharing and the exchange of data allowed under the IBER leads to a better assessment of risks by insurers.

- The severity of some underlying risks requires cooperation amongst insurers. For example, extreme risks categorised by low frequency high impact loss events happen rarely but their potential impact can be devastating. This makes the process of managing and pricing these risks extremely challenging. Therefore the pooling of financial resources across different insurers is required, as no single insurer would be able to cope with the extent of the loss should a claim occur. The IBER provides the necessary legal certainty for participating in these risk-sharing pools and if the IBER were to lapse these risks might not get coverage in the market.

- The life and pension insurance businesses typically entail long time horizons and uncertainty about the future, and this plays a much bigger role than in many other markets.

These reasons explain why risk-sharing and data collection and dissemination is key to insurers generating better information about the economic fundamentals of their businesses. This sharing improves economic efficiency and resource-allocation decisions. It also allows the market to function better when there is some measure of co-operation and data exchange about the nature of these risks.

Insurance Europe believes that this enhanced need for cooperation requires a legal instrument equal to the IBER to protect and facilitate it.

We would point out that guidance or guidelines would not be adequate substitutes to the current IBER. Unlike the IBER, guidance and guidelines are not legally binding. They would not provide the legal certainty (re)insurers request to engage in cooperation agreements on joint compilations, tables and studies, and on pools.

Without the legal certainty that the IBER provides, there is a significant risk that insurers will stop cooperating, to the detriment of competition and insurance buyers. For example, reinsurance is one of the most common techniques for risk mitigation referenced in Solvency II. In many instances, in order to be able to accept risk from a ceding insurer, a reinsurer will require underlying information about the transferred risks, included claims tables and other underwriting data. If both insurers and reinsurers are no longer cooperating as a result of the removal of the IBER, there is a greater possibility that the reinsurers will refuse to cover certain risks. This will result in a less liquid reinsurance market and, for insurers under Solvency II (and indeed some existing prudential regimes), increased capital requirements.

See our response to Q15 and Q16.

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.

See also our response to Q8.

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:

Insurance Europe believes that the IBER is the only legal instrument that appropriately protects and facilitates the demonstrated enhanced need for cooperation in the insurance sector.

Guidance or guidelines would not be adequate substitutes to the current IBER. Unlike the IBER, guidance and guidelines are not legally binding. They would not provide the legal certainty (re)insurers request to engage in cooperation agreements on joint compilations, tables and studies, and on pools.

Without the legal certainty that the IBER provides, insurers are likely to stop cooperating, to the detriment of competition and insurance buyers. See our response to Q15 and Q16.

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.

The legal uncertainty that would result from the non-renewal of the IBER would significantly increase self-assessment costs. Without the IBER, operators would have to bear an increased burden of self-assessment to ensure that the cooperation agreement they are engaged in or consider engaging complies with applicable competition law requirements, and falls out of the scope of Article 101(1) or, if not, meets the requirements outlined in Article 101(3). This is a long, complex and onerous legal exercise, which does not provide for any legal certainty, and which would discourage many to continue or engage in such business cooperation. For instance, the German insurance association (GDV) estimates that a new competition assessment of all statistics made necessary by a non-renewal of the IBER for joint compilations, tables and studies within GDV would require more than 300 man-hours.

Without the IBER, insurers will have to further audit each single activity of cooperation in which they are or they consider to be involved, without having any guarantee as to the validity of the assessment. The costs resulting from the employment of additional legal experts, lawyers and consultants in order to assess - again, without guaranteeing - the legal validity of the envisaged forms of cooperation will increase costs substantially, especially the investment costs for market entry. There is a significant risk that those going through such an exercise would ultimately pass on the related extra costs to customers.

This applies to small and medium-sized undertakings that may not be able to afford such additional investments as well as to new entrants where the cost effect will be even more critical because they will have to split the costs between fewer clients. Their products will consequently become more expensive and less competitive in comparison to the products of larger insurers or well-established operators, therefore provoking a shift in the relative power of market players to the detriment of small and medium-sized undertakings and new entrants.

However, the major risk with not renewing the IBER is that operators prefer to abandon cooperation for reasons of prudence, ie for fear of being exposed to the risk that the cooperation in which they invest is afterward challenged by the competition authorities.

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.

Insurance Europe believes that operators' compliance costs will not decrease if the IBER were not renewed. By contrast, there are good reasons for believing that these costs will increase, should operators simply cease cooperating (see our response to Q31). This impact will be more acute in the context of Solvency II, where reinsurance is recognised as a common technique for risk mitigation. In many instances, in order to be able to accept risk from a ceding insurer, a reinsurer will require underlying information about the transferred risks, including claims tables and other underwriting data. If both insurers and reinsurers are no longer cooperating as a result of removal of the IBER, there is a greater possibility that reinsurers will refuse to cover certain risks. This will result in a less liquid reinsurance market and, for insurers under Solvency II (and indeed some existing prudential regimes), increased capital requirements.

Without the IBER there would be an increase in legal risk. As Solvency II is a risk-sensitive capital standard, which requires more capital for more material risk, this will further increase capital requirements.

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.

There is a significant risk that operators would cease cooperating for reasons of prudence. The provisions for information exchange in the Horizontal Guidelines are in no way adapted to the assessment of joint compilations, tables and studies. Under the IBER, the market conditions are irrelevant for the assessment of joint compilations, tables and studies, and a high participation level of market players is considered a positive aspect (Art. 3 (1) (a) IBER). On the other hand, the market structure is an important aspect of the analysis under the Horizontal Guidelines, and a high proportion of the market participating in an exchange of information is considered as a negative factor. The Horizontal Guidelines do not take into account the specific features of the insurance markets, which – as the examples above show – might even lead to an opposed outcome to that intended under the current IBER.

Change 2

- ☐ Slight
- ☐ Moderate
- ☒ Appreciable

Please elaborate:

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

The IBER preserves the level-playing field by ensuring legal certainty and a similar level of consistency and uniformity of antitrust rules across the EU. Without the IBER, there is a risk of inconsistent approaches across the various National Competition Authorities.

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.

There is a significant risk that operators would cease cooperating for reasons of prudence. The provisions on commercialisation agreements of the Horizontal Guidelines are not suited for the competitive assessment of pools. Commercialisation agreements that unify pricing are deemed likely to restrict competition by object and can generally not be justified under Art. 101 (3) (paras. 234, 246 of the Horizontal Guidelines). The efficiencies generated by pools are not taken into account by these provisions.

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.

Insurance Europe believes that the IBER is the only legal instrument that appropriately protects and facilitates the demonstrated enhanced need for cooperation in the insurance sector.

Whilst guidance or guidelines that have been properly adapted to the specificities of the insurance sector would be preferable to an assessment within the framework of the Horizontal Guidelines, they would still not be adequate substitutes to the current IBER. Unlike the IBER, guidance and guidelines are not legally binding. They would not provide the legal certainty (re)insurers request to engage in cooperation agreements on joint compilations, tables and studies, and on pools.

Without the legal certainty that the IBER provides, insurers are likely to stop cooperating, to the detriment of competition and insurance buyers.

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.

Insurance Europe believes that the IBER is the only legal instrument that appropriately protects and facilitates the demonstrated enhanced need for cooperation in the insurance sector.

Whilst guidance or guidelines that have been properly adapted to the specificities of the insurance sector would be preferable to an assessment within the framework of the Horizontal Guidelines, they would still not be adequate substitutes to the current IBER. Unlike the IBER, guidance and guidelines are not legally binding. They would not provide the legal certainty (re)insurers request to engage in cooperation agreements on joint compilations, tables and studies, and on pools.

Without the legal certainty that the IBER provides, insurers are likely to stop cooperating, to the detriment of competition and insurance buyers.

Impact 2

- ☐ Slight
- ☐ Moderate
- ☒ Appreciable

Please elaborate:

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

The IBER preserves the level-playing field by ensuring legal certainty and a similar level of consistency and uniformity of antitrust rules across the EU.

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.

Insurance Europe believes that the IBER has contributed to enhancing customer choice and supply diversity.

By contrast, without the legal certainty provided by the IBER, there is a significant risk that insurers no longer cooperate on joint compilations, tables and studies, and in relation to pools.

The absence of cooperation on joint compilations, tables and studies would result in a reduced knowledge of the risks, a more restricted choice in terms of providers and of products to the detriment of customers.

Indeed, instead of engaging in cooperation, larger insurers will prefer to rely on their own portfolio and collect statistics by themselves due to the lack of legal certainty.

As a result, because of the restricted size of their portfolio, small and medium-sized insurance undertakings and new entrants will not possess sufficiently representative and reliable data to enable them to carry out calculations on a reasoned basis and they will thus be excluded from the market. Considering specifically non-concentrated markets, the absence of such cooperation would also negatively affect all market players since each individual operator, regardless of its market share, would not be able to obtain representative and reliable data on its own, with a negative effect on the accuracy of risk pricing.

In the absence of pools, certain types of risks may not find any insurance coverage as individual companies would be reluctant to cover risks individually or unable to insure the entire risk alone, both being to the detriment of customers.

Impact 2

- ☐ Slight
- ☐ Moderate
- ☒ Appreciable

Please elaborate:

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

The IBER preserves the level-playing field by ensuring legal certainty and a similar level of consistency and uniformity of antitrust rules across the EU. This benefit would be lost without the IBER, exposing insurance undertaking to further legal uncertainty.

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.

Not renewing the exemption on pool would discourage operators from engaging in such cooperation and have the negative impact described in our response to Q36.

Renewing the exemption for cooperation in the area of joint studies, tables and compilations would continue facilitating operators' involvement in this form of cooperation, with a number of pro-competitive effects.

We agree with the European Commission's views that "collaboration between insurance undertakings or within associations of undertakings in the compilation of information (which may also involve some statistical calculations) allowing the calculation of the average cost of covering a specified risk in the past or, for life insurance, tables of mortality rates or of the frequency of illness, accident and invalidity, makes it possible to improve the knowledge of risks and facilitates the rating of risks for individual companies. This can in turn facilitate market entry and thus benefit consumers".

This exemption helps all insurance undertakings, in particular small and medium-sized insurance undertakings and new entrants, to carry out calculations on a reasoned basis, enabling thus a more accurate risk pricing, while without such an exemption, they would not be able to access markets (see our response to Q16). It also benefits larger undertakings by allowing them to obtain more precise statistics than those they would have to collect by themselves. Considering specifically non-concentrated markets, this exemption also benefits all market players since each individual operator, regardless of its market share, would not be able to obtain representative and reliable data on its own.

The exempted form of cooperation on joint compilations, tables and studies allows operators to price risks more accurately, leads to the opening up of markets and has proven to be useful with regard to cross-border competition, reinforcing thus the supply side. The resulting new players in the market enhance the variety of products to the benefit of customers.

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.

Not renewing the exemption on joint studies, tables and compilations would discourage operators from engaging in such cooperation and have the negative impact described in our response to Q36.

Renewing the exemption on pools would continue to facilitate operators' participation in this form of cooperation, with a number of pro-competitive effects.

Insurance Europe agrees with the European Commission that "risk sharing for certain types of risks is crucial in order to ensure that all such risks can be covered" and that "pools (...) may, for example, allow their participating undertakings to gain the necessary experience of the sector of insurance involved, or they may allow cost savings, or reduction of commercial premiums through joint reinsurance on advantageous terms". This leads to an increase in the availability of insurance products on the market.

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.

Renewing the current IBER would help maintaining the pro-competitive effects described in our response to Q11 and Q13.

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.

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

Contact

✉ COMP-IBER-REVIEW@ec.europa.eu
