



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

For the attention of:
European Commission
DG Competition
Antitrust Registry
Ref.: HT.1221 – stakeholder input
1049 Brussels

BIPAR RESPONSE

Consultation on the Draft New Insurance Block Exemption Regulation

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Re : Draft Commission Regulation on the application of Article 81(3) of the Treaty to categories of agreements, decisions and concerted practices in the insurance sector

BIPAR thanks the Commission for the consultation on this important issue.

BIPAR is the European Federation of insurance intermediaries grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 47 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR has been established in Brussels since 1989. It is today the recognized single voice of insurance intermediaries with the European Institutions.

BIPAR is of the opinion that it is generally in the consumers' interest to have well-defined limits imposed on collaboration between insurance undertakings, thus ensuring free competition in the insurance sector. BIPAR recognizes that there is a need for a minimum level of possibility for collaboration and agreements between insurance carriers to ensure the efficient functioning of the insurance sector.

For more general information about our position we refer to our answers to the public consultation of April 2008 and to our answers on the occasion of the public hearing.

Regarding the draft regulation and in particular regarding drafting related to Chapter III, we have the following concerns, comments and questions:

- As regards the definition of the new risks (as described in Article 1 point 6 of the draft Regulation), we believe that the definition should be broader and include not only the risks which did not exist but also the risks whose nature has not been known for insurance coverage purposes.
- As regards the market share (as described in Article 6 of the Draft Regulation) we believe that the activities outside the pool should not be taken into account as this would be in contrast with the purpose of creating the pools, i.e. the increase of the insurance capacity of the pool participants. This could in practice mean that the most specialized insurer in the field may not be allowed to participate in the pool. As pools are "exceptional" we believe that this could lead to an unbalance between efficiency, practicality and pure competition concerns.
- We also invite the Commission to consider deleting the sub (g) in article 7. Article 6 sub 2 stipulates a maximum participation in the relevant market and should be sufficient. Maintaining art. 7 sub g) would lead to a situation that an insurer can participate in one direct insurance pool with a 20 % share and not in 4 pools with a share of for instance 3 % each, in all only 12 %.
- Our main concerns are related to the way recital 20 is drafted. As it is drafted, it might create confusion in the interpretation of whether or not ad hoc coinsurance activities fall under the BER, where it has never been questioned that the BER is not covering ad hoc coinsurance.
- BIPAR invites the Commission to include in the new BER a provision allowing for a reasonable transition period (at least a year).

BIPAR regrets that the BER does not cover the "Standard policy conditions" anymore.

As explained before, it is our opinion that the use of 'model clauses' brings many benefits for consumers. The use of such clauses can and does increase efficiency. It can facilitate reaching agreement on the policy wording and, hence, the subsequent processing of the business. Without them, each clause would have to be individually agreed, which would be very time-consuming and expensive. They also help in creating contract certainty which is important from the point of view of the consumer. It is to be stressed that these models can and often are varied by negotiation on individual risks, thus avoiding any undue standardisation. Tailor-made wordings may be built up using a series of "model clauses" which have been drafted by experts on the basis of wide experience and whose meaning is clear and legally sound. This is an evident benefit for the policyholders. Moreover, the use of such "model clauses" reduces disputes as parties to the contract can rely on precedents of interpretation. We refer to our former responses for more details on this and remain at the Commission's disposal if guidance would be developed.

We note the renewal of the BER for "Joint compilations, tables and studies". We note the non-renewal of the BER for security devices. For both issues we refer to our earlier positions and responses.