THE END OF THE INSURANCE BLOCK EXEMPTION REGULATION

DÉCEMBER 2016

On 31 March 2017, the EU Insurance Block Exemption Regulation n° 267/2010 ("IBER") will expire and will not be renewed. Therefore, the types of cooperation it covered will fall under the general rules of competition law.

The Insurance Block Exemption Regulation

EU Regulation No 267/2010 of 24 March 2010 entered into force on 1 April 2010 and **will lapse on 31 March 2017**.

The IBER provides still an **exemption** from the general prohibition of anticompetitive agreements under Article 101 (1) of the Treaty on the Functioning of the European Union ("TFEU") for two forms of cooperation specific to the insurance sector, namely:

- Agreements in relation to **joint compilations, tables and studies**;
- The common coverage of certain types of risks by means of **co(re)insurance pools.**

Under several strict conditions, the IBER provides a **safe harbour** for these two types of agreements presumed to be procompetitive.

The first are considered as justified under the IBER as they offer a form of exchange of information which is needed to enable insurers to predict and price risks more accurately. The second are exempted as they guarantee that insurance companies will be able to cover all risks, in particular new risks.

Initially adopted in 1992, the IBER enabled insurers to save important administrative costs at a time where restrictive agreements between competitors still had to be notified to the European Commission for prior approval. This requirement was removed in 2004, and replaced by the self-assessment by the companies. The IBER was prolonged in 2003 and 2010, its scope being significantly reduced. **The reasons which led to preserve the IBER in 2010 no longer prevail today.**

In this context, on 17 March 2016, the European Commission published a *Report on the functioning of the IBER* and started public consultations to assess the opportunity of reconducting it or not. At the end of this consultation, on 13th December 2016, **the European Commission decided not to prolong or amend the insurance block exemptions at the expiry of the IBER.**

Non-Renewal of the block exemption at the expiry of the IBER

As regards the compilation and the distribution of **joint calculations, tables and studies**, the European Commission considered that while certain types of exchange of information remain essential in the insurance sector, **a block exemption regulation is no**

longer justified since the **guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements**, published on 14 January 2011 (the "*Horizontal guidelines*") **offer guidance for the purpose of self-assessment** which are perfectly suited for these types of cooperation.

As for **co(re)insurance pools**, prolonging IBER is no longer justified either, since, on the one hand, its applicability to these forms of cooperation was extremely limited and, on the other hand, **it is no longer possible to presume with sufficient certainty that these types of cooperation satisfy the conditions necessary to be compatible with the Internal Market.** This is especially true since the insurance market currently provides new less restrictive alternatives to pools for the purpose of co(re)insuring risks.

The expiry of the IBER will have the benefit of a more precise assessment of agreements in the insurance sector in their concrete market context **on a case by case basis**, in light of the Horizontal guidelines. Currently, the assessment of an agreement under the IBER is much more simplified since it does almost not take into account the effects on the market.

What happens after March 31, 2017 ?

The non-renewal of the IBER does not mean that these forms of cooperation will become unlawful under Article 101 (1) TFEU. **Rather, insurance companies will have to self-assess their cooperation agreements to determine if they are in line with competition rules.**

In particular, companies will need to assess whether their cooperation agreements can **benefit from the individual exemption provided for under Article 101(3) TFEU** and namely meet the following cumulative conditions:

- the agreement must contribute to improving the production or distribution of goods or to **promoting technical or economic progress**,
- while **allowing consumers a fair share of the resulting benefit**,
- without imposing on the undertakings concerned **restrictions which are not indispensable to the attainment of these objectives**,
- and **without affording such undertakings the possibility of eliminating competition** in respect of a substantial part of the products in question.

The transition may create costs for companies which will have to reexamine their agreements following the horizontal guidelines and Article 101(3) TFEU but the European Commission considered that such costs would not remove insurers' incentives to cooperate.

The European Commission will monitor the impact of the lapsing of the IBER and will explore the need for further guidance if it creates any legal uncertainty.

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