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 sector (Text with EEA relevance)

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 sector

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 1534/91 of 31 May 1991 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector[(1)], and in particular Article 1(1)(a), (b), (c) and (e) thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation (EEC) No 1534/91 empowers the Commission to apply Article 101(3) of the Treaty on the Functioning of the European Union[(2)] by regulation to certain categories of agreements, decisions and concerted practices in the insurance sector which have as their object cooperation with respect to:

- the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims,
- the establishment of common standard policy conditions,
- the common coverage of certain types of risks,
- the settlement of claims,
- the testing and acceptance of security devices,
- registers of, and information on, aggravated risks.

(2) Pursuant to Regulation (EEC) No 1534/91, the Commission adopted 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[(3)]. Regulation (EC) No 358/2003 expires on 31 March 2010.

(3) Regulation (EC) No 358/2003 does not grant an exemption to agreements concerning the settlement of claims and registers of, and information on, aggravated risks. The Commission considered that it lacked sufficient experience in handling individual cases

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) No 267/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

to make use of the power conferred by Regulation (EEC) No 1534/91 in those fields. That situation has not changed. Furthermore, although Regulation (EC) No 358/2003 granted an exemption for the establishment of standard policy conditions and the testing and acceptance of security devices, this Regulation should not do so since the Commission's review of the functioning of Regulation (EC) No 358/2003 revealed that it was no longer necessary to include such agreements in a sector specific block exemption regulation. In the context where those two categories of agreements are not specific to the insurance sector and, as the review showed, can also give rise to certain competition concerns, it is more appropriate that they be subject to self-assessment.

(4) Following a public consultation launched on 17 April 2008, the Commission adopted a report to the European Parliament and the Council on the functioning of Regulation (EC) No 358/2003 (the Report)[(4)] on 24 March 2009. In the Report and its accompanying Working Document (the Working Document) preliminary amendments of Regulation (EC) No 358/2003 were proposed. On 2 June 2009, the Commission held a public meeting with interested parties, including representatives of the insurance sector, consumer organisations and national competition authorities, on the findings and proposals in the Report and Working Document.

(5) This Regulation should ensure effective protection of competition while providing benefits to consumers and adequate legal security for undertakings. The pursuit of those objectives should take account of the Commission's experience in this field, and the results of the consultations leading up to the adoption of this Regulation.

(6) Regulation (EEC) No 1534/91 requires the exempting regulation of the Commission to define the categories of agreements, decisions and concerted practices to which it applies, to specify the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices, and to specify the clauses which must be contained in the agreements, decisions and concerted practices or the other conditions which must be satisfied.

(7) Nevertheless, it is appropriate to continue the approach taken in Regulation (EC) No 358/2003 of placing the emphasis on defining categories of agreements which are exempted up to a certain level of market share and on specifying the restrictions or clauses which are not to be contained in such agreements.

(8) The benefit of the block exemption established by this Regulation should be limited to those agreements which can be assumed with sufficient certainty to satisfy the conditions of Article 101(3) of the Treaty. For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those agreements which are capable of falling within Article 101(1) of the Treaty. At the same time, there is no presumption that agreements which do not benefit from this Regulation are either caught by Article 101(1) of the Treaty or that they fail to satisfy the conditions of Article 101(3) of the Treaty. In the individual assessment of agreements under Article 101(1) of the Treaty, account must be taken of several factors, and in particular the market structure on the relevant market.

(9) Collaboration between insurance undertakings or within associations of undertakings in the compilation of information (which may also involve some statistical calculations)

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EU) No 267/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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. The same applies to joint studies on the probable impact of extraneous circumstances that may influence the frequency or scale of claims, or the yield of different types of investments. It is, however, necessary to ensure that such collaboration is only exempted to the extent to which it is necessary to attain these objectives. It is therefore appropriate to stipulate in particular that agreements on commercial premiums are not exempted. Indeed, commercial premiums may be lower than the amounts indicated by the compilations, tables or study results in question, since insurers can use the revenues from their investments in order to reduce their premiums. Moreover, the compilations, tables or studies in question should be non-binding and serve only for reference purposes. The exchange of information not necessary to attain the objectives set out in this recital should not be covered by this Regulation.

(10) Moreover, the narrower the categories into which statistics on the cost of covering a specified risk in the past are grouped, the more leeway insurance undertakings have to differentiate their commercial premiums when they calculate them. It is therefore appropriate to exempt joint compilations of the past cost of risks on condition that the available statistics are provided with as much detail and differentiation as is actuarially adequate.

(11) Furthermore, access to the joint compilations, tables and study results is necessary both for insurance undertakings active on the geographic or product market in question and for those considering entering that market. Similarly access to such compilations, tables and study results may be of value to consumer organisations or customer organisations. Insurance undertakings not yet active on the market in question and consumer or customer organisations must be granted access to such compilations, tables and study results on reasonable, affordable and non-discriminatory terms, as compared with insurance undertakings already present on that market. Such terms might for example include a commitment from an insurance undertaking not yet present on the market to provide statistical information on claims, should it ever enter the market and might also include membership of the association of insurers responsible for producing the compilations. An exception to the requirement to grant access to consumer organisations and customer organisations should be possible on the grounds of public security, for example where the information relates to the security systems of nuclear plants or the weakness of flood prevention systems.

(12) The reliability of joint compilations, tables and studies becomes greater as the amount of statistics on which they are based is increased. Insurers with high market shares may generate sufficient statistics internally to be able to make reliable compilations, but those with small market shares may not be able to do so, and new entrants are even less likely to be able to generate such statistics. The inclusion in such joint compilations, tables and studies of information from all insurers on a market, including large ones, in principle promotes competition by helping smaller insurers, and facilitates market

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EU) No 267/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

entry. Given this specificity of the insurance sector, it is not appropriate to subject any exemption for such joint compilations, tables and studies to market share thresholds.

(13) Co-insurance or co-reinsurance pools can, in certain limited circumstances, be necessary to allow the participating undertakings of a pool to provide insurance or reinsurance for risks for which they might only offer insufficient cover in the absence of the pool. Those types of pools do not generally give rise to a restriction of competition under Article 101(1) of the Treaty and are thus not prohibited by it.

(14) Co-insurance or co-reinsurance pools can allow insurers and reinsurers to provide insurance or reinsurance for risks even if pooling goes beyond what is necessary to ensure that such a risk is covered. However, such pools can involve restrictions of competition, such as the standardisation of policy conditions and even of amounts of cover and premiums. It is therefore appropriate to lay down the circumstances in which such pools can benefit from exemption.

(15) For genuinely new risks it is not possible to know in advance what subscription capacity is necessary to cover the risk, nor whether two or more pools could co-exist for the purposes of providing the specific type of insurance concerned. A pooling arrangement offering the co-insurance or co-reinsurance of such new risks can therefore be exempted for a limited period of time without a market share threshold. Three years should constitute an adequate period for the constitution of sufficient historical information on claims to assess the necessity or otherwise of a pool.

(16) Risks which did not previously exist should be considered as new risks. However, in exceptional circumstances, a risk may be considered as a new risk where an objective analysis indicates that the nature of the risk has changed so materially that it is not possible to know in advance what subscription capacity is necessary in order to cover such a risk.

(17) For risks which are not new, co-insurance and co-reinsurance pools which involve a restriction of competition may, in certain limited circumstances, involve benefits so as to justify an exemption under Article 101(3) of the Treaty, even if they could be replaced by two or more competing insurance entities. They 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. However, any exemption should be limited to agreements which do not afford 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 condition should be regarded as being met when the market share of a pool remains below a given threshold and can therefore be presumed to be subject to actual or potential competition from undertakings which are not participating in that pool.

(18) This Regulation should therefore grant an exemption to any such co-insurance or co-reinsurance pool which has existed for more than three years, or which is not created in order to cover a new risk, on condition that the combined market share held by the participating undertakings does not exceed certain thresholds. The threshold

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EU) No 267/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

for co-insurance pools should be lower because co-insurance pools may involve uniform policy conditions and commercial premiums. For the assessment of whether a pool fulfils the market share condition, the overall market share of the participating undertakings should be aggregated. The market share of each participating undertaking is based on the overall gross premium income of that participating undertaking both within and outside that pool in the same relevant market. These exemptions however should only apply if the pool in question meets the further conditions laid down in this Regulation, which are intended to keep to a minimum the restrictions of competition between the participating undertakings of the pool. An individual analysis would be necessary in such cases, in order to determine whether or not the conditions set out in this Regulation are fulfilled.

(19) In order to facilitate the conclusion of agreements, some of which can involve significant investment decisions, the period of validity of this Regulation should be fixed at seven years.

(20) The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of 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[(5)], where it finds in a particular case that an agreement to which the exemptions provided for in this Regulation apply nevertheless has effects which are incompatible with Article 101(3) of the Treaty.

(21) The competition authority of a Member State may withdraw the benefit of this Regulation pursuant to Article 29(2) of Regulation (EC) No 1/2003 in respect of the territory of that Member State, or a part thereof where, in a particular case, an agreement to which the exemptions provided for in this Regulation apply nevertheless has effects which are incompatible with Article 101(3) of the Treaty in the territory of that Member State, or in a part thereof, and where such territory has all the characteristics of a distinct geographic market.

(22) In determining whether the benefit of this Regulation should be withdrawn pursuant to Article 29 of Regulation (EC) No 1/2003, the anti-competitive effects that may derive from the existence of links between a co-insurance or co-reinsurance pool and/or its participating undertakings and other pools and/or their participating undertakings on the same relevant market are of particular importance,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply: