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PART 2

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying document to the

COMMISSION REGULATION (EU) No ../..

**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**

{C(2010) 1746 final}
{SEC(2010) 326}

ANNEX I

REVIEW OF REGULATION 358/2003 AND CONSULTATION

1. The Review process began in November 2007 when DG Competition consulted the ECN for their experience and analysed its own relatively limited case experience in this area. It then began drafting a detailed Consultation Paper which was also based on the findings from the Sector Inquiry.
2. In addition, the Commission assessed the evidence gathered during its Sector Inquiry into Business Insurance ('the Sector Inquiry')¹. Although the Sector Inquiry had a different scope than the review of the BER, it also examined to a certain extent the use of the BER and market participants were invited to express their views on its necessity. The Interim Report was published on 24 January 2007, with a public invitation to comment on its findings including the application of the BER². The Commission obtained 44 replies from insurance companies, brokers, insurers associations, NCAs.
3. The Commission's Services concluded that the evidence received suggested that the practices covered by the BER are in most cases unproblematic or even desirable in the market. However, the Commission noted that the Sector Inquiry did not produce "compelling reasons"³ to renew the BER, which may also cover some practices which distort competition. A conclusion on this matter was not reached as it was outside the scope of the Sector Inquiry Report. However, the Final Report encouraged market participants to continue their reflection, in advance of the current Review, focusing more on the necessity of the legal instrument of the BER itself than on the necessity of the specific forms of cooperation covered by the BER.
4. The Consultation (following an inter-service consultation of other DGs within the Commission) on the functioning of the BER was opened in April 2008 for three months giving a significant time window for those interested to present evidence for renewal or non-renewal.
5. The Consultation Paper primarily sought information on the functioning of the BER in particular in relation to how, where and by whom it was being used. It first generally set

¹ On 13 June 2005, the Commission initiated a sector inquiry into the provision of insurance products and services to businesses in the Community, based on article 17 of Council Regulation (EC) No 1/2003. See the Final Report of 25 September 2007 (The Communication from the Commission and The Commission Staff Working Document):

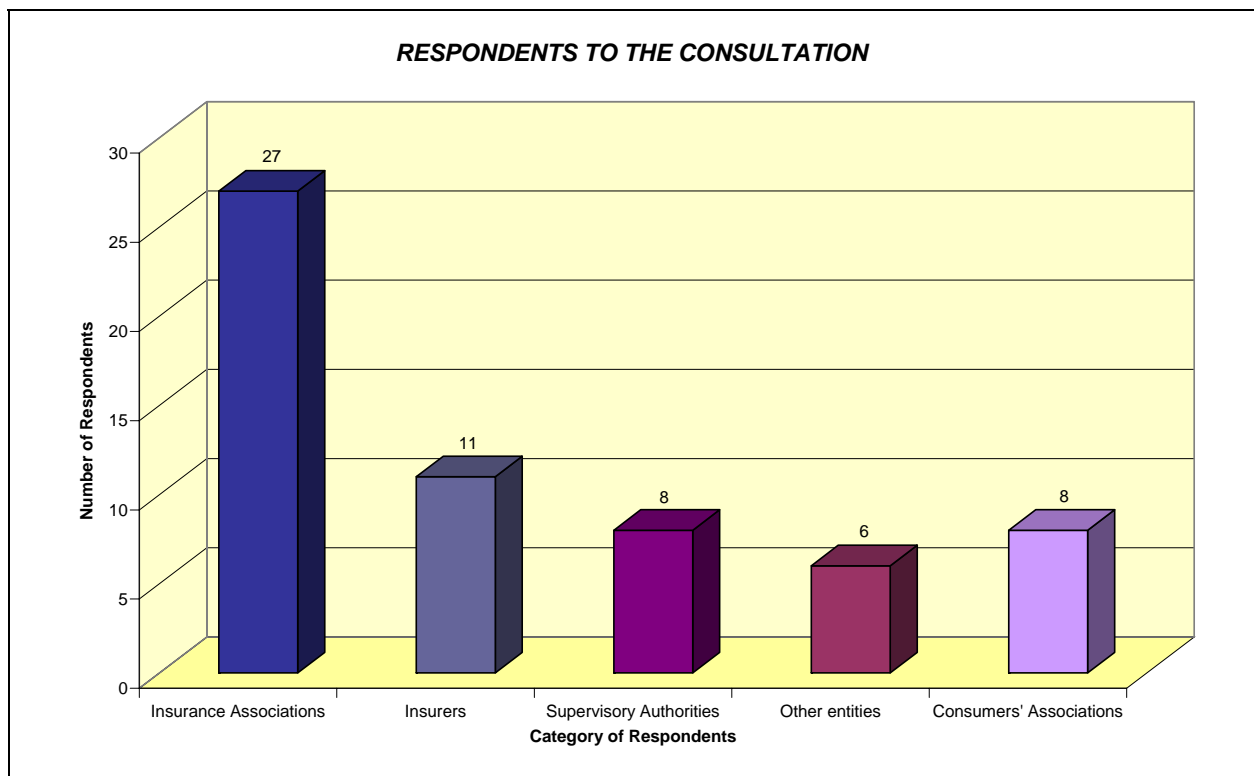
http://ec.europa.eu/comm/competition/sectors/financial_services/inquiries/business.html

² See Section XI.3 of the Interim Report.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Sector Inquiry under Article 17 of Council Regulation No. 1/2003 on Business Insurance (Final Report), paragraph 41.

out the comments which the Commission received in relation to the BER on the Sector Inquiry. It then went on to review each exemption under the BER individually setting out the comments from the Sector Inquiry, the comments received from the consultation of NCAs on the functioning of the BER as well as the Commission's considerations and case experience in relation to the BER. Finally it asked a number of specific and detailed questions, both in relation to each exemption category and generally encouraging replies substantiated with evidence, from across the EU and all categories of stakeholders.

6. Replies were received from a relatively small number of market participants as illustrated in the chart below. In order to cover all possible types of market participants, a first round of questionnaires was also sent out to all national consumer organisations associations and to several associations of undertakings representing customers (large customers and SMEs). In addition, targeted questionnaires were sent to Supervisory Authorities in all Member States. The non-confidential versions of the replies to the Consultation – with the exception of submissions from NCAs, were published on DG Competition's website. Furthermore, the Commission's Services held a number of meetings during this review to discuss contributions or raise other questions with NCAs as well as with a range of stakeholders, insurers, insurance associations and pools.



7. Following closure of the Consultation, the Commission analysed the replies and sent out further detailed questionnaires in particular to categories of stakeholders from whom it had received either no or a very limited direct response, namely, smaller insurers, pools and producer federations/associations of security devices. These questionnaires were

specifically targeted at how and in which instances the BER was being used. The numbers of replies to these follow-up questionnaires is illustrated in the table below.

Respondent Group	Organisations / Undertakings to whom Questionnaires were sent⁴	Replies
Small Insurers	63	19
Pools	37	27
Producer Federations/Associations of producers of security devices	10	2
TOTAL	110	48

8. On 24 March 2009, following an inter-service consultation of other DGs within the Commission, the Commission adopted the Report to the European Parliament and Council on the functioning of the current BER⁵ which was accompanied by a Commission Staff Working Document.
9. Following publication of the Commission's Report, DG Competition held a public event on 2 June 2009 in order to hear further comments on the findings and initial proposals in Report and the accompanying Working Document. Separate panels discussed each of the four categories of agreement currently exempt under the BER.⁶ Of the 216 industry participants who registered to attend the event, 130 participated representing a wide range of stakeholders such as insurance companies and associations, pools, consumer organisations, lawyers and consultants, governments, academia and press. During the registration process attendees were also given the opportunity to propose specific questions for the panel discussions.
10. To ensure that all views were heard and to facilitate the highest quality of analysis, the Commission sent out a further round of targeted questionnaires to three groups of stakeholders in the insurance sector. The Commission received 18 replies to these questionnaires, representing almost a 75 per cent response rate as can be seen from the following table.

Respondent Group	Organisations / Undertakings to whom Questionnaires were sent⁷	Replies Received
Small Insurers	8	5
Large Insurers	5	4

⁴ Contact details for Small Insurers and Pools were primarily provided by the European Insurance Association, CEA and supplemented by the Commission's market research.

⁵ Report from the Commission to the European Parliament and the Council on the functioning of the Commission Regulation (EC) No 358/2003 on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector, COM (2009) 138 final.

⁶ Further information regarding the public event is accessible under:

⁶ http://ec.europa.eu/competition/sectors/financial_services/events/insurance_ber.html

⁷ Contact details for Small Insurers and Pools were primarily provided by the European Insurance Association, CEA and supplemented by the Commission's market research.

Federations/Associations	10	9
TOTAL	23	18

11. The Commission analysed the comments and proposals put forward by the participants in the event as well as the additional written submissions received after the public event and discuss findings with an extended (including government ministries) ECN meeting.

12. On 5 October 2009, following an Advisory Committee with Member States on a draft new BER and another inter-service consultation with other DGs within the Commission, a public consultation was launched for eight weeks on that draft.

13. The Commission received the following replies:

Respondent Group	Replies Received
Consumer Organisations	1
Federations/Associations	12
Insurers	1
National Competition Authorities	1
Supervisory Authorities	1
Other Entities	6
TOTAL	23

14. The Commission's contact with the insurance industry has not revealed any particular problems in terms of the links between the BER and the financial crisis. In general insurers say they are in a good shape to withstand the financial crisis because of a robust start capital position, effective risk management, recognition of vulnerability to higher claims and effective credit control.

15. Although there is no formal consultation process with the **European Parliament** because the BER is a Commission Regulation, the Commission briefed or met several members of this and the previous ECON Committee, including the Chair and briefed or met a number of assistants and administrators prior to and following publication of the draft new Regulation for Consultation. The European Parliament was in particular, concerned as stated in its Resolution of 5 June 2008⁸ that the Commission should "support cooperation in the insurance industry on promoting market access" and therefore called on the Commission to renew the BER. It reiterated its call in a letter to Commissioner Kroes dated 16 November 2009. We have taken the European Parliament's views into account during this process.

⁸ On Retail Financial Services in the Single Market (2007/2287(INI)).