

### 3. **Block Exemption Regulation**

ABI Contact: Elisabeth Hoskins, 020 7216 7505; Shradha Patel 020 7216 7431

ABI Lead Committee: European Committee

Issue: The European Commission is currently considering the future of the Insurance Block Exemption Regulation (BER), which is due to expire on 31 March 2010.

Status: On 5 October, the Commission issued a draft Regulation on the BER. This draft contains a partial renewal of the BER on Joint compilations (new term), Tables & Studies and for Pools. It will be valid for a period of 7 years until 2017. The Commission did not propose to renew the exemption for the establishment of Standards Policy Conditions (SPCs) and the testing and acceptance of security devices, concluding the BER was no longer necessary for these fields. Instead, future activity under both of these fields will need to be assessed under Article 81(3) of the Treaty.

The Commission then issued a consultation on this draft Regulation, seeking particular comments on the expanded definition of new risks for Pools, the anticipated functioning of the exemption for Pools and the public security exception for access to results of information exchanged. Comments were due by 30 November and the Commission aims to issue their final Regulation in early 2010.

ABI action: Following the release of the draft Regulation in October, the ABI submitted a response to the consultation questions. We continued to argue for a complete renewal of the Regulation, reiterating our previous arguments regarding the benefits of the BER. We also made comments about our concerns on the proposed changes to joint tables, studies and compilations and pools including asking:

- for clarification and reassurance that the third party access to insurance information relates only to the aggregated data and the results of the information exchanged, rather than the raw data provided by insurers.
- for the changes made to aggregate market share and the simultaneous membership of pools to be removed and for the provisions in the current BER to be reinstated.
- for references to ad-hoc coinsurance falling outside the scope of the BER to be removed.
- for a transitional period of 1 year to allow insurers to seek legal advice in relation to the proposed Regulation.
- that the Commission should not replace the removed parts of the BER with guidelines or any other guidance. We do not view these alternatives as legally adequate and are concerned they would not provide sufficient legal certainty for the insurance market.

We met with HM Treasury and the Office of Fair Trading (OFT) to explain our concerns on the draft Regulation. We got a good hearing and some support. They have said they will discuss our concerns with the proposed text when they meet the Commission in January before the final Regulation is released.

Background: In April 2008, the Commission issued a public consultation on the functioning of the BER in order to determine where and how the BER was being used. There was a general consensus from both the UK and European insurance industries to support the retention of the BER. The ABI submitted a response to the consultation in July 2008 where we strongly supported the retention of the BER explaining the benefits it provided for competition, how it provided legal clarity and certainty and how it had led to the opening up of the insurance market to new businesses and to the development of new products.

**Useful documents:**

[DG Competition Consultation Responses](#)

[European Commission report on the BER – March 2009](#)

[Draft Regulation – October 2009](#)