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Accompanying the

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**On the functioning of 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**

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TABLE OF CONTENTS

I. INTRODUCTION	6
1. Background and aims of the review	6
2. Purpose and scope of the Report and of the Working Document	7
3. Insurance markets in the EU	7
4. Methodology and data	8
4.1. Phase One (leading up to and including the Consultation Paper)	8
4.2. Phase Two (leading up to the Report to the European Parliament and Council)	9
4.3. The Sector Inquiry into Business Insurance	10
4.4. Consultation of NCAs	11
5. Approach to analysis of whether to renew BER	12
5.2. If the BER is not renewed	13
5.2.1. Applicability of Article 81(1) of the Treaty	13
5.2.2. Applicability of Article 81(3) of the Treaty	14
II. JOINT CALCULATIONS, TABLES AND STUDIES	14
1. Scope of the BER	14
1.1. What the BER covers	14
1.1.1. Agreements which relate to certain joint calculations and tables	14
1.1.2. Agreements which relate to the joint carrying-out of certain studies	15
1.2. What the BER does not cover	16
2. Main findings of the review and analysis	16
2.1. Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation in this area?	16
2.1.1. Data from joint calculations, tables and studies is important in order to price risks in the insurance sector	16
2.2. Question Two: If the answer to question one is positive, does this enhanced need for cooperation require a legal instrument in order to protect or facilitate it?	17
2.2.1. Cooperation is useful, particularly for small and medium sized insurers	17
2.2.2. Cooperation increases consistency in terms of Solvency II	18
2.2.3. Alternatives to cooperation	18

2.3.	Question Three: if the answer to question two is positive, what is the most appropriate legal instrument?	19
2.3.1.	Questions about the scope of the current BER.....	19
2.3.2.	Exemption under the BER – current thinking.....	19
2.3.3	Whether BER is most appropriate and if so in what form?	21
3.	Conclusions and Proposals.....	22
III. STANDARD POLICY CONDITIONS AND MODELS		23
1.	Scope of the BER.....	23
1.1.	What the BER covers.....	23
1.1.1.	Agreements on SPCs.....	23
1.1.2.	Agreements on Models on Profits.....	23
1.2.	What the BER does not cover	23
2.	Main findings of the review and analysis	24
2.1.	Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation?.....	24
2.1.1.	SPCs are not specific to the insurance sector.....	24
2.2.	Question Two: does this enhanced need for cooperation require a legal instrument in order to protect or facilitate it?.....	24
2.3.	Applicability of Article 81	24
2.3.1.	Applicability of Article 81(1).....	25
2.3.2.	Applicability of Article 81(3).....	26
2.4	Effects on SPC cooperation in event of non-renewal	27
3.	Conclusions and Proposals.....	27
IV. COMMON COVERAGE OF CERTAIN TYPES OF RISKS (POOLS)		29
1.	Scope of the BER.....	29
1.1.	Pools newly created which cover new risks.....	29
1.2.	Pools covering risks which are not new	29
1.3.	What the BER does not cover- Co(re) insurance on subscription markets.....	30
2.	Main findings of the review and analysis	30
2.1.	Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation?.....	30

2.2.	Question Two: if the answer to Question one is positive, does this enhanced need for cooperation require a legal instrument in order to protect or facilitate it?.....	30
2.2.1.	The need for a consistent approach regarding market share rules	30
2.2.2.	Pools can benefit from the BER provided they meet certain strict conditions	31
2.2.2.1.	Some pools are outside the scope of the BER because they are necessary and as such do not give rise to a restriction of competition	32
2.2.2.2.	Some pools are outside the scope of the BER because they do not comply with its conditions	33
2.2.2.3.	Some pools are within the scope of the BER.....	35
2.2.3.	The simple existence of the BER does not provide for automatic cover for pools....	35
2.2.3.1.	The relevant market.....	35
2.2.3.1.1.	Available guidance	35
2.2.3.1.2.	Uncertainty in practice despite the BER	36
2.2.3.2.	The notion of "new risks"	37
2.2.4.	Pools appear to have positive effects	38
2.2.5.	Risk of reduction in cooperation for pools.....	38
3.	Conclusions and Proposals.....	39
V.	SECURITY DEVICES.....	40
1.	Scope of the BER	40
1.1.	What the BER covers	40
1.1.1.	Conditions of the BER	40
1.1.2.	Link with the rules on the free movement of goods and services and on the freedom of establishment	41
1.2.	What the BER does not cover	42
1.2.1.	Agreements in areas which are harmonised at EU level.....	42
1.2.2.	Agreements in areas which do not comply with the conditions provided in Article 9 of the BER.....	43
2.	Main findings of the Review and analysis	44
2.1.	Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation?.....	44
2.2.	Question Two: does this enhanced need for cooperation require a legal instrument such as the BER in order to protect or facilitate it?	44
2.2.1.	Competition issues on the downstream market for security devices	44

2.2.2.	The existence of obstacles to the free movement of goods and services	44
2.2.3.	The scope of the BER is significantly reduced or eliminated due to existing EU level harmonisation.....	45
2.2.4.	Transparency and non-discrimination in standard-setting	45
2.3.	Applicability of Article 81(3).....	46
3.	Conclusions and Proposals.....	47
VI.	CONCLUSIONS.....	48
1.	Options and proposals	48
2.	Next Steps	48
ANNEX 1	Definitions.....	50
ANNEX 2	Replies to Consultation	52
ANNEX 3	Questions from Consultation on Joint Calculations, Tables and Studies.....	55
ANNEX 4	Questions from Consultation on Standard Policy Conditions and Models on Profits	56
ANNEX 5	Questions from Consultation on Common Coverage of Risks (Pools).....	57
ANNEX 6	Questions from Consultation on Security Devices	58
ANNEX 7	General Questions from Consultation	59
ANNEX 8	Questionnaires to Small and Medium Sized Insurers following Consultation	61
ANNEX 9	Questionnaires to Pools following Consultation.....	63
ANNEX 10	Questionnaires to Producer Federations concerning Security Devices following Consultation	64
ANNEX 11	Fire Detection and Fire Alarm Systems-Harmonised European Standards	66

I. INTRODUCTION

1. BACKGROUND AND AIMS OF THE REVIEW

1. Commission Regulation (EC) No 358/2003¹, the Insurance Block Exemption Regulation (the BER) applies Article 81(3) of the EC Treaty (the Treaty)² to four categories of agreements, decisions and concerted practices in the insurance sector namely agreements in relation to (i) joint calculations, tables and studies; (ii) standard policy conditions and models on profits; (iii) the common coverage of certain types of risks (pools); and (iv) security devices.
2. The European Commission (the Commission) is required, not later than six years after the entry into force³ of the BER to submit a report (the Report) to the European Parliament and Council on the functioning of the BER.⁴
3. The BER will expire by default on 31 March 2010. The intention of the Commission during 2008 was to review the functioning of the BER on the basis of a Consultation Paper as well as targeted questionnaires sent to certain stakeholders (the Review). This Review was carried out in co-operation with the European Competition Network (ECN). The findings of the Review to date are included in the Report as well as this accompanying Working Document.
4. It should be noted that the Report and Working Document confine themselves to presenting the Commission's preliminary views on the functioning of Regulation 358/2003 and do not prejudge in any respect a final decision on the outcome of the review. The Report and Working Document together constitute one of the steps in a comprehensive consultation process to which all stakeholders are invited to contribute.
5. Since 1 May 2004, like most other sectors, the insurance sector has been subject to the generally applicable provisions of Council Regulation (EC) No 1/2003 of 16 December 2002 (Regulation 1/2003) on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. Regulation 1/2003 provides that agreements that satisfy the conditions of Article 81(3) are not prohibited, no prior decision to that effect being required. Undertakings and associations must now assess for themselves whether their agreements⁵ are compatible with Article 81 of the Treaty. Only a few sectors currently benefit from a sector specific BER and there have been other sectors for which the relevant BER were not renewed.⁶

¹ Commission 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 (Official Journal L 53, 28.02.2003).

² Wherever Article 81 is referred to in this document, the reference is to Article 81 of the EC Treaty.

³ Commission Regulation (EC) No 358/2003 entered into force on 1 April 2003.

⁴ This requirement was laid down in Article 8 of Council Regulation (EC) No 1534/91 (the Implementing Regulation) empowering the Commission to adopt a block exemption regulation in the insurance sector.

⁵ Wherever the term "agreements" is used in this document, it shall mean agreements, decisions and concerted practices.

⁶ Recent repeal of Council Regulation (EEC) No 4056/86 laying down detailed rules for the Application of Articles 85 and 86 [now named Articles 81 and 82] of the Treaty to maritime transport; and the expiry of Commission Regulation (EC) No 1459/2006 on the application of Article 81(3) to certain categories of agreements and concerted practices concerning consultations on passenger tariffs on scheduled air services and slot allocation at airports.

6. The question now arises as to whether there are sufficient grounds to continue to declare by regulation Article 81(3) applicable to certain categories of agreements in the insurance sector.
7. The BER applies only in relation to the specific categories of agreements and under the conditions set out in the BER. In that context it is important to note (though overlooked by many respondents to the Commission during the current Review as well as during the Sector Inquiry⁷) that even if a new BER is not adopted, this does not necessarily mean that agreements previously falling under the BER become illegal. An assessment under Article 81(1) and, if applicable, under Article 81(3) rather than under the BER would be required. At the moment, in each case a legal assessment must also be undertaken in order for undertakings to determine whether the forms of cooperation in which they participate fulfil the conditions imposed by the BER.

2. PURPOSE AND SCOPE OF THE REPORT AND OF THE WORKING DOCUMENT

8. The purpose of the Report and of the Working Document is to present the findings of the Commission's review of the functioning of the BER over the past six years and to present the Commission's initial analysis of whether the BER should be renewed.
9. Through this work, the Commission's intention is to analyse whether competition and consumers in the insurance sector are helped or hindered by the BER and whether any changes should be made to the current approach to the application of Article 81 in this area in particular in relation to each of the four forms of agreement exempted by the BER from the prohibition of Article 81(1).
10. The scope of the Report and of the Working Document covers all of the EU-27 Member States.

3. INSURANCE MARKETS IN THE EU

11. The Sector Inquiry Report contained an extensive account of how insurance markets are organized in the EU, including a significant amount of original research by the Commission services during the inquiry, which will not be repeated here. However, it is useful to recall briefly some salient features.
12. Primary insurance markets for most risks tend to be national in scope, even when they are primarily served by consolidated multinational insurance groups. This is for a variety of reasons, of which the most important is probably the fact that insurance contracts are written under, and subject to, general national contract law as well as specific insurance law, and that liability issues similarly arise under national law which may substantially vary from one jurisdiction to another. In addition, there is a need for a local presence, often for distribution and always for claims settlement, and language issues may arise. It is natural thus to characterise the organization of the market as multi-domestic and to

⁷ As noted in the Final Report, almost all replies failed to make a distinction between the necessity of the forms of cooperation covered by the BER, and the necessity of the BER itself. The primary initial objective of the BER was to exclude certain generic types of agreement from the ambit of Article 81(1) and limit the BER to those agreements for which it can be assumed with sufficient certainty, satisfy the conditions of Article 81(3) - thereby obviating the need for separate and time-consuming individual exemptions (see page 77 of the Final Report and the preamble to the BER).

exclude, in many cases, the possibility of any competitive constraint from cross-border providers short of actual entry.

13. The mode of entry for insurers seeking to enter new markets has, to date, usually been through acquisition of a local company which becomes a subsidiary of the acquirer. Greenfield entry is uncommon. National markets tend as a consequence to be quite concentrated, especially in the major categories of risk.
14. The insurance industry has tended not to be examined outside the industry with the same degree of interest as other areas of financial services. This is likely gradually to change, with the Commission's work on Solvency II⁸, the Insurance Mediation Directive⁹ and the BER particularly in the forefront of the debate.

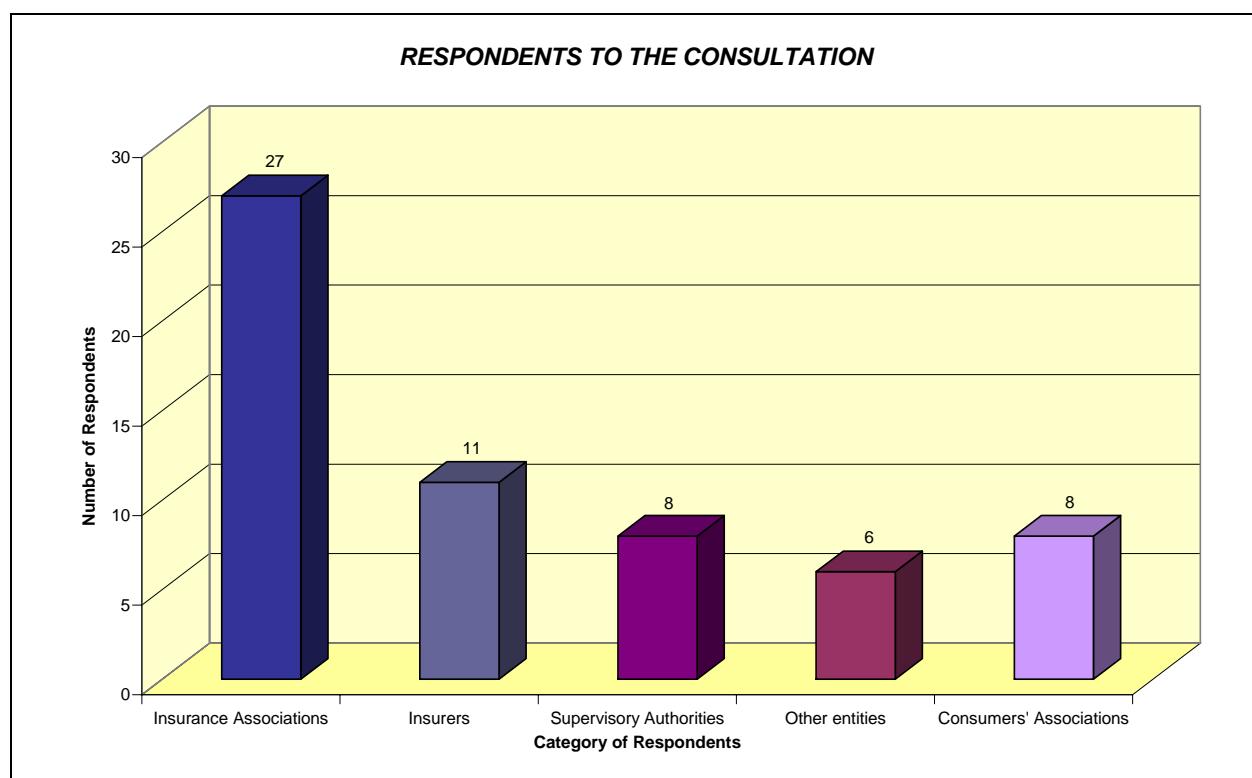
4. METHODOLOGY AND DATA

4.1. Phase One (leading up to and including the Consultation Paper)

15. DG Competition, in November 2007 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. The Consultation was opened in April 2008 for three months giving a significant time window for those interested to present evidence for renewal or non-renewal.
16. 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 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.
17. In order to facilitate replies from a wide range and number of stakeholders DG Competition published the Consultation in English, French and German and also published a detailed press release in all the EU's official languages.
18. Replies were received from a relatively small number of market participants as illustrated in the chart below. See also a list of respondents in Annex 2. The contents of the replies will be dealt with in detail in relation to each category of agreement exempted by the BER in the sections below.
19. In order to cover all possible types of market participants, a first round of questionnaires was also sent out to all national consumers associations and to several associations of undertakings representing customers (large customers and SMEs). Targeted questionnaires were sent to Supervisory Authorities in all Member States as well.

⁸ Proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance - Solvency II, COM (2007) 361, 10 July 2007

⁹ See http://ec.europa.eu/internal_market/insurance/mediation_en.htm



4.2. Phase Two (leading up to the Report to the European Parliament and Council)

20. 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.

21. Table: Replies to Follow-up questionnaires

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

¹⁰ Contact details for Small Insurers and Pools were primarily provided by the European Insurance Association, CEA and supplemented by the Commission's market research.

22. These questionnaires were specifically targeted at how and in which instances the BER was being used. See Annexes 8, 9 and 10.
23. All the non-confidential versions of the replies to the Consultation, with the exception of submissions from NCAs, have been published on DG Competition's website.
24. Furthermore the Commission's Services had 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.

4.3. The Sector Inquiry

25. The Commission recently completed a Sector Inquiry into Business Insurance ('the Sector Inquiry')¹¹. The Sector Inquiry had a different scope to this Review of the BER: first, it concerned only the provision of insurance products and services to businesses in the Community; and second, it was aimed at 'better understanding the functioning of the insurance sector with a view to ultimately identifying restrictive practices or distortions of competition.
26. However, the Sector Inquiry also examined 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 BER¹². The Commission obtained 44 replies from insurance companies, brokers, insurers associations, NCAs, most of which¹³ have been published on the DG Competition's website¹⁴.
27. The main arguments put forward by respondents to the public consultation in the Sector Inquiry were:
 - Legal certainty is required as to the antitrust status of a given practice, in the sense that the BER has a clarifying character as an exemption *ipso jure*.
 - Costs deriving from the alleged additional administrative burden caused by assessing the legal compliance costs would ultimately be passed on to policyholders, which would trigger an increase in insurance premiums.
 - Fears were also expressed that without the BER, competition rules would be applied inconsistently across the 27 Member States of the EU.
 - Market participants also insisted that the variations in the use of the BER across Member States do not mean that the BER is no longer useful. They explained that differences in the use of the BER may originate from different legislation (high number of compulsory insurance policies in some Member States) or from the fact that Member States' insurance markets are at different stages of development (e.g.

¹¹ 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

¹² See Section XI.3 of the Interim Report.

¹³ With the exception of those labeled confidential in their entirety or for which no non-confidential version was provided.

¹⁴ http://ec.europa.eu/comm/competition/sectors/financial_services/inquiries/replies_interim_report/index.html

countries in central and Eastern Europe have recently developed from monopolies to competitive markets). Some respondents interpreted the diverging use of the BER as a sign of competition, claiming that the BER is used most in Member States that are mature and highly competitive.

- The forms of cooperation allowed under the BER effectively facilitate market entry for insurers with insufficient expertise. If there is better knowledge and accessible risk information, the argument is that this leads to more entry to the market (in particular by insurers with insufficient scale/historical expertise).
- Non-renewal of the BER would cause a larger number of compliance issues with supervisory authorities as a consequence of the fact that insurance companies would develop their activities on markets on which they are not specialised but no longer have the benefit of access to the experience of other insurers.

28. 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"¹⁵ 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.

4.4. Consultation of NCAs

29. During the consultation of NCAs on the functioning of the BER the following comments were received:

- Many NCAs consider that the BER is used as a justification for a wide-range of information exchange. This may result in a restriction of competition. Also, it was observed that co-insurance groups could be used in certain cases to coordinate and engage in cartel activity.
- One NCA considers that price uniformity in the sector could be combated by allowing the BER to expire.
- In another's experience, data sharing on risks tends to overlap with a general exchange of information, including commercial premiums, especially in the motor-vehicle insurance market.
- However, the ability to share information as allowed under the BER may decrease premium fees for consumers since insurers may need to tie up less capital if they have more information on risks. This may in turn facilitate entry for smaller insurers and for insurers established in other Member States and decrease administrative and other expenses.

¹⁵ 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.

- Some NCAs noted that exchanges of information are only performed through the National Insurers' Federation and there are no direct exchanges of information between insurance associations. Furthermore, insurers appear to use the BER for information sharing but only in the retail sector. There does not appear to be any data sharing in more concentrated business markets.
- New entrants to a Member State often use data available to them in other Member States where they are also active.
- Standard policy conditions offered by insurers based on net prices may represent agreements on discounts. These are not binding but they do provide an indication to insurers of the kind of discounts that can be offered. Such systematic approaches go beyond the exemptions envisaged by the BER and Article 81(3).
- Some NCAs are against renewal and consider that there are no elements to justify the continuance of a specific insurance BER fixing rules which are different from those applying to other sectors. They consider that insurers should self-assess their agreements on the basis of Article 81(3), as is required in other sectors.
- A few NCAs were more in favour than against renewal on the basis of the following arguments: i) the BER enables more accurate calculation of risks to the advantage of newcomers and smaller companies, particularly with regards to facilitating market entry; ii) the BER is consequently a source of market diversity, lower premiums and higher transparency for consumers; iii) they have not experienced competition problems in applying the BER; iv) the BER may facilitate the consistent application of competition rules across 27 Member States; v) cooperation on standard policy conditions makes it easier for buyers to switch insurance providers and results in cheaper premiums for the buyer as long as these conditions are non-binding; vi) the BER can be an instrument of legal certainty; and vii) the insurance industry has a unique nature raising problems of information asymmetry.
- A recent Report from the EFTA Surveillance Authority concerning its own sector inquiry into business insurance in the EFTA States shows that it is highly concentrated and that insurers do not rely on shared data to calculate risk for most insurance classes (except for a few cases limited to specific insurance classes typically with a relatively low share of gross premiums written).¹⁶

5. APPROACH TO ANALYSIS OF WHETHER TO RENEW BER

30. The Working Document deals in Chapters II to V with each of the four categories of agreements that are exempted under the BER. At the end of each Chapter, the Commission draws together the conclusions of its analysis and makes proposals for the future of the BER.
31. In relation to each of the four categories of agreement exempted by the BER, the analysis as to whether or not to renew it follows the same analytical process by addressing a number of key questions. Those key questions are:

¹⁶ The EFTA Surveillance Authority acknowledges that the results of the survey are biased towards larger insurers (due to an over-representation of large insurance companies); and that smaller insurers may use external databases to a larger extent.

- (a) whether the business risks or other issues in the insurance sector make it "special" and different to other sectors such that this leads to an enhanced need for cooperation amongst insurers;
- (b) if the answer to the question in (a) is positive this gives rise to a second question as to whether this enhanced need for cooperation requires a legal instrument such as the BER or Guidance to protect or facilitate it (in comparison to other sectors for example, where there a high level of cooperation without such a legal instrument); and
- (c) if the answers to the questions in (a) and (b) are positive this in turn raises a third and final question as to what is the most appropriate legal instrument (i.e. whether it is the current BER or whether partial renewal, amended renewal, or Guidance would be more appropriate).

32. In order to answer the above questions the Commission's Services considered the following issues:

- (i) whether there is a significant and real risk that there would be less cooperation (i.e. that a category of agreements would not be entered into) in the event of non-renewal to the disadvantage of both competition and consumers or have other negative consequences;
- (ii) whether the BER is currently being used and if so in which Member States, for which insurance lines and which forms of cooperation are used most intensively;
- (iii) whether alternative, reasonable and practicable arrangements could not be made which would create greater benefits to consumers; and
- (iii) pro-competitive and consumer aspects of each category of agreement under the BER.

5.2. If the BER is not renewed

33. If the BER is not renewed, or is partially renewed, an analysis under Article 81(1) and, if appropriate, under Article 81(3) should be undertaken.

5.2.1. *Applicability of Article 81(1) of the Treaty*

34. It is possible that an agreement or pool does not give rise to a restriction of competition and is therefore not caught by Article 81(1). This would be the case for instance as regards pool members which are not actual or potential competitors, as explained in Chapter IV, Section 2.2.2.1. Moreover, agreements whose activity do not influence the relevant parameters of competition because they are of minor importance and/or do not appreciably affect trade between Member States¹⁷ are not caught by Article 81(1).

¹⁷ Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty, OJ C 368, 22.12.2001, p.13 and Guidelines on the effect on trade concept, OJ C 101, 27.4.2004, p.81.

5.2.2. *Applicability of Article 81(3) of the Treaty*

35. Where forms of cooperation are caught by Article 81(1) of the Treaty, the undertakings involved need to ensure that they fulfil the four cumulative conditions of Article 81(3)¹⁸.
36. Any restrictive agreements that fulfil the four conditions of Article 81(3) are covered by its exemption from prohibition. This analysis incorporates a sliding scale. The greater the restriction of competition found under Article 81(1), the greater the efficiencies and the pass-on to consumers must be.
37. It is up to the undertakings involved to demonstrate that the cooperation they are part of promotes technical or economic progress in the form of efficiency gains. This is discussed further in relation to each of the chapters below. In addition, where an exemption under the BER is not renewed, the Commission intends to give reasons in a Communication stating that it will not renew. It is also likely to include the extent to which the Commission considers that the conditions of the current BER can be used as guidance in this event.
38. Consumers must receive a fair share of the efficiencies generated. Under Article 81(3) of the Treaty, it is the beneficial effects on all consumers in the relevant market that must be taken into consideration, not the effect on each individual consumer¹⁹. The pass-on of benefits must at least compensate consumers for any actual or potential negative impact caused to them by the restriction of competition under Article 81(1)²⁰.
39. An agreement must not impose restrictions that are not indispensable to the attainment of the efficiencies. In this respect it is necessary to examine whether the parties could have achieved the efficiencies on their own.
40. Finally, the cooperation in question must not afford the parties the possibility of eliminating competition in respect of a substantial part of the services in question.
41. All positive effects of an agreement including those mentioned by respondents to the Consultation and Questionnaires can be considered on a case-by-case basis when undertaking a legal analysis under Article 81(1) and (3).

II. JOINT CALCULATIONS, TABLES AND STUDIES

1. SCOPE OF THE BER

1.1. What the BER covers

1.1.1. *Agreements which relate to certain joint calculations and tables*

42. The BER (Article 1(a)) exempts agreements which relate to the joint establishment and distribution of (i) calculations of the average cost of covering a specified risk in the past and (ii) calculations in connection with insurance involving an element of capitalisation,

¹⁸ Guidelines on the application of Article 81(3), OJ C 101, 27.4.2004.

¹⁹ Judgement of the Court of Justice of 23 November 2006 in Case C-238/05, *Asnef-Equifax v Asociación de Usuarios de Servicios Bancarios (Ausbanc)*, (2006) ECR I-11125, paragraph 70.

²⁰ Guidelines on the application of Article 81(3), cited above in footnote n° 16.

mortality tables, and tables showing the frequency of illness, accident and invalidity (Tables).

43. Agreements in relation to (i) and (ii) above are covered by the BER only on condition that they are:

- (1) based on the assembly of data, spread over a number of risk-years chosen as an observation period, which relate to identical or comparable risks in sufficient number to constitute a base which can be handled statistically and which will yield figures on (*inter alia*):
 - the number of claims during the said period,
 - the number of individual risks insured in each risk-year
 - of the chosen observation period,
 - the total amounts paid or payable in respect of claims
 - arisen during the said period,
 - the total amount of capital insured for each risk-year during the chosen observation period;
- (2) include as detailed a breakdown of the available statistics as is actuarially adequate;
- (3) do not include in any way elements for contingencies, income deriving from reserves, administrative or commercial costs or fiscal or para-fiscal contributions, and take into account neither revenues from investments nor anticipated profits.

Furthermore, the BER applies only where the results of the calculations, or tables:

- (4) do not identify the insurance undertakings concerned or any insured party;
- (5) when compiled and distributed, include a statement that they are non-binding;
- (6) are made available on reasonable and non-discriminatory terms, to any insurance undertaking which requests a copy of them, including insurance undertakings which are not active on the geographical or product market to which those calculations or tables results refer.

1.1.2. Agreements which relate to the joint carrying-out of certain studies

44. The BER (Article 1(b)) exempts agreements on the probable impact of general circumstances external to the interested undertakings, either on the frequency or scale of future claims for a given risk or risk category or on the profitability of different types of investment and the distribution of the results of such studies.

45. Similarly to the calculations and tables mentioned above, the BER only covers these agreements on condition that the study results:

- (1) do not identify the insurance undertakings concerned or any insured party;

- (2) when compiled and distributed, include a statement that they are non-binding;
- (3) are made available on reasonable and non-discriminatory terms, to any insurance undertaking which requests a copy of them, including insurance undertakings which are not active on the geographical or product market to which those calculations or tables results refer.

1.2. What the BER does not cover

- 46. Agreements in relation to the joint calculations, tables and studies will not be covered by the BER where participating undertakings enter into an undertaking or commitment among themselves, or oblige other undertakings, not to use calculations or tables that differ from those established as outlined in Article 1(a) of the BER (set out above) or not to depart from the results of the studies referred to in Article 1(b) (also set out above).

2. MAIN FINDINGS OF THE REVIEW AND ANALYSIS

2.1. Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation in this area?

2.1.1. Data from joint calculations, tables and studies is important in order to price risks in the insurance sector

- 47. The costs of insurance products are unknown at the time the price is agreed and the risk covered. This makes access to past statistical data crucial in order to technically price risks. Some respondents to the Consultation and targeted Questionnaires argued that the availability of this kind of data is very important in order for them to be able to reliably assess risk, build stochastic models, correctly analyse cost and choose a price by calculating the risk exposure on the basis of historical data.
- 48. Since calculation of risk is a key issue in pricing all insurance products, this aspect appears to be a differentiating factor from other sectors including the banking sector.²¹ Although, the UK NCA has pointed out that this form of cooperation is not being used in the UK, which could be an indication that it is not specific to the insurance industry, insurers in the majority of Member States argue that they do cooperate in this area and continue to emphasise the importance of this cooperation for their activities.
- 49. Therefore, on the basis of the evidence before the Commission, it appears that cooperation in this area is both specific to the insurance industry and may be necessary (in at least most Member States) in order to price risks. In particular, most respondents on this issue highlighted that, in the absence of the BER, the competitiveness of small insurance companies would decrease, driving smaller insurers out of the market, due to the restricted size of their portfolio.

²¹ Credit registers in the field of banking seem to be a similar feature. However, there are a number of fundamental differences. Credit registers are often run by private companies, they are often only 'negative lists' (i.e. bad clients). Furthermore, Banks can ask for collateral whereas insurance companies have no such option.

2.2 Question Two: If the answer to question one is positive, does this enhanced need for cooperation require a legal instrument in order to protect or facilitate it?

2.2.1. Cooperation is useful, particularly for small and medium sized insurers

50. Agreements which increase the number of insurers potentially capable of covering a given risk generally increase market access and competition. The fact that major insurers are allowed to engage in cooperation on the calculation of risk cover may enable entry of small and medium sized firms. It appears that large insurers can also generally benefit from a broader statistical base, even if their internal statistics would have been sufficient. However, grouped statistics must be justified by similarity of risks, if necessary interpreted sufficiently broadly to reach the minimum size having statistical relevance, but not resulting in the grouping of obviously disparate risks.
51. The vast majority of respondents drew our attention to the industry need to cooperate on this issue and connected it to the existence of the BER.
52. One could argue that the pro-competitive character of such cooperation on statistics would, even in the absence of the BER, not fall under Article 81(1) or would be exempted under Article 81(3). However, an argument submitted not only by insurers, but also by some supervisory authorities and a risks management federation²² is that without the BER, insurers would no longer cooperate on joint calculations, tables and studies or would not share the outcome of any cooperation with smaller or foreign insurers. Indeed some large insurers (who, according to insurance associations, would be able to compile the relevant information alone or by involving perhaps one or two other large insurers) may have no incentive to do so without the condition in the BER requiring that where such agreements do exist, the resulting calculations, tables and studies must be made available on reasonable and non-discriminatory terms. However, it should be noted that insurance companies are under regulatory pressure (for example, under the Solvency II Directive) to exchange information and improve their risk management systems. Whereas the BER requires that when insurance companies enter into these forms of cooperation, they must give access to the information compiled, on a non-discriminatory basis, to other companies, it was argued that in the event of non-renewal of the BER, insurers could cooperate to prevent access by for example, smaller or foreign insurance companies, to the information compiled in order to narrow the market.
53. This would be to the disadvantage of smaller/foreign insurers who would be prevented or discouraged from entering the market since assessing risk on the basis of their own tables and studies alone would be insufficient to allow them to cover certain risks. Some respondents pointed out that cooperation on joint calculations, tables and studies is necessary in order to allow new entry (in particular greenfield entry) and that the absence of such cooperation would lead to the creation of entry barriers, which would in turn increase the concentration in the market, limit the supply of insurance products and, consequently, decrease competition. Consumers in turn would be negatively affected by a reduced range of insurance products, from fewer insurance companies.
54. A number of respondents during the Review in particular small and medium sized insurers said they could not have entered the market with the use of this part of the BER. Arguments were also made that (a) competition is increased by the availability of data that small companies can directly and easily find and (b) that transparency of the historical data and publication of market trends are important tools in the formation of a

²²

FERMA (Federation of European Risks Management Associations).

correct cost related price. Moreover, customers can easily (c) choose among products and services and (d) better compare between them.

55. Furthermore, on the basis of the evidence before the Commission, it appears that the newer a market is, the more important it is to have access to the data from joint calculations, tables and studies in order to assist entrants to accurately assess risk.

56. The antitrust regime for insurance in the US is notably different to that in the EU. The US McCarran-Ferguson Act of 1945 provides a targeted exemption from antitrust laws, for certain limited insurance activities²³, whereas in the EU, the BER is only a presumption that Article 81(3) applies, - meaning that these categories are within the scope of competition law (Article 81(1) applies in the first place). The McCarran-Ferguson exception was discussed in a Report²⁴ issued by the Antitrust Modernisation Commission (AMC) on 3 April 2007 which, although it did not call for an outright repeal of the exemption allowing insurers to share data, did recommend that the McCarran-Ferguson Act should be further reviewed by the US Congress.

2.2.2. *Cooperation increases consistency in terms of Solvency II*²⁵

57. Another argument from some respondents to the Consultation was that non-cooperation in this field would hamper the implementation of Solvency II, which encourages data exchange between insurers. Solvency II will impose a new risk-sensitive solvency regime and will require firms to have high-quality risk management and actuarial data. Whilst not imposing the use of pooled and external data, it is implicitly accepted in the ongoing Solvency II debate that the use of such data would facilitate compliance with the standards envisaged in the new regime.

2.2.3. *Alternatives to cooperation*

58. Some respondents to the Consultation and Questionnaires made clear that alternatives to horizontal cooperation do exist. In particular, insurers could add to their research and development staff in order to conduct market surveys and analyses themselves. Alternatively, best practice may be for governments or public organisations to collect and publish data. However the evidence appears to be that the first option is not an efficient way to achieve this goal and that the second is not necessarily a resource priority for public organisations or governments.

59. The Commission's Services considered the question of whether cooperation in this area is so important to the insurance industry, that the legal risks caused by any lack of legal certainty would, be secondary to the need to cooperate and as such would not significantly restrict it. However, it appears at this stage that even if the risk may be low, the possibility that such pro-competitive cooperation may be diminish, should be avoided.

²³ This exemption (amongst other things which are irrelevant to this question) allows insurance companies to exchange data regarding losses and other factors and allows the development of standardised policy language.

²⁴ This Report addressed, inter alia, the argument that the exemption is necessary for insurers to share data and that this exemption, and the shared data, in particular benefits smaller insurers. AMC found the justification "questionable" and responded that, under the current application of antitrust law, the data sharing would be evaluated under the rule of reason that would take into consideration the pro-competitive effects of the activity.

²⁵ The Commission adopted the Solvency II Directive Proposal in July 2007, with the aim of modernising regulation and supervision in the insurance sector.

60. Thus, it appears that there are good reasons to protect and facilitate the agreements on cooperation in this area. The next question is to consider whether the current BER is doing this effectively.

2.3. Question Three: if the answer to question two is positive, what is the most appropriate legal instrument?

2.3.1. Questions about the scope of the current BER

61. The Commission's Services considered the question of whether a blanket block exemption such as the current BER may be too broad in its risk coverage for the three reasons:

62. First, certain statistics, such as the production of mortality tables, seem to require little cooperation since life expectancies are widely known, often published and are not subject to sudden and large changes. Some information can be found in population dynamics research or public available information; for example, in Italy, ISTAT provides tables concerning the Italian population concerning demographic risk and behavioural tendencies. However, several respondents also pointed out that government information is often only partial, inadequate or difficult to find or access.

63. Second, more pro-competitive solutions may exist to overcome the information problem in particular instances. For example, if policy holders were rated and this information is communicated to them, they can switch insurance companies carrying this information with them.

64. Third, it is not clear to what extent the uncertainty underlying premium calculation is not a normal business risk. However, some respondents highlighted particular circumstances where risk information can be only obtained by the common efforts of the whole insurance industry, especially in the case of information on natural catastrophes; because the access to such data would be too cost-intensive and time-consuming.

2.3.2. Exemption under the BER – current thinking

65. Agreements that set pure and risk premiums have been exempted by the BER²⁶, as they are not prices, but statistical indicators.²⁷ The commercial (or gross) premium is the price

²⁶ *Complaint against Italian legislation establishing a claims settlement system (2007)*: The complainant alleged that the direct settlement system imposed by the Italian legislation requiring insurance companies to enter into an agreement whereby claims settlement should be performed on the basis of average costs of risks in the past was anticompetitive. The complainant argued, *inter alia*, that insurers will set commercial premiums not on the basis of supply and demand but instead on standardised average costs based on the cost of claims borne by all member companies. The complaint was rejected. First, contrary to these allegations, the claims settlement system does not oblige insurance companies to set insurance rates on standardized average costs, but to establish financial settlements on the basis of average costs, calculated on the basis of claims actually paid during the previous year. Secondly, the joint establishment and distribution of calculations of the average costs of covering a specified risk in the past is permitted, under certain conditions, by Articles 1a) and 3 of the BER.

²⁷ *The Test Achats complaint (1995)*: The case involved the Belgian professional association of insurance companies (UPEA) and had been communicated to the Commission by the Belgian consumer association, *Test Achats*. It had complained, *inter alia*, about a recommendation from UPEA aiming to establish a minimum pure premium for the coverage of hospital expenses in the case of group contracts. There was a uniform premium for contracts with groups containing up to 10 members and reductions for contracts with larger groups. There was nothing to indicate that this recommendation was based on statistical data. The Commission consequently, concluded that the recommendation was not covered by the BER. The recommendation was withdrawn and the file closed.

that the insured pays to cover a given risk and corresponds to the risk premium plus the administrative costs and the profit margin of the individual insurer. The risk premium reflects the net cost of the cover and is fixed by first determining the pure (or net) premium, which is based on the statistical data concerning the frequency and the average intensity of the risk in the past, and by then applying to it a coefficient which takes account of forecasts of the future occurrence of the risk.

66. On the other hand, agreements that set or recommend uniform commercial premiums have been considered price-fixing agreements falling within Article 81(1)²⁸ of the EC Treaty and not normally capable of being exempted.
67. In practice, both the Commission's and NCAs' consider the possibility that cooperation is a cover for the anti-competitive exchange of information, as was the case in Italy or, most recently, in Bulgaria. Following a general inquiry, the Italian Competition Authority criticised the maintenance of a uniform system of parameters with similar values to calculate repairing costs as one of the major causes of the increase in premiums. Although A.N.I.A (The Italian Insurers' Association) formally abandoned the system, it continued to encourage the insurance companies to follow the same criteria and was fined for infringing Article 81(1) in 2005. The Bulgarian NCA adopted a decision²⁹ in July 2008 against insurers who agreed, to define and respect the common minimum risk premium in their activities. Risk premiums established by insurers actually became commercial premiums (final insurance prices) as soon as the parties agreed to "obey the common minimum risk premium...when determining their minimum tariffs and not to allow conclusion of insurance on prices below the thus determined minimum threshold". This was considered price fixing and so was outside the scope of the BER.
68. Also, individual instances of widespread practices³⁰, when they result from agreements between undertakings, may fall within the scope of Article 81(1).³¹
69. In some cases, the infringing recommendations were abandoned and the cases closed.³² The Commission has sometimes started ex-officio investigations in order to check if

²⁸ *Case 45/85 Verband der Sachversicherer e.V. v Commission (1987) ECR 405*: The German Association of Property Insurers recommended increases in commercial premiums for industrial fire and consequential loss insurance in specified circumstances. Although the recommendation was stated to be non-binding, the Court held that it reflected the Association's aim to coordinate the conduct of its members.

²⁹ CPC Decision № 576/15.07.2008 on CPC Case № KZK-765/20.12.2007. After the appeal before the Supreme Administrative Court (SAC) the Decision was confirmed by the court which rejected the appeals of all the appellants. The SAC judgment is currently being appealed before the Court of Cassation whose decision will be final.

³⁰ As a result of the Commission's investigations during the Sector Inquiry, it appeared that widespread practices in both co-reinsurance and coinsurance markets almost always results in an alignment of premiums and other conditions of coverage. Potential co(re)insurers are asked to indicate the share of the cover and the price they would be willing to accept. Once a lead insurer has been determined, the broker will negotiate and agree terms and premiums with this insurer. The broker subsequently approaches the follow market to fill 100% of the cover and advises the following co-insurers the same terms and conditions, including premium, as the ones agreed upon with the lead-insurer.

³¹ Paragraph 15 of the Communication of the Commission on the Sector Inquiry of 25 September 2007:

³² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0556:FIN:EN:PDF>

E.g.: Commission Decision 93/3/EEC of 4 December 1992 - *Lloyd's Underwriters' Association and The Institute of London Underwriters OJ L004, 08/01/1993 p.26-31*: The Joint Hull Understandings agreement recommended minimum increases in premiums, fixed the rate of increase in deductibles and fixed the rebate paid for prompt cash payment and for deferred payment. *The notification carried out by UPEA (The Belgian professional association of insurance companies) in 1988*: This case involved a recommendation concerning the calculation of premiums for so-called special risks, concerning fire coverage for properties with a value

some recommendations of insurance associations met all conditions of the BER.³³ Insurance associations have also been fined by NCAs³⁴ for cooperation infringing Article 81(1).

70. It should be noted that the Commission also now considers that calculations on pure-premiums should be non-binding.³⁵
71. However, these cases concern cooperation on commercially sensitive information which is outside the scope of the BER and which can be sanctioned both in the absence and in the presence of the BER. On the basis of the evidence before the Commission, cooperation within the limits of the BER appears to be generally pro-competitive.
- 2.3.3 *Whether BER is most appropriate and if so in what form?*
72. On the basis of the analysis above and the evidence before it, the Commission considers there to be particular risks in relation to the non-renewal of this exemption which lead to a relatively high risk of smaller/foreign insurers being driven out of or being prevented from entering the market. This may result in adverse consequences for consumers. Without the BER, large insurers may continue to cooperate without the explicit obligation in the BER to share data with smaller/foreign insurers (in order for such agreements to fall under the BER). Moreover, renewing this particular exemption might avoid possible inconsistency with the Solvency II principles and other EU directives.
73. The current BER appears to be working effectively for competition and consumers. However, the Commission has not yet decided whether to amend the structure or drafting of the current exemption and whether, if concluded that renewal is necessary, it should be total or partial. This will depend on the further input it may receive and on a thorough and specific analysis of all data and information available. In terms of improving the current exemption, the Commission will consider a range of options including (i) whether the scope of this exemption can be narrowed on the basis of risk

above a certain amount. Having regard to the considerable divergences between the premiums charged by insurers, the Commission restricted itself to informing the association of the incompatibility of its recommendation with the BER and finally closed the case without further action. *The notification submitted by UNESPA (Unión Española de Entidades Aseguradoras y Reaseguradoras) in 2000*: This notification involved a decision of an association of undertakings (UNESPA) related to the creation of a database containing the history of the contracts signed-up by the policy-holders of motor vehicle insurance, as well as the damages linked with these contracts for previous last five years. The periodic exchange of information, the sensitivity of the information exchanged (lists of clients, price elements) and the homogeneity of the products led the Commission to appreciate that this exchange of information agreement facilitated or encouraged the anti-competitive behaviour of the insurance companies participating in it.

³³ In 1997, an ex-officio procedure was started by the Commission in relation to certain A.N.I.A (The Italian Insurers' Association) recommendations. The investigation proved that A.N.I.A did not collect data on commercial premiums, nor recommend commercial premiums. However, the investigation showed that insurance companies based their tariffs on very similar parameters (for instance: bonus/malus; type of fuel; age of the policyholder) to which they attributed similar values. The Italian Competition Authority fined 38 insurance companies for exchange of information by concerted practices in the branch of motor vehicle insurance. The Commission then closed its case.

³⁴ Following a general inquiry, the Italian Competition Authority criticised the maintenance of a uniform system of parameters to calculate repairing costs as one of the major causes of the increase in premiums. Although A.N.I.A formally abandoned the system, it continued to encourage the insurance companies to follow the same criteria and was fined for infringing Article 81(1) in 2005.

³⁵ *Commission Decision 84/191/EEC of 30 March 1984 – Nuovo CEGAM, OJL 099, 11/04/1984, p.29-37*: An Italian association of insurers agreed not only to set pure premiums for industrial engineering insurance, but also to apply them jointly. The Commission exempted the agreement as it considered that it brought new competition onto the market (the members of the association collectively had a 26% market share while their largest competitor had a 25% market share).

type; (ii) adding further examples of information which may be shared and of commercially sensitive information which may not be shared; and (iii) adding a transparency requirement such that shared information should be more easily/freely accessible to non-insurance companies such as consumer organisations or private individuals.

3. CONCLUSIONS AND PROPOSALS

74. The Commission has not yet decided whether to amend the structure or drafting of the current exemption and whether, if concluded that renewal is necessary, it should be total or partial. This will depend on the further input it may receive and on a thorough and specific analysis of all data and information available.

III. STANDARD POLICY CONDITIONS AND MODELS

1. SCOPE OF THE BER

75. The BER exempts subject to certain conditions, the joint establishment and distribution of non-binding standard policy conditions (SPCs) for direct insurance; and non-binding models on profits³⁶.

1.1. What the BER covers

1.1.1. *Agreements on SPCs*

76. Agreements on the joint establishment and distribution of non-binding SPCs are only permitted under the BER on condition that they are established and distributed with an explicit statement that they are non-binding and that their use is not in any way recommended. Furthermore, such agreements on SPCs are only exempt under the BER if they expressly mention the participating undertakings are free to offer different policy conditions to their customers and are accessible to any interested person (provided simply upon request).³⁷

1.1.2. *Agreements on Models on Profits*

77. Agreements on the joint establishment and distribution of non-binding models illustrating the profits to be realised from an insurance policy involving an element of capitalisation (Models) are only exempt under the BER from the prohibition in Article 81(1) on condition that these Models are established and distributed only by way of guidance.
78. The Commission's Services received no comments from respondents during the course of its Review in relation to models on profits. This category of agreements will therefore not be analysed further in this document.

1.2. What the BER does not cover

79. As mentioned above there are strict conditions which must be fulfilled before an agreement on SPCs will be covered by the BER. Furthermore the BER will not cover SPCs which include clauses which for example contain any indication of the level of commercial premiums; or require the policyholder to obtain cover from the same insurer for different risks.³⁸

³⁶ Illustrating the profits to be realised from an insurance policy involving an element of capitalisation.

³⁷ Article 1 and 5 of the BER.

³⁸ A list of agreements which exclude cover by the BER is contained in Article 6 of the BER, namely, agreements which (a) contain any indication of the level of commercial premiums; (b) indicate the amount of the cover or the part which the policyholder must pay himself; (c) impose comprehensive cover including risks to which a significant number of policyholders are not simultaneously exposed; (d) allow the insurer to maintain the policy in the event that he cancels part of the cover, increases the premium without the risk or the scope of the cover being changed (without prejudice to indexation clauses), or otherwise alters the policy conditions without the express consent of the policyholder; (e) allow the insurer to modify the term of the policy without the express consent of the policyholder; (f) impose on the policyholder in the non-life assurance sector a contract period of more than three years; (g) impose a renewal period of more than one

2. MAIN FINDINGS OF THE REVIEW AND ANALYSIS

2.1. **Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation?**

2.1.1. *SPCs are not specific to the insurance sector*

80. Several insurers and insurers associations (for instance the LMA in the UK) argue that cooperation in order to establish standard policy conditions (SPCs) ensures that the costs incurred by insurers and in turn the premiums they charge to customers are kept low. They argue that without the BER, there would be an increase in insurers' and brokers' costs resulting from the increased effort required to agree wordings for policies due in particular to the lack of an agreed starting point.

81. The Commission agrees that in many cases SPCs can give rise to positive effects for competition and consumers (as discussed below). However the question for this review is primarily whether this category of agreements is special to the insurance sector. The answer to that question appears to be that technically or legally complex agreements in fast changing legal environments are commonplace in a number of sectors and not specific to the insurance sector. SPCs are used in some of these sectors without the cover of sector-specific BERs.

82. For example in the banking sector to whom the Commission's Services also sent questionnaires, SPCs are agreed between banks in a number of Member States, for services such as money transfer, issuance of cards, use of ATMs, account terms, credit agreements and payments. In addition it has been argued by representatives of the banking sector that it does not require a legislative framework (such as a BER) in order to set policy conditions and furthermore, that the absence of such a framework has not caused any tangible difficulties for banks.

2.2. **Question Two: does this enhanced need for cooperation require a legal instrument in order to protect or facilitate it?**

83. As discussed above it appears that that co-operation on SPCs is not specific to the insurance sector and as such cooperation does not objectively require a sector specific BER.

2.3. **Applicability of Article 81**

84. As shown in Chapter I, Section 5.2, in the event that the BER is not renewed, Article 81(3) together with the Guidelines on the application of Article 81(3) will be applicable to the insurance sector, as is currently the case for the vast majority of sectors which do not benefit from a BER. The BER itself is "an application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector". Given this fact and the evidence gathered in this review, it is unlikely that the

year where the policy is automatically renewed unless notice is given upon the expiry of a given period; (h) require the policyholder to agree to the reinstatement of a policy which has been suspended on account of the disappearance of the insured risk, if he is once again exposed to a risk of the same nature; (i) require the policyholder to obtain cover from the same insurer for different risks; (j) require the policyholder, in the event of disposal of the object of insurance, to make the acquirer take over the insurance policy; (k) exclude or limit the cover of a risk if the policyholder uses security devices, or installing or maintenance undertakings, which are not approved in accordance with the relevant specifications agreed by an association or associations of insurers in one or several other Member States or at European level.

Commission or NCAs would consider that an SPC currently covered by the BER would fail to comply with Article 81(3) of the EC Treaty.

85. Indeed, most of the criteria used in the BER would remain valuable for interpretation purposes as regards the analysis under Article 81(3). Further guidance on SPCs may also be envisaged by the Commission in the event of non-renewal.

2.3.1. Applicability of Article 81(1)

86. Standard policy conditions would, in most cases, be unlikely to fall within the prohibition of Article 81(1).

87. However, there are some categories of agreement on SPCs which will usually fall foul of the prohibition in Article 81(1) in particular the categories of agreement listed in Article 6 (the black list) of the BER. In the past, the Commission has received notifications for individual exemptions in the past, in relation to clauses which were on the black list of the BER. However, its view has been that the arguments in favour of exemption had to be particularly strong and that it had to be cautious not to open the door for any "softenings" of the black-list clauses.³⁹ In addition some respondents recalled that cooperation in respect of standard policy conditions should not be tied to cooperation in the establishment of risk premiums and pure premiums.

88. SPCs allow the comparison of insurance policies offered by different insurers allowing customers to verify the content of guarantees more easily and facilitating switching between insurers and insurance products. Similarly, the main effect of the proposed EU Directive on Consumer Credit Loans will be to provide standard, comparable information to customers across the EU when taking out a credit loan.

89. However, whilst there is clearly a need for comparability between insurance products for consumers, this cannot be at the expense of homogeneous standard conditions which can hinder consumers' ability to find products suited to their needs, a risk highlighted by some respondents. Indeed, too much standardisation can harm consumers by limiting product choice, as pointed out by one consumer association⁴⁰ in its reply in relation to motor vehicle insurance. Comments that standard policy conditions are capable of being a hindrance to competition as they may influence the use by insurers of restrictive or exclusionary terms were also made in response to the present Commission's Consultation.

³⁹ The notification of the German Association of Insurers' (GDV's) "Security Device Guidelines for Banks, Building Societies and other financial institutions) (2000): These Guidelines contained inter alia a general description of the risks and protection requirements, installations for reports of robbery and burglary, installations for optical monitoring of the rooms, special security devices as well as money and value transports. Furthermore, they contained a part dealing with recommended insurance premiums for cover of different types of value containers (such as safes etc) which were dependent on the robustness of the containers. The Commission considered that the recommended level of coverage sums for subscription was a black clause because of an indication of the amount of the cover. Even though the policy-holder could have benefited from the comparability of the conditions of the insurance companies and from the prevention of burglary and robbery in the form of lower insurance premiums and earlier compensation, as GDV argued, they were inevitably confronted with a range of similar products and similar prices. A similar assessment was made in relation to the notification of the GDV's "Security Device Guidelines for Banks, Building Societies and other financial institutions) (2000).

⁴⁰ Test Achats, Belgium.

90. Clearly, concerns may arise with SPCs and responses during the Review were divided on whether the overall effect is restrictive of competition. A blanket BER such as is currently in place would therefore not appear appropriate since on the basis of the Commission's current evidence, an analysis of an agreement on SPCs would need to be undertaken in the context of the product and geographic market for which it is intended.

2.3.2. *Applicability of Article 81(3)*

91. In the event that an agreement on SPCs (outside of the black list in Article 6) were caught by Article 81(1), it may still fall within the efficiency exemption provided by Article 81(3). For example in one Commission Decision, the complainant argued that the GDV member companies applied uniform conditions in occupational disability insurance and that this amounted to a “cartel” between the GDV members. The Commission rejected the complaint on the basis that it met the exemption conditions for Article 81(3) as set out in the BER. Furthermore there was no evidence that GDV or its members agreed, to oblige other undertakings to apply the standard policy conditions.⁴¹
92. Replies to the Consultation and targeted questionnaires supported the initial view of the Commission and many NCAs that common standard policy conditions which are not black listed in the BER have advantages for consumers and competition. The variation in the frequency of use of standard policy conditions across EU Member States may depend on the national insurance regulations (e.g.: the high level of use of standard policy conditions in some Member States may be explained by the high number of compulsory insurance products).
93. An argument made by some respondents in favour of SPCs is that new market entrants require sample insurance terms, in particular where a foreign language or a different jurisdiction is involved as this reduces the investment expenditure connected with entry into a new market. Furthermore, it was argued that without SPCs established by insurance associations a reverse effect could occur whereby big market players could set up their own conditions and smaller companies lacking the means and resources would have to follow.
94. Respondents also argued that SPCs can facilitate the insurance of new risks because once non-binding SPCs have been agreed for new risks, even small insurers can include new products in their product range from the very start of the coverage such new risks.
95. The question arises as to whether customers should be involved in a more transparent way in the process of drafting standard policy conditions. On this issue the Commission's investigation into the behaviour of providers of aviation war and terrorism insurance in the wake of the terrorist attacks of 11 September 2001 concluded in March 2005 with a settlement involving several reforms. These foresaw *inter alia* greater transparency and customer involvement in key industry committees including one that establishes standard wordings for aviation insurance policies and clauses. A new Aviation Insurance Clauses Group would grant customers – previously not involved in the preparation of standard clauses - the opportunity to participate and make proposals.⁴²

⁴¹ Commission Decision to reject a complaint against DBV Winterthur insurance company and the GDV (the German Insurance Industry Association) (2004).

⁴² The Aviation case (2005).

96. The BER clearly requires SPCs to be non-binding. In addition it may be the case that a requirement to notify derogations to establishing associations would also be exempt under Article 81(3). A case in point is the Commission's Decision in *Concordato Incendio* to exempt not only standard policy conditions, which members were free to derogate from, but also a requirement that members notify the Concordato of any such derogation that might affect the statistics used to calculate pure premiums. This requirement was considered necessary to guarantee the reliability of the statistics.⁴³
97. It has been argued that SPCs can help to reduce the use of restrictive or exclusionary terms. However, there are indications from the evidence before the Commission that some imbalanced clauses are still being used by insurers and that consumer associations, as they would wish, are not fully involved in the drafting of such clauses (which would obviously be the ideal scenario in terms of ensuring balance between insurers and consumers).

2.4 Effects on SPC cooperation in event of non-renewal

98. It has been argued by some respondents in the course of the Commission's review that the legal uncertainty that would result from non-renewal would lead to less cooperation for fear of a risk that such cooperation could be challenged by the Commission or NCAs. The argument continues that in the event of non-renewal there would be an individual assessment which would be time consuming and expensive especially for smaller insurers which would pass on costs to policyholders.
99. However, even under the current regime, a careful legal assessment of standard clauses' compliance with the BER must be undertaken, in particular to ensure that the conditions are fulfilled and that no prohibited black clauses are present. In addition, some national regulations have already fixed these standard policy conditions, which results in a reduced need for cooperation. Moreover, there are cases where the national regulator (e.g. FSA in the UK) challenged market participants to achieve contract certainty⁴⁴ and made clear that if the market fails to develop its own, it will be forced to intervene with new rules and requirements.
100. Therefore, there does not appear to be a significant and real risk of less or non-cooperation in the event of non-renewal of the BER, particularly where the national regulator imposes a high degree of contract certainty. Furthermore, many national associations have been taking the lead on SPCs for some time, which further supports the view that it is unlikely that SPCs would not continue to be agreed in the absence of a BER. This is in particular given the Commission's view that in many cases SPCs would not fall foul of Article 81(1) or would not fail to comply with the exemption criteria of Article 81(3).

3. CONCLUSIONS AND PROPOSALS

101. The Commission agrees that in many cases SPCs can give rise to positive effects for competition and consumers. In many cases SPCs would not fall foul of Article 81(1) or would not fail to comply with the exemption criteria of Article 81(3).

⁴³ Commission Decision 90/25/EEC of 20 December 1989 – *Concordato Incendio*, OJL 015, 19/01/1990, p.25-29.

⁴⁴ This being with a view to achieving greater certainty for buyers about what they have bought and for insurers about the risks they are covering, whilst also reducing risks for brokers.

102. However the question for this review is whether this category of agreements are special or peculiar to the insurance sector such that they should be protected by a legal instrument. The answer to that question appears to be in the negative on the basis of the fact that similar SPCs are agreed in other sectors in particular in the banking sector, without the need for a BER.
103. Furthermore, there does not appear to be a significant risk of non-cooperation on SPCs in the event of non-renewal.
104. On the basis of the above analysis the Commission therefore proposes, at this stage, not to renew the BER for agreements on SPCs.

IV. COMMON COVERAGE OF CERTAIN TYPES OF RISKS (POOLS)

105. Co(re)insurance pools (or groups) are frequently used for the coverage of large or exceptional risks, such as aviation, nuclear and environmental risks, for which individual insurance companies are reluctant or unable to insure the entire risk alone.
106. In these pools, in general, each member insurance company agrees in advance to take a fixed percentage of all risks insured and the pool acts as one single interlocutor for the insured party.
107. The BER is based on the premise that any such pools might involve restrictions of competition and that it is therefore appropriate to lay down the circumstances (market share thresholds⁴⁵ and other conditions⁴⁶) under which such groups can benefit from the Article 81(3) exemption.

1. SCOPE OF THE BER

1.1. Pools newly created which cover new risks

108. The BER exempts the setting up and operation of insurance pools (groups of insurance undertakings or groups of insurance undertakings and reinsurance undertakings) for the common coverage of new risks for three years from the date of first establishment of the group, regardless of the market share of the group.
109. Given that it is not possible to know either what subscription capacity is necessary to cover the risk nor whether two or more such groups could co-exist to provide this type of insurance, the BER provides that new risks are exempt for a limited period of 3 years.

1.2. Pools covering risks which are not new

110. The BER exempts co-insurance or reinsurance pools that have been in existence for three years (and have covered new risks for a period of three years) or that were not created in order to cover new risks, and provide common coverage of a specific category of risks

⁴⁵ Article 7(2) (a) and (b) of the BER: more than 20% of the relevant market in the case of co-insurance groups and, respectively, more than 25% of the relevant market in the case of co-reinsurance groups.

⁴⁶ Article 8 of the BER provides: "The exemption provided for in Article 1(e) shall apply on condition that:

- a) each participating undertaking has the right to withdraw from the group, subject to a period of notice of not more than one year, without incurring any sanctions;
- b) the rules of the group do not oblige any member of the group to insure or re-insure through the group, in whole or in part, any risk of the type covered by the group;
- c) the rules of the group do not restrict the activity of the group or its members to the insurance or reinsurance of risks located in any particular geographical part of the European Union;
- d) the agreement does not limit output or sales;
- e) the agreement does not allocate markets or customers;
- f) the members of a co-reinsurance group do not agree on the commercial premiums which they charge in direct insurance; and
- g) no member of the group, or undertaking which exercises a determining influence on the commercial policy of the group, is also a member of, or exercises a determining influence on the commercial policy of, a different group active on the same relevant market.

(e.g. nuclear, environmental, terrorism risks), subject to certain conditions, in particular market share thresholds.

111. However, the BER will not cover any exemption for such groups/pools if the group benefits from a significant level of market power (25% for co(re)insurance pools and 20% for co-insurance pools), since the restriction would otherwise outweigh any advantages.

1.3. What the BER does not cover- Co(re) insurance on subscription markets

112. Co(re)insurance can be offered both through institutionalised pools (which are covered by the BER under certain conditions) or through arrangements on subscription markets (*ad-hoc* co(re)insurance) in which each insurance company agrees independently to insure a certain percentage of a risk. In this case a lead insurer covering the largest part of the risk is chosen normally by the broker and his client, agreements on terms and conditions including premium are concluded between the lead-insurer and the client and then other small or medium sized insurers are invited to cover the remaining part of the risk.

113. This latter category of cooperation is outside the BER. Following the consultation on the previous insurance BER (in 2002), the Commission did not include *ad-hoc* co(re)insurance in the current BER as at the time there was no information or evidence to indicate any possible restriction of competition. However, during the Business Insurance Sector Inquiry the Commission found that co(re)insurance on the subscription market (not covered by the BER) usually involves premium alignment, which may restrict competition and may not be justified under Article 81(3).

2. MAIN FINDINGS OF THE REVIEW AND ANALYSIS

2.1. Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation?

114. Several replies to the Consultation Paper emphasised that the insurance sector is special as regards co(re)insurance and that its specificity gives rise to an enhanced need for cooperation in the sense that pools permit insurers to mitigate risk and fulfil the need to pool financial capacity which companies might not be able to find in isolation for complex risks (nuclear risks, terrorism) or less well documented risks (environment, climate change).

115. The Commission agrees that risk sharing for certain types of risks (usually very large or new risks) is crucial in order to ensure that all such risks can be covered. Furthermore, this is an requirement that appears to be specific to the insurance sector. However if it is accepted that the insurance sector gives rise to an enhanced need for such cooperation, the question arises as to whether a legal instrument such as the BER or sector specific guidance is required in order to facilitate it.

2.2. Question Two: if the answer to Question one is positive, does this enhanced need for cooperation require a legal instrument in order to protect or facilitate it?

2.2.1. The need for a consistent approach regarding market share rules

116. Article 11-1 of the first Insurance BER provided that market share should be calculated by taking into account the members' "global turnover in the relevant insurance market,

irrespective of whether they do their business through the pools or independently". As regards the coverage of catastrophic or aggravated risks, article 11-2 specified that the market share to be taken into account related to "the insurance products brought into the group", i.e. the members' turnover made through the pool.

117. The current BER follows this last method and provides in Article 7(2) and 7(3)(a) that for the purposes of applying the market share thresholds provided by the BER, the market shares shall be calculated taking into account the insurance products underwritten within the pool by the participating undertakings or on their behalf, on the basis of the gross premium income of the preceding calendar year⁴⁷.
118. This new methodology for calculating market shares made the market share calculation more generous for co(re)insurance pools, as the turnovers achieved by the participating companies outside the co(re)insurance group in the relevant insurance market are not to be considered.
119. It is important to note that this method of calculating market share is not in line with other general and sector-specific competition rules on the assessment of horizontal cooperation. The Commission's *de minimis* Notice⁴⁸ refers to the "aggregate market share held by the parties to the agreement"⁴⁹ and not to the market share of the cooperation in question. In addition, no other BER, be it general⁵⁰ or sector-specific⁵¹, bases its calculation of market share on the cooperation only instead of the aggregate share of all companies involved⁵². Applying different rules on the calculation of market shares in the insurance sector to those applied in other sectors would result in treating the insurance sector in a preferential way.
120. Whilst there appears to be no reason to maintain such preferential treatment in relation to other sectors, the inconsistency related to market shares calculations in the current BER is not in itself a reason not to renew. In the event that the Commission decided to renew this exemption, the Commission would consider that the section on market shares should be significantly amended with a view to bringing it into line with the rules on other forms of horizontal cooperation.

2.2.2. *Pools can benefit from the BER provided they meet certain strict conditions*

121. The vast majority of respondents to the Consultation Paper and questionnaires emphasised that in the absence of the BER there is a risk that they would not continue to cooperate within pools. However, this assertion presumes that the pools in question currently benefit from the BER, since otherwise non-renewal of the BER would result in no change.

⁴⁷ If gross premium income data are not available, estimates based on other reliable market information, including insurance cover provided or insured risk value, may be used to establish the market share of the undertaking concerned.

⁴⁸ Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty, OJ C 368, 22.12.2001, p.13 and Guidelines on the effect on trade concept, OJ C 101, 27.4.2004, p.81.

⁴⁹ The Commission's Notice on Agreements of Minor Importance referred to above.

⁵⁰ Article 4 of the Specialisation BER considers that market share "of the participating undertakings", and Article 3 of the Technology Transfer BER considers the "combined market share of the parties".

⁵¹ Article 5(2) of the Draft Consortia BER provides for the aggregation of the market shares of carriers that offer services both individually and within a consortium on the same relevant market.

⁵² As also pointed out by a NCA in reply to the consultation.

122. Yet, on the basis of the evidence the Commission has found, it appears that some pools do not actually benefit from the BER, for a number of reasons, and therefore renewal or non-renewal of the BER should not affect their legal assessment. First, certain pools do not need a BER to provide them with a safe harbour because they do not give rise to a restriction of competition in the first place. Secondly, there are pools which do restrict competition and wrongly consider themselves covered by the BER. For example one pool argued that although it had been in existence for 30 years, it still considered it covered a "new risk" (within the definition of the BER). For this category of pools the renewal or non renewal of the BER should not be of primary importance, as it is unlikely that they benefit from the BER. However, it may still be possible to benefit from an exemption under Article 81(3).
123. However, there is one category of pools which may experience a change in terms of their legal assessment in case of non-renewal, namely the pools which are restrictive of competition, but currently benefit from the BER as they fulfil all its conditions.
- 2.2.2.1. Some pools are outside the scope of the BER because they are necessary and as such do not give rise to a restriction of competition
124. Certain catastrophic risks may be such that no individual insurer is capable of insuring them alone. In the P&I Clubs case⁵³ it was considered that members of the pool were not actual or potential competitors, given the fact that they were unable to insure alone the risks covered by the pool. The so-called P&I Clubs doctrine currently applies in relation to pools on markets where no coverage outside the pool is possible. In accordance with this doctrine, pools, no matter how high their market share, may be considered not to be anti-competitive as long as pooling is necessary to allow their members to provide a type of insurance that they could not provide alone.
125. The same approach was taken in the nuclear insurance pool cases (2001)⁵⁴. Moreover, in the *Austrian and the German terror pool case* (2002)⁵⁵, the Commission considered that the pools did not fall within the scope of Article 81(1) because it was not in a position to clearly demonstrate that the pool is not necessary or could be replaced by more than one pool. It has therefore been the Commission's practice to grant the "benefit of a doubt", if it cannot prove that more than one pool can exist.

⁵³ *Commission Decision 1999/329/EC of 12 April 1999 – P&I Clubs, Pooling Agreement, OJL 125 of 19/05/1999, p.12-31*: A claim-sharing agreement between insurance mutuals covering 89% of the world market for maritime third party and contractual liability insurance (protection & indemnity - P&I) was not considered to restrict Article 81(1) because the members of the P&I Clubs were not actual or potential competitors, given the fact that they were unable to insure alone the risks covered by the pool (very large maritime liability risks).

⁵⁴ *The nuclear insurance pool cases (2001)*: In January 2001 the Commission closed its investigations into three nuclear insurance pool cases (a Swedish co-insurance and co-reinsurance nuclear pool, an Italian reinsurance nuclear pool and a Spanish pool providing co-insurance to nuclear installations in Spain and co-reinsurance to nuclear risks outside Spain). The Commission concluded that without the pooling agreements there would be no supply of nuclear liability insurance with adequate coverage for the risks involved.

⁵⁵ *The Austrian pool and the German pool (terror pools) (2002)*: The Commission received two applications for negative clearance: one concerned an agreement for the creation and operation of a co-insurance group ("Austrian Terrorpool") with the aim of covering the risk of terrorism within insured threats for private customers and small business located in Austria. The second concerned the German Pool Extremus, providing terror risk insurance for risks located in Germany. The Commission considered that due to the highly atypical and more political character of the terrorism risk, the pools would fall within the category of pools for which it is the Commission's practice to grant the "benefit of a doubt", if it is not in a position to clearly demonstrate that the pool is not necessary or could be replaced by more than one pool. Therefore it was concluded that the pools did not fall within the scope of Art. 81(1).

126. Replies to questionnaires from nuclear pools show that some are aware of the Commission's analysis as they do not consider that they benefit from the BER for the simple reason that "the pool is not violating Article 81(1) of the Treaty as its members would not be able to provide the necessary capacity for the reinsurance of nuclear risks and are only enabled to grant reinsurance cover by means of their cooperation". Conversely, other pools active on national nuclear liability markets, which appear to fall into the same category (outside the BER because they would not restrict competition in the first place), might wrongly consider themselves within the scope of the BER.. These pools say they are concerned that in the absence of the BER "this form of cooperation would become more difficult or even impossible due to legal uncertainty. Nuclear business is really not attractive and compared to other types of insurance is not generating enough premium to justify the legal uncertainty".
127. It therefore appears that not renewing the BER should not have any effect on pools which are outside its scope because they do not give rise to a restriction of competition and are not prohibited by Article 81(1) of the Treaty.
128. On the question of whether it is possible for any member of a pool to cover individually the same risks or whether they currently cover the same risk outside the pools, some of the pools reply in the affirmative. This leads to the conclusion that such pools fall under Article 81(1), even if they cover such risks in a "very limited way as the values at risk are substantial and monitoring of exposures is complex". Such pools could still be exempt if they fulfil the market share thresholds and other conditions provided by the BER, as shown in the following section.
- 2.2.2.2. Some pools are outside the scope of the BER because they do not comply with its conditions
129. Pools which can be replaced by two or more insurance entities can give rise to restrictions of competition, such as "the standardisation of policy conditions and even of amounts of cover and premiums"⁵⁶. These pools are only covered by the BER if they have market shares that fall within the thresholds set out in the BER⁵⁷ (20% for co-insurance groups and 25% for co-reinsurance groups) and comply with the other conditions of the BER. The replies to the consultation indicate that there are a number of pools operating on the market, which are restrictive of competition, but do not comply with either the market share thresholds or other exemption conditions set out in the BER.
130. A pool might have as its object a restriction of competition. Otherwise, its effects in the market concerned are analysed to determine whether it is likely to have an appreciable adverse impact on the parameters of competition on the market such as prices, costs, level of coverage, service differentiation, service quality and innovation. Agreements can have this effect by appreciably reducing rivalry between the parties to the agreement or between them and third parties⁵⁸.
131. A pool's ability to cause appreciable negative market effects depends on its economic context, taking into account market shares together with other structural factors in the relevant market as well as the nature of the agreement. If the pool and its members have

⁵⁶ Recital 18 of the BER.

⁵⁷ Recital 21 of the BER last sentence: "However, any exemption for such groups is not justified if the group in question benefits from a significant level of market power, since in those circumstances the restriction of competition deriving from the existence of the pool would normally outweigh any possible advantages".

⁵⁸ Guidelines on the application of Article 81(3), OJ C 101, 27.4.2004, p.97.

a low market share, the pool is unlikely to produce restrictive effects. Market concentration, the position and number of competitors, market entry barriers and the likelihood of entry should be taken into account as additional factors in assessing the impact of a given pool on the relevant market.

132. As regards the nature of the agreement, consideration should be given to clauses affecting the pool or its members competitive behaviour in the market such as those stipulated by Article 8 of the BER (e.g. the so-called the "obligation d'apport" clause: the obligation for a member to insure or re-insure through the group, in whole or in part, any risk of the type covered by the group⁵⁹).
133. There have been cases in several Member States where pools were set up, despite the fact that the risks in question could have been covered by several individual insurers rather than a pool and the market share thresholds were exceeded.
134. In 2007, the German NCA prohibited a pool covering pecuniary loss liability risks for auditors and chartered accountants.⁶⁰ The *Bundeskartellamt* considered that the relevant market was the market for pecuniary loss liability risks for auditors and chartered accountants. On that basis, the pool largely exceeded the market share thresholds fixed by the BER. Given that insurance cover was only provided at standard premiums and terms and that there was no competition between the insurance companies for insurance premiums and conditions or for service quality in claims processing, four insurance companies were prohibited from continuing to jointly insure the pecuniary loss liability risks of auditors and chartered accountants from 2009 via the insurers' pool.⁶¹ Another similar case is currently being investigated in the Netherlands, where the Dutch Competition Authority considers that a pool offering primary professional liability insurance to notaries is restrictive of competition and not exemptible. Firstly, members of the pool do not compete with each other regarding the premium or terms, although other insurers already cover this risk independently. This means that two or more competitors could co-exist on the market and that Article 81(1) is applicable in this case. Secondly, due to high market shares (60%) which are beyond the market share thresholds provided by the BER, the pool in question does not benefit from the exemption afforded by the BER.
135. Some replies to the Commission's targeted Questionnaires indicate that some pools do not benefit from the exemption under the BER because they do not fulfil the additional condition set out in Article 8(g) of the BER. In accordance with Article 8(g), if an insurer or reinsurer is simultaneously a member of two pools active on the same relevant market, then neither pool is covered by the BER. Some replies indicate that this is an issue which arises in practice.

⁵⁹ A nuclear insurance pool case (the *German pool DKG*) was closed in 2002, following the deletion of a clause obliging members to insure nuclear risks only through the pool, whatever the amount of cover.

⁶⁰ Decision no B4-31/05 of 10 August 2007, available at:

⁶¹ <http://www.bundeskartellamt.de/wDeutsch/download/pdf/Kartell/Kartell07/B4-31-05.pdf>.

The decision of the *Bundeskartellamt* was annulled by the Düsseldorf Court of Appeal on the grounds of market definition (Judgement VI-Kart 11/07 (V) of 17 September 2008). The Appeal Court considered that the market should be defined more widely. On that basis, the pool under investigation would fall under the market share thresholds defined by the BER. The judgment is not yet final, the *Bundeskartellamt* is considering whether to appeal to the Supreme Court.

2.2.2.3. Some pools are within the scope of the BER

136. Although the first two categories of pools discussed above are outside the scope of the BER and hence could not theoretically be affected by the non-renewal of the BER, pools which do comply with market shares thresholds and other conditions established by the BER would be affected by its non-renewal.

2.2.3. *The simple existence of the BER does not provide for automatic cover for pools*

137. It appears from many replies during the Review that pools use the BER as a general "blanket" exemption and that they consider the simple existence of the BER enough to provide them with legal certainty. This is a misconception as the BER offers exemption to pools only in certain conditions, which must be assessed case by case. Compliance with the BER is being assessed incorrectly in many instances according to the evidence the Commission has found.
138. It is essential that all pools undertake a proper legal assessment in order to determine whether they are restrictive of competition or otherwise and/or whether they are covered by the BER.

2.2.3.1. The relevant market

139. In order to assess the effects on competition of an agreement for the purposes of Article 81, it is first necessary to carefully define the relevant product and geographic market(s). Market definition is also a prerequisite in order to assess the applicability of the Insurance BER, especially for the application of the market share thresholds for pools. However, the subsequent versions of the BER have never offered any guidance on market definition in the insurance sector. As a consequence, despite the adoption of the first Insurance BER in 1992, many pools felt the need to maintain their individual notifications to the European Commission, because of uncertainty as to market definition and market shares⁶².

2.2.3.1.1. Available guidance

140. The main purpose of market definition is to identify in a systematic way the competitive constraints faced by an undertaking. The methodology adopted by the Commission for its definition of the relevant market in its Notice on the definition of the relevant market for the purposes of Community competition law⁶³ is normally based on an analysis of the substitutability of demand and supply. The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.
141. Given that substitutability of demand is theoretically zero, as the insurance of each risk category and even of specific risks within each category is not substitutable for the insured person for whom each insurance policy is unique, supply substitutability is particularly important in insurance market definition. An analysis of the substitutability of supply reveals that different types of risk can often be included in a single product market, since the conditions needed to insure them are similar. The conditions in question, which may allow the insurance of different risks to be included in a single product market, are, inter alia, the laws and regulations applicable, the distribution

⁶² For instance, three comfort letters were issued to nuclear pools in 2001.

⁶³ OJ C372, 9.12.1997, p.5.

channels, the necessary expert know-how and the characteristics of the risk (frequency and scale of claims).

142. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas⁶⁴. In the insurance sector, the geographic market must be defined essentially by the actual cross-frontier provision of services: if customers unable to find appropriate insurance in their own countries obtain cover in another country, the market is international; if not, the market is national. It is also possible that an undertaking operates on a market larger than its domestic market but smaller than the world market (e.g. the European Union) or operates simultaneously on several geographic markets having different competitive conditions.
143. In addition, relevant Commission's decisions and comfort letters can be used in order for pools to determine the relevant market in which they operate. For example, the Commission distinguished: a nuclear liability insurance market in the nuclear insurance cases of 2001⁶⁵ and a third-party liability insurance market for maritime shipping in the P&I Clubs case⁶⁶. Also, in aviation insurance, the Commission considered that insurance for commercial and non-commercial aviation (private and pleasure aviation) constitute distinct products markets⁶⁷.
144. In some cases, the Commission's Services have defined the relevant product or geographic market in a broad way (e.g. an Austrian pool for international transport risks which appeared to obtain around one-third of its turnover abroad was considered to operate on a geographic market which was wider than Austria; the market share of another Austrian pool dealing with the insurance of Volkswagen-type cars was determined with reference to the wider product market for car insurance; and an Italian pool providing entrepreneurs or contractors with insurance against late delivery of their work was considered to operate in competition with financial institutions providing such companies a bank guarantee against the same event)⁶⁸.

2.2.3.1.2. Uncertainty in practice despite the BER

145. In the consultation process, we received indications from several pools and NCAs that the geographic product market on which pools operate is often national (in the sense that the risks being covered are situated in the Member State where the pool is located) and have market shares beyond the ones permitted by the BER, with the consequence that they would not be covered by the BER. Conversely, pools which cover risks situated in

⁶⁴ Notice of the Commission on the Definition of the Relevant Market for the Purposes of Community Competition Law, referred to above, paragraph 8.

⁶⁵ See footnote 54.

⁶⁶ See footnote 55.

⁶⁷ *The Aviation Pool cases (1998)*: In 1998 the Commission closed an investigation into several notifications of aviation pool cases. For the insurance of large aviation risks, the market was international and the market share of each pool was sufficiently small as to benefit from negative clearance. For small aviation risks (private and pleasure aviation), for which markets were national the pools in question did not seem to be necessary in order to allow their members to be present on those markets. The Commission found there to be insufficient Community interest to bring proceedings but warned the pools of the possibility of action by national competition authorities.

⁶⁸ Report from the Commission to the Council and the European Parliament on the operation of Commission Regulation n° 3932/92 concerning the application of Article 81 (ex-Article 85), paragraph 3, of the Treaty to certain categories of agreements, decisions and concerted practices in the field of insurance, p 16.

several countries worldwide consider that they fall under the BER "*because the market is global*".

146. In the case of the insurers' pool in Germany for auditors and accountants, the German competition authority's decision defining the relevant market as the one for pecuniary loss liability risks for auditors and chartered accountants was annulled by the German Appeal Court in 2008. The Court held that this market definition was too narrow and that liability of risks of other professions (such as lawyers) should be included. On that basis, the pool would fall under the 20 per cent market share threshold provided by the BER and would be excluded.
147. In the case of the insurers' pool offering insurance to notaries in the Netherlands, the Dutch competition authority defined the relevant market as the market for professional liability insurance for notaries. The definition is based on the fact that there is no substitute for the demand and that there is no substitute offer either. An important barrier to entry was considered to be the specific knowledge necessary to assess the risk. On the basis of this market definition, the notary pool had a market share of around 60% in the period under consideration (from January 2008 onwards) and therefore is not covered by the BER. Furthermore, the Dutch competition authority considers that the pools agreement would not be exemptible even if a broader definition was accepted, that is, the market for all legal professions, where the pool has a market share of just over 50%.
148. In comparison with these narrow definitions, some pools' definition of their relevant market may be too large. For instance, a coinsurance group for professional liability of insurance intermediaries defines the relevant market of the pool as the national liability market (excluding motor third party liability). On this basis, their market share would only be of 2%, which would allow them to benefit from the BER.
149. The reply of one nuclear pool illustrates not only the importance of the definition of the relevant market but also shows that the simple existence of the BER does not offer legal certainty as such. They consider that the pool in question is not covered by the BER "if the relevant market is the global nuclear liability market" (probably because of high market shares). However, "if the relevant market is the global general liability market", the pool would be covered by the BER.

2.2.3.2. The notion of "new risks"

150. According to article 2(7) of the BER, "new risks means risks which did not exist before, and for which insurance cover requires the development of an entirely new insurance product, not involving an extension, improvement or replacement of an existing insurance product". Recital 20 of the BER further clarifies the definition, stating that:

only risks which did not exist before are included in the definition, thus excluding for example risks which hitherto existed but were not insured. Moreover, a risk whose nature changes significantly (for example a considerable increase in terrorist activity) falls outside the definition, as the risk itself is not new in that case. A new risk, by its nature, requires an entirely new insurance product, and cannot be covered by additions or modifications to an existing insurance product.

151. From replies to the targeted Questionnaires it appears that some pools seem to interpret this definition too broadly, wrongly considering that they are being covered by the BER. First, it is unlikely that a risk that existed before such as pollution would be considered "new" within the definition in the BER, even if this risk is "an unknown risk, which

demands studies and specific knowledge". Secondly, only pools which were created after 31 March 2003 (i.e. the entry into force of the current BER) in order to cover new risks are exempt, independently of their market shares.

152. Therefore, pools which do not correctly apply the definition of "new risks", as well as pools which started to cover "new risks" more than 3 years ago, should assess whether they comply with the thresholds established by the BER for the second category of risks, i.e risks which are not new. It appears from the replies that not all of the pools make this new assessment, which means that they could be outside the BER without being aware of it.
153. Several replies to Questionnaires emphasised the fact that the definition of "new risks" should be clarified and extended⁶⁹. Moreover, some of the respondents consider that the BER hinders the setting-up of pools with innovative policies because the definition of "new risk" in the BER is not clear. This shows that there are situations where pools refrain from innovation as they are reluctant to cooperate on risks which might not be considered "new" and could therefore fall outside the BER.
154. This also suggests that there may be a certain amount of confusion between the scope of what is unambiguously exempted under the BER and the larger set of agreements which is exempt under Article 81(3) due to efficiencies created.

2.2.4. *Pools appear to have positive effects*

155. Many respondents both to the Consultation Paper and Questionnaires consider that pools help insurers and reinsurers to gain the necessary experience of risks with which they are unfamiliar. For instance environmental pools would allow smaller and medium-sized insurers to share information and to gather experience in evaluating environmental damage.
156. Moreover, several respondents emphasised a range of positive effects of pools such as the fact that they increase the availability of insurance products on the market and that cross-border pools create a more integrated insurance industry throughout the EU. Pools would also allow smaller and medium-sized insurers to enter and remain in the market and to gain the necessary experience of risks with which they are unfamiliar. The Commission's services agree that pools can give rise to such positive effects and this is one of the arguments that the BER mentions itself in Recital 18.

2.2.5. *Risk of reduction in cooperation for pools*

157. Some of the pools which are very much in favour of renewing the BER appear not to fall foul of Article 81(1) and therefore would have no reason under the competition rules, to stop cooperating.
158. However, many respondents both to the Consultation Paper and to the targeted Questionnaires mentioned that this form of cooperation would become more difficult or even impossible due to legal uncertainty and that many pool members would consider withdrawing from the pool due to the lack of legal certainty. They argued that the consequence would be that some risks which are "not attractive"(such as nuclear risks)

⁶⁹ For instance, one respondent argued that risk of terrorism is not new but that nowadays it is considered new because of the possible impact and geographical scope; some risks may not be new in some markets but totally new in other markets.

would no longer be covered, as this would not generate enough premium to justify the legal uncertainty.

- 159. In addition some respondents considered that a decrease in insurance capacity could not be ruled out, especially in the context where emerging risks in the area of natural catastrophes may increase the need for joint coverage of risks.
- 160. On the basis of the evidence before the Commission at this stage, it appears that there is some risk of non-cooperation in this area in the event of non-renewal. Although this risk may not be real and significant, it may be appropriate to keep an exemption under the BER in place for pools at least for a certain further period of time beyond expiry of the current BER in 2010.

3. CONCLUSIONS AND PROPOSALS

- 161. It appears that covering large risks for which individual insurance companies are reluctant or unable to insure the entire risk alone is specific to the insurance sector, which triggers an enhanced need of cooperation. It also appears at this stage that this enhanced need for cooperation would need to be facilitated by a BER for a certain further period of time.
- 162. It should be noted however that legal certainty provided by the BER is not absolute and can be a safe harbour codifying Article 81(3) only if the conditions of the BER are fulfilled. Many pools appear to rely on the legal certainty provided by the simple existence of the BER, without carrying out the required careful legal assessment of their compatibility with the market share thresholds and other conditions established by the BER. Contrary to this practice, it must be stressed that, even in the case of renewal of this part of BER, insurance companies concerned would still need to carry out a careful legal assessment of a pools' compliance with the competition rules. This analysis would have to ascertain whether the pool in question is restrictive of competition in the first place and then, where the response is affirmative, to ensure that the conditions set out in the BER, particularly the market share conditions are fulfilled.
- 163. Moreover, neither the BER nor another legal instrument can define the relevant market. It can merely establish clear rules to be followed for this purpose. Defining the relevant market is a matter which must be individually assessed by pools, in the framework of the legal assessment mentioned above.
- 164. In the event that the Commission decides to renew the BER for this form of cooperation, the current text of the BER would need to be significantly redrafted, in particular with a view to bringing the market share rules in line with the rules on other forms of horizontal cooperation.

V. SECURITY DEVICES

1. THE SCOPE OF THE BER

165. This form of cooperation enables insurers to evaluate better the risks that they cover. Indeed, as provided by Recital 24 of the BER, this form of cooperation "can be beneficial in providing a benchmark to insurers and reinsurers when assessing the extent of the risk they are asked to cover in a specific case, which depends on the quality of security equipment and of its installation and maintenance". Consequently, insurers can calculate more precisely the premium they charge. In theory, policyholders benefit from this form of cooperation because if they buy safety equipment corresponding to certain technical specifications, the risk to their property decreases, which can lead to a decrease in their insurance premium. It can also encourage manufacturers of safety systems to improve them and thereby minimise the insured risks.

1.1. What the BER covers

1.1.1. Conditions of the BER

166. The BER subject to certain conditions⁷⁰ covers agreements with respect to the establishment, recognition and distribution of:

- Technical specifications, rules or codes of practice concerning security devices and procedures for assessing and approving the compliance of security devices with such specifications, rules or codes of practice;
- Technical specifications, rules or codes of practice for the installation and maintenance of security devices and procedures for assessing and approving the compliance of undertakings which install or maintain security devices with such specifications, rules or codes of practice.

167. These agreements are covered by the BER in so far as no EC-level harmonisation exists. Indeed:

⁷⁰ Set out in Article 9 of the BER i.e: "(a) the technical specifications and compliance assessment procedures are precise, technically justified and in proportion to the performance to be attained by the security device concerned; (b) the rules for the evaluation of installation undertakings and maintenance undertakings are objective, relate to their technical competence and are applied in a non-discriminatory manner; (c) such specifications and rules are established and distributed with an accompanying statement that insurance undertakings are free to accept for insurance, on whatever terms and conditions they wish, other security devices or installation and maintenance undertakings which do not comply with these technical specifications or rules; (d) such specifications and rules are provided simply upon request to any interested person; (e) any lists of security devices and installation and maintenance undertakings compliant with specifications include a classification based on the level of performance obtained; (f) a request for an assessment may be submitted at any time by any applicant; (g) the evaluation of conformity does not impose on the applicant any expenses that are disproportionate to the costs of the approval procedure; (h) the devices and installation undertakings and maintenance undertakings that meet the assessment criteria are certified to this effect in a non-discriminatory manner within a period of six months of the date of application, except where technical considerations justify a reasonable additional period; (i) the fact of compliance or approval is certified in writing; (j) the grounds for a refusal to issue the certificate of compliance are given in writing by attaching a duplicate copy of the records of the tests and controls that have been carried out; (k) the grounds for a refusal to take into account a request for assessment are provided in writing; and (l) the specifications and rules are applied by bodies accredited to norms in the series EN 45 000 and EN ISO/IEC 17025."

where there exists Community level technical specifications, classification systems, rules, procedures or codes of practice harmonised in line with Community legislation covering the free movement of goods, it is not appropriate to exempt by regulation any agreements among insurers on the same subject, since the objective of such harmonisation at European level is to lay down exhaustive and adequate levels of security for security devices which apply uniformly across the Community. (Recital 24)

168. Therefore, when no harmonisation has taken place in the field concerned, agreements between insurers are covered by the BER (provided that they also fulfil the other conditions set out in Article 9 of the BER). However the BER provides no exemption where EU standards do exist – something which has become increasingly common in recent years. Thus the BER will not exempt agreements between insurance companies for example on the categorisation of security devices for the purposes of setting discounts.

1.1.2. *Link with the rules on the free movement of goods and services and on the freedom of establishment*

169. In the absence of harmonisation at EU level (e.g. in anti-burglary systems), Member States are nevertheless obliged to notify to the Commission and to the other Member States of their draft national technical regulations (concerning products and/or information society services), in accordance with Directive 98/34/EC⁷¹. Moreover, Member States must respect the principle of mutual recognition introduced by the ECJ in *Cassis de Dijon*⁷². In accordance with the provisions of Article 28 EC and the mutual recognition principle, goods which are lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if they are produced to technical or quality specifications different from those applied to its own products. The only exceptions to this principles are restrictions that are justified on the grounds described in Article 30 EC (protection of public morality or public security, protection of the health and life of humans, animals or plants, etc) or on the basis of overriding requirements of general public importance recognised by the case law of the Court of Justice, and are proportionate to the aim pursued. The same principle applies to services.

170. The Treaty rules on the free movement of goods are not applicable to private undertakings and their associations. However, agreements which have as their object or effect the partitioning of the common market along national borders have in some instances of established case law been considered as anti-competitive and contrary to Article 81(1)⁷³.

171. Unlike the Treaty provisions on free movement of goods, the provisions of Article 39 (free movement of workers), 43 and 49 (freedom of establishment and to provide services) are binding not only on the State but also on private bodies⁷⁴. In case *Walrave and Koch*⁷⁵, the ECJ ruled that the Treaty prohibition on discrimination on the grounds

⁷¹ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 (as amended by Directive 98/48/EC) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, OJEU L 204 of 21.07.1998.

⁷² Case 120/78, Judgment of the Court of 20 February 1979 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, ECR 1979 p. 0064.

⁷³ Joined Cases 56/64 and 58/64, *Consten and Grundig* [1966] ECR 299, page 340; Case 41/69 *ACF Chemiefarma* [1970] ECR 661, para.128.

⁷⁴ Cases C-415/93, *Bosman* [1995] ECR I-4921, paras 83 and 84; and C-281/98, *Angonese* [2000] ECR I-4139, para.32.

⁷⁵ Case 36/74, *Walrave and Koch* [1974] ECR 1405.

of nationality applied not only "to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services". The abolition, as between Member States, of obstacles to freedom of movement for persons would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law.⁷⁶

172. The application of Article 81 is inherently linked to those relating to the application of Article 28 (free movement of goods) and Articles 43 (free movement of persons) and 49 of the EC Treaty (free movement of services). The BER encourages insurers to define standards for security devices, which can sometimes pose (private) obstacles to the marketing of security devices legally manufactured and sold in another EU Member State, or equally to the services of installation and maintenance undertakings whose professional qualifications were recognised in another EU Member State. This should be taken into account when assessing the need to renew this part of the BER.

1.2. What the BER does not cover

1.2.1. Agreements in areas which are harmonised at EU level

173. Agreements are outside the BER as long as the Community legislator has adopted harmonisation legislation in the field concerned. For example, the Construction Products Directive 89/106 CE⁷⁷ (which also deals with security devices and safety equipment) is in line with the Commission's *new approach* to technical harmonisation and standardisation⁷⁸. In accordance with a Council Resolution⁷⁹ of 1985, legislative harmonisation is limited to essential safety requirements to which products on the market must conform in order to enjoy free movement throughout the Community. For example, safety in case of fire is one of the essential requirements to which construction products must conform, in accordance with the Construction Products Directive. Public authorities of Member States are obliged to recognise that products manufactured in conformity with harmonised standards are presumed to conform to the essential requirements established by the directive in question. If the producer does not manufacture in conformity with these standards, he has an obligation to prove that his products conform to the essential requirements.
174. The task of drawing up technical production specifications is entrusted to organisations competent in industrial standardisation, which take the current stage of technology into account when doing so. The European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC) are the only bodies with the competence to adopt European harmonised standards in the field of

⁷⁶ Case C-309/99, *Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten* [2002] ECR I-1577; C-411/98; *Ferlini v. CHL* [2000] ECR I-8081, para.50.

⁷⁷ Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, OJ L 40, 11. 02. 1989.

⁷⁸ The aim of completing the internal market at the end of 1992 necessitated a new approach to technical harmonisation and the use of standardisation. In its communication entitled "Technical harmonization and standardization: a new approach" [COM(1985)19 final - Not published in the Official Journal], the Commission therefore proposed that the methods and procedures be revised. The main idea is to develop an approach establishing general rules which are applicable to sectors or families of products as well as types of hazard. This avoids the lengthy decision-making procedures which, in the past, established technical harmonization through very technical and detailed product-specific directives.

⁷⁹ Council Resolution (85/C 136/01) of 7 May 1985 on a new approach to technical harmonization and standards – OJ C136 of 4 June 1985.

security devices/safety equipment, following a mandate issued by the European Commission after consultation of Member States. The standardisation mandate is issued according to the procedure of Directive 98/34/EC.

175. The adoption of protectionist practices by Member States is prohibited. For example, in accordance with Article 6 of the Construction Products Directive, "...Member States shall ensure that the use of such products, for the purpose for which they were intended, shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking or acting as a public body on the basis of a monopoly position".

1.2.2. Agreements in areas which do not comply with the conditions provided in Article 9 of the BER

176. Several conditions must be fulfilled for an agreement in relation to security devices to be covered by the BER. One is that "such specifications and rules are established and distributed with an accompanying statement that insurance undertakings are free to accept for insurance, on whatever terms and conditions they wish, other security devices or installation and maintenance undertakings which do not comply with these technical specifications or rules"⁸⁰.

177. However, the Consultation indicates that even if an agreement does allow insurers to insure property protected by such non-compliant devices or installation/maintenance, this is often only a purely theoretical freedom. Although the agreement itself could easily comply with the BER ("*accompanying statement that insurance undertakings are free to accept other security devices*"), in practice its effects could become obligatory: for example, it appears from several replies to the Consultation, that insurers do extensively use the specifications and rules commonly established by the agreement, with the consequence that these agreements become, *de facto*, mandatory for the security devices producers or the installation and maintenance undertakings. As policyholders will only buy security devices that conform to the commonly agreed standards, producers, installers and maintenance providers of security devices will need to comply with these standards.

178. It should also be noted that decisions or recommendations of associations of undertakings, although non binding, could infringe Article 81⁸¹. In such cases it is necessary to consider whether members in the past have tended to comply with recommendations that have been made, and whether compliance with the recommendation would have a significant influence on competition within the relevant market. This would suggest that the BER grants insurers preferential treatment as compared to other sectors, since any non-binding agreement, even if it does have recommendation character, can be exempted.

⁸⁰ Article 9 c) of the BER.

⁸¹ Case 8/72 *Vereeniging van Cementhandelaren v Commission* [1972] ECR 977; Case 71/74 *FRUBO v Commission* [1975] ECR 563; Cases 209/78 etc *Van Landewyck v Commission* [1980] ECR 3125; Cases 96/82 [1983] ECR 3369; Case 45/85 *VDS v Commission* [1987] ECR 405, para 32; *Fenex OK* [1996] L 181/28, paras 32-42.

2. MAIN FINDINGS OF THE REVIEW AND ANALYSIS

2.1. **Question One: is the insurance sector special or different to other sectors such that it gives rise to an enhanced need for cooperation?**

179. It appears (and this is supported by replies to the Consultation) that there is a mutuality of interests in the insurance sector in relation to cooperation on security devices since insurers actively seek ways to help customers to reduce their exposure to the risk covered.

180. However agreements on technical specifications for security devices and their installation fall into the general domain of standard setting which is not unique to the insurance sector.

2.2. **Question Two: does this enhanced need for cooperation require a legal instrument such as the BER in order to protect or facilitate it?**

181. As it appears that this form of cooperation is not specific to the insurance sector, the Commission has doubts whether the BER is required in order to facilitate this cooperation. In addition, as explained below, the interest to reduce risk exposure needs to be carefully weighed against the potentially market-partitioning effect of private standardization at national level.

2.2.1. *Competition issues on the downstream market for security devices*

182. The Commission considered the possibility that manufacturers of security devices and companies providing installation and maintenance services do not comply with technical specifications and compliance assessments commonly established by insurers and are therefore excluded from the market because consumers cannot get insurance for such products/services. Some of the replies confirmed Commission's Services concerns already identified in the Business Insurance Sector Inquiry.

183. One consumer association's argued in response to the Consultation, that difficulties could arise if customers wish to switch to suppliers of security devices that do not wish to adhere to the standards. One European association of producers of security devices in its reply to the Commission's Questionnaire argued that consumers must qualify for acceptance for insurance by proving they apply approved security, devices, systems, installations and services for achieving an acceptable level of prevention as desired by the associations of insurers. In addition one NCA submitted that cooperation in relation to the distribution of technical information regarding security devices should not be too restrictive because this may lead to a diminution of competition in the downstream market for security devices.

2.2.2. *The existence of obstacles to the free movement of goods and services*

184. A respondent from one European security devices association argued that in the most Member States only installations and services from regionally or nationally operating "approved" suppliers, using "approved" devices are accepted by the insurance companies (who are themselves, mostly organised within national associations). According to this respondent, national quality marks based on national certification bodies and test laboratories prevail over national quality marks of different EU Member States even if they are tested against the same standards. This association argued that the high costs of multiple testing and certification are a significant barrier to marketing new and innovative products in to the European market. This respondent considers that

CEN/CENELEC European harmonised standards should be applied instead. The Commission also considers that European Standardisation has proven to be a successful tool for the completion of the Single Market for goods⁸².

185. It appears that a large number of historically developed national, regional or technical requirements fragment the European market and are a growing barrier for efficiency in development, design, manufacturing, installation and maintenance of security devices and systems. A 2004 Report⁸³ also emphasised that a range of obstacles to the free movement of goods continue to exist and these should no longer be accepted: "Free movement continues to be hindered by a range of local rules, often applied arbitrarily and in clear contradiction to the mutual recognition principle that is the cornerstone of the internal market". The estimated cost of the non-application of the mutual recognition principle is around EUR 150 billion. Yet, the BER encourages the *de facto* adoption of infra-European industry standards⁸⁴.

2.2.3. *The scope of the BER is significantly reduced or eliminated due to existing EU level harmonisation*

186. Approximately 90 EU harmonised standards (or technical specifications) concerning fire detection and fire alarm systems as well as fixed fire fighting systems have been already published in the EU's Official Journal and another 30 EU harmonised standards are under development for different categories of construction products. These technical specifications are not mandatory and maintain their status of voluntary standards (See Annex 12).

187. It appears that this standardisation work covers to a large extent the possible fields of technical harmonisation for these categories of products. Thus, the scope of the BER is being continually reduced.

188. EU-harmonised standards are listed on this webpage:

<http://ec.europa.eu/enterprise/newapproach/standardization/harmstds/reflist.html>

2.2.4. *Transparency and non-discrimination in standard-setting*

189. Since the early 1990ies, the Commission has recognised the potential economic benefits of industry standard setting, but warned against its anti-trust risks. In particular, the Commission has always advocated that the standard setting process be open to all interested industry participants and the results be made available on fair, reasonable and non-discriminatory terms. Similarly, the Commission has stressed in its Communication⁸⁵ on the role of European standardisation in the framework of European policies and legislation that improving the efficiency of standardisation entails, among other things, the involvement of all interested parties in the standardisation process because this helps enhance the strategic value of standardisation for competitiveness and

⁸² Communication from the Commission to the European Parliament and the Council on the role of European standardisation in the framework of European policies and legislation, 18.10.2004.

⁸³ Report from the High Level Group chaired by Wim Kok: Facing the challenge – The Lisbon strategy for growth and employment, November 2004, p. 26.

⁸⁴ "There will clearly be a point at which the specification of a private standard by a group of firms that are jointly dominant is likely to lead to the creation of a *de facto* industry standard" (Paragraph 174 of the Commission notice of 6 January 2001: Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Official Journal C 3 of 06.01.2001).

⁸⁵ Communication from the Commission to the European Parliament and the Council, 18.10.2004.

facilitates its uniform application. Also the recent Commission Communication "Towards an Increased Contribution from Standardization to Innovation in Europe"⁸⁶, states that it is necessary that the standard-setting process is in line with European competition law; "standardization complements market-based competition, typically in order to achieve objectives such as the interoperability of complementary products/services and to agree on test methods and on requirements for safety, health, organizational and environmental performance".

190. Moreover, the Commission's Guidelines on horizontal cooperation⁸⁷ provide in paragraph 172 that "all competitors in the market(s) affected by the standard should have the possibility of being involved in discussions. Therefore, participation in standard setting should be open to all, unless the parties demonstrate important inefficiencies in such participation or unless recognised procedure are foreseen for the collective representation of interest, as in formal standard bodies".
191. The relevant section of the BER contains none of these general requirements and does not, in particular, force insurers to involve all manufacturers and service providers concerned when deciding standards. This lack of transparency is presumably closely linked to the subsequent de facto exclusion of certain manufacturers from the market.
192. Moreover, "to avoid elimination of competition in the relevant market(s), access to the standard must be possible for third parties on fair, reasonable and non-discriminatory terms"⁸⁸. It seems that not all security devices producers have such a "fair, reasonable and non-discriminatory" access to standards, given that their products must comply with different sets of national rules, depending on the Member State where they sell their products.
193. From replies to the Consultation and Questionnaires it appears that some of the agreements currently existing in different Member States cover sectors where there is already harmonisation at EU level. Such agreements are therefore outside the scope of the BER. If this is the case, companies involved in such agreements should have undertaken a self-assessment on the basis of Article 81(1) and 81(3). It is difficult to see why further standardisation at national level is indispensable and thus exemptible in such a case, but of course an assessment would need to be conducted on a case-by-case basis.
194. Therefore, since agreements on technical specifications for security devices and their installation are not specific to the insurance sector, and since there are competition concerns and obstacles to free movement of goods and services within the EU, it appears that a BER is not appropriate in order to protect or facilitate these agreements.

2.3. Applicability of Article 81(3)

195. Agreements regarding security devices and their installation and maintenance can be exempt under Article 81(3), provided the positive effects of such agreements outweigh restrictive effects on competition.

⁸⁶ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, 11.3.2008.

⁸⁷ Commission notice of 6 January 2001: Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Official Journal C 3 of 06.01.2001

⁸⁸ Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (see footnote 18), paragraph 174.

196. Several respondents emphasised positive effects of agreements in this area of the BER. Such positive effects can and should be taken into account when analysing the application of Article 81(3) on a case-by-case basis. For example these agreements assist with risk prevention and help to develop risk insurability. They also provide a benchmark to insurers and reinsurers when assessing the extent of the risk they are asked to cover in a specific case. Otherwise, insurers would have to fund separate testing and approval, costs which would then have to be passed on to policyholders. Also, when the same security device requirements are used it is easier for consumers to switch between insurance undertakings, and the existence of a single standard assists manufacturers in bringing new technology and security devices to the various EU national markets.

197. Furthermore insurers will benefit from guidance in terms of applicability or otherwise of Article 81 of the Treaty to their agreements afforded by the general standardisation chapter in the Commission's Notice on the Applicability of Article 81 to Horizontal Cooperation Agreements which are currently being reviewed.⁸⁹

3. CONCLUSIONS AND PROPOSALS

198. On the basis of the evidence before the Commission, it appears that competition problems arise on the downstream market for the supply security devices, given that the use of security devices not compliant with national or regional certification/listing schemes will not be accepted by insurers or their associations.

199. This type of behaviour also constitutes an obstacle to free movement of goods, persons and services, particularly when the mutual recognition principle is not applied in practice (in non-harmonized areas). As regards the products and services which have been harmonised at EU level, replies to the Consultation show that cooperation is still taking place and some stakeholders incorrectly consider they are covered by the BER.

200. Where an EU standard has been adopted, the BER does not apply and has no effect. It should be noted that the remaining scope for possible agreements in this area is significantly reduced or eliminated in relation to some products since EU harmonisation is now extensive and increasing. The effect of the BER is therefore to allow national harmonisation of security devices by insurance companies – very often without the involvement of the manufacturers – where no EU standards have yet been adopted.

201. It should be borne in mind that even if cooperation is outside the scope of the BER as regards a harmonised field, the agreements in question may not restrict competition (in terms of being prohibited by Article 81(1)) or if they do, they may qualify for exemption on the basis of Article 81(3). Furthermore insurers will benefit from guidance in terms of applicability or otherwise of Article 81 to their agreements afforded by the general standardisation chapter in the Horizontal Guidelines.

202. Therefore, the Commission proposes not to renew the BER for agreements in this area.

⁸⁹ OJ, C3 of 6 January, 2001.

VI. CONCLUSIONS

1. OPTIONS AND PROPOSALS

203. The Commission has come to the preliminary conclusion that there are good reasons to protect or facilitate the agreements on cooperation in the area of joint calculations, tables and studies, that the current BER is doing this effectively and should therefore be renewed. The Commission has not yet decided whether to amend the structure or drafting of the current exemption. However, in terms of improving it, a range of options would be considered.
204. The Commission's view at this stage is that pools are also specific to the insurance sector and that there are several arguments in favour of the necessity of a BER in order to protect or facilitate such agreements. The Commission therefore proposes to renew the BER in relation to pools. However, the Commission would be likely to significantly redraft the wording of the chapter in question in order to take on board many of the comments received during the Review and also to make it consistent with other general and sector-specific legislation.
205. Furthermore the Commission considers at this stage of the Review that even if the risk of non-cooperation in these two areas may be low, the possibility that such pro-competitive cooperation may diminish, should be avoided.
206. Cooperation on SPCs does not appear to be specific to the insurance sector and as such does not necessarily require a sector specific BER. Nor does there appear to be a significant risk of less or non-cooperation on SPCs in the event of non-renewal of the BER. The Commission therefore proposes not to renew the BER for SPCs. Further guidance on SPCs may be envisaged by the Commission if non-renewal is the final decision.
207. Agreements in relation to security devices appear to give rise to concerns in relation to both competition and the development of the EU's internal market. Moreover, they do not appear specific to the insurance sector.
208. The Commission therefore proposes non-renewal of the BER for this category of agreements. However, insurers will benefit from guidance in terms of applicability or otherwise of Article 81 of the Treaty to their agreements on security devices, afforded by the general standardisation chapter in the Horizontal Guidelines⁹⁰ which are currently under review.

2. NEXT STEPS

209. DG Competition plans to hold a public event following publication of the Report and Working Document, on 2 June 2009 in order to give the industry and stakeholders a final opportunity to make representations before the Commission takes a decision on whether to renew.

⁹⁰ Commission Notice of 6 January 2001: Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements, Official Journal C 3 of 06.01.2001

210. The Commission looks forward to receiving comments from the European Parliament and Council. The Commission's Services welcome any other comments on the Report and/or Working Document which should **quote the reference: "Review of Insurance BER – COMP/D1 HT 1221"** and be sent to:

COMP-GREFFE-ANTITRUST@ec.europa.eu

211. Although any comments should be sent in writing to the address above, queries by telephone may be addressed to Eithne McCarthy at Tel: +32 (0)2 299 4138; or Laura Stefanescu at Tel: +32 (0)2 298 6569.

ANNEX 1

Definitions

Please note that the definitions provided below are exclusively for the purpose of the report and do not necessarily correspond to the definitions contained in EU insurance legislation.

Acronyms for Member States

AT – Austria

IT - Italy

BE – Belgium

LT - Lithuania

CY – Cyprus

LU - Luxemburg

CZ – Czech Republic

LV - Latvia

DE – Germany

MT - Malta

DK – Denmark

NL – The Netherlands

EE – Estonia

PL - Poland

EL – Greece

PT - Portugal

ES – Spain

SE - Sweden

FI – Finland

SK - Slovakia

FR – France

SL - Slovenia

HU – Hungary

UK – United Kingdom

IE – Ireland

Business insurance

The provision of insurance products and services to any type of business, irrespective of its size, form of organisation or legal structure.

Small and Medium Sized enterprises ("SME")

Any company whose staff number is below 250 people and whose turnover is under 50 MEUR (million EUR). Micro-companies are thus also included in the SME category. Businesses exceeding these thresholds are considered large corporate clients (LCC).

ANNEX 2
Replies to Consultation

Respondent Group	Number of Replies
Insurance Associations	27
Insurers	11
Insurance customers	1
Supervisory Authorities	8
Consumer Organisations	8
Other Entities ⁹¹	6
TOTAL	60

Insurance Associations:

- ABI Association of British Insurers
- AIRMIC Association of Insurance and Risk Managers
- ANIA Italian Insurance Association
- APS Portuguese Association of Insurers
- Association Francaise de l'Assurance
- Assuralia
- BDI Bundesverband der Deutschen Industrie⁹²
- BFV Federal Association of Insurance Intermediaries and Companies tied to a specific firm
- BIPAR European Federation of Insurance Intermediaries
- CEA European Insurance and Reinsurance Federation
- CEFOR Central Union of Marine Underwriters
- Czech Insurance Association
- DIA Danish Insurance Association

⁹¹ Society of Actuaries in Ireland, Norton Rose LLP (law firm), Austrian Economic Chamber, Harold Caplan (private citizen), European Actuarial Consultative Group.

⁹² Three Associations (BDI Bundesverband der Deutschen Industrie, DVS, BFV) responded together.

- Fire Protection Association
- FNH Norwegian Financial Services Association
- Försäkringsförbundet Swedish Insurance Federation
- GDV German Insurance Association
- Hellenic Association of Insurers Companies
- Irish Insurance Federation
- Lloyd's Market Association
- MABISZ Association of Hungarian Insurance Companies
- PEIF Pan European Insurance Forum
- PKV Verband der privaten Kranken Versicherung
- Slovak Insurance Association
- VNAB Cooperatieve Vereniging Nederlandse Assurantie
- VVO Austrian Insurance Association
- VVV Dutch Association of Insurers

Insurers:

- Allianz SE
- Aviva
- AXA
- Ecclesia
- Marsh Group
- Nürnberger Versicherung
- Provinzial NW Holding
- QBE Insurance
- R+V Versicherung AG
- RSA Insurance Group
- Zurich Financial Services

Supervisory Authorities:

- CBFA Commission Bancaire, Financière et des Assurances

- CSA Insurance Supervisory Commission Romania
- Czech National Bank
- Dirección General de Seguros y Fondos de Pensiones
- FKTK Financial and Capital Market Commission of Latvia
- ISP Portuguese Insurance and Pension Funds
- ISVAP Istituto per la Vigilanza sulle Assicurazioni Private
- National Bank of Slovakia

Risks management federation:

- FERMA

Consumer Associations:

- Altroconsumo
- Deco Proteste
- KEPKA Consumers protection Center
- NACP Hungary
- TEST-Achats
- DVS German Association for the Protection of Insurance Customer
- VZBV Verbraucherzentrale Bundesverband

Other Entities:

- Actuaries Society in Ireland
- Caplan Harold
- FIN-USEs Rzu Gov Poland
- Groupe Consultatif Actuariel Europeen
- Norton Rose LLP
- WKO Austrian Federal Economic Chamber

ANNEX 3
Questions from Consultation on
Joint Calculations, Tables and Studies

Note: You are requested to answer the questions with reference to the market or markets in which you are or have been active (this could be a single EU Member State or a number of EU Member States). Please always indicate to which Member State your comments relate. Wherever possible, please support your arguments with evidence.

1. (i) How do you evaluate the current functioning of the BER in this area? (ii) What is the impact of this form of cooperation on the demand and supply of insurance and on the pricing of insurance policies? (iii) To what extent is the performance (profitability, solvency) of the insurance industry affected? Please explain your answers.
2. Are there any changes that you believe may be useful in the current BER in order to improve its functioning e.g. differentiating between insurance classes / specific risks (e.g. should the frequency and diversifiability of specific risks play a role in block exempting cooperation among insurers)? Please explain the reasons for your answer.
3. Considering the greenfield market entries in the insurance sector⁹³ over the last five years to your knowledge (i) did such entrants make use of the joint calculations, tables, and studies envisaged in the BER? (ii) Is there evidence that this exemption has affected entry and if so, how? (iii) Please describe any entry barriers affected by this exemption and provide estimates of the costs involved in overcoming these barriers. Please provide any analysis, report, study or survey to substantiate your views.
4. (i) What do you consider would be the impact if any of the non-renewal of the BER on the scope and level of cooperation in this particular area? Please explain why you would expect this impact. (ii) What do you consider would be the economic effects (e.g. in terms of market structure, entry barriers, competitiveness of smaller insurers, level of customer mobility, etc.) of these changes in cooperation? Please provide any analysis, report, study or surveys to substantiate your claims.
5. Do you consider there to be alternative (pro-competitive) solutions to overcome the information asymmetry problems faced by the industry other than through renewal of the BER as it is currently drafted? Please explain your answer.

⁹³

Entry by insurance companies in a Member State through the establishment of subsidiaries/branches as opposed to the acquisition of insurance companies already existing in that Member State.

ANNEX 4
Questions from Consultation on
Standard Policy Conditions and Models on Profits

Note: You are requested to answer the questions with reference to the market or markets in which you are or have been active (this could be a single EU Member State or a number of EU Member States). Please always indicate to which Member State your comments relate. Wherever possible, please support your arguments with evidence.

1. (i) How do you evaluate the current functioning of the BER in this area? (ii) What is the impact of this form of cooperation on the demand and supply of insurance and on the pricing of insurance policies? To what extent is the performance (profitability, solvency) of the insurance industry affected? Please explain your answers.
2. Are there any changes that you believe may be useful in the current BER to improve its functioning (e.g. differentiating between insurance classes)? Please be specific and give reasons for your answer.
3. Considering the greenfield market entries over the last five years in the insurance sector⁹⁴, to your knowledge: (i) did such entrants make use of standard policy conditions, clauses, models envisaged in the BER? (ii) Is there evidence that this exemption has affected entry and if so how? (iii) Please describe any entry barriers affected by this exemption and provide estimates of the costs involved in overcoming these barriers. Please provide any analysis, report, study or survey to substantiate your claims.
4. (i) What do you consider would be the impact if any of the non-renewal of the BER on the scope and level of cooperation in this particular area? Please explain why you would expect this impact. (ii) What do you consider would be the economic effects (e.g. in terms of market structure, entry barriers, competitiveness of smaller insurers, level of customer mobility, etc.) of these changes in cooperation? Please provide any analysis, report, study or surveys to substantiate your views.
5. (i) In your experience, how does cooperation on standard policy conditions affect the variety of available insurance policies? (ii) Can cooperation lead to a decreased supply of insurance products?
6. In your experience, how does cooperation on standard policy conditions affect the use of restrictive or exclusionary terms? Please explain your answer.

⁹⁴

Entry by insurance companies in a Member State through the establishment of subsidiaries/branches as opposed to the acquisition of insurance companies already existing in that Member State.

ANNEX 5
Questions from Consultation on
Common Coverage of Risks (Pools)

Note: You are requested to answer the questions with reference to the market or markets in which you are or have been active (this could be a single EU Member State or a number of EU Member States). Please always indicate to which Member State your comments relate. Wherever possible, please support your arguments with evidence.

1. (i) How do you evaluate the current functioning of the BER in this area? (ii) What is the impact of this form of cooperation on the demand and supply of insurance and on the pricing of insurance policies? (iii) To what extent is the performance (profitability, solvency) of the insurance industry affected? Please explain your answers.
2. Are there any changes that you believe may be useful in the BER to improve its functioning? Please be specific and give reasons for your answer.
3. (i) What do you consider would be the impact if any of the non-renewal of the BER on the scope and level of cooperation in this particular area? Please explain why you would expect this impact. (ii) What do you consider would be the economic effects (e.g. in terms of market structure, entry barriers, competitiveness of smaller insurers, level of customer mobility, etc.) of these changes in cooperation? Please provide any analysis, report, study or surveys to substantiate your claims.
4. (i) Do you consider that the current BER provisions define pro-competitive pools sufficiently? (ii) Are there any exceptions (e.g. pro-competitive pools not exempted, anti-competitive pools exempted)? Please give examples and explain.
5. Do you consider that the BER hinders setting-up pools with innovative policies (e.g. against natural disasters) on the basis that the risks are not new? Please give examples and explain.
5. In what sense, if any would non-renewal / absence of the BER affect the setting-up of cross-border pools? Please explain your answer.

ANNEX 6
Questions from Consultation on
Security Devices

Note: You are requested to answer the questions with reference to the market or markets in which you are or have been active (this could be a single EU Member State or a number of EU Member States). Please always indicate to which Member State your comments relate. Wherever possible, please support your arguments with evidence.

1. (i) How do you evaluate the current functioning of the BER in this area? (ii) What is the impact of this form of cooperation on the demand and supply of insurance and on the pricing of insurance policies? (iii) To what extent is the performance (profitability, solvency) of the insurance industry affected?
2. Are there any changes that you believe may be useful in BER to improve its functioning? Please be specific and give reasons for your answer.
3. (i) Considering the greenfield market entries over the last five years in the insurance sector⁹⁵, to your knowledge, did such entrants make use of the cooperation in the field of security devices envisaged in the BER? (ii) Is there evidence that the BER has affected entry in a positive way in the past?
4. (i) What do you consider would be the impact if any of the non-renewal of the BER on the scope and level of cooperation in this particular area? Please explain why you expect this outcome. (ii) What do you consider would be the economic effects (e.g. in terms of market structure, entry barriers, competitiveness of smaller insurers, level of customer mobility, etc.) of these changes in cooperation? Please provide any analysis, report, study or surveys to substantiate your claims.
5. Did you experience any competition problems in relation to the BER in the following sectors: (i) production of security devices; (ii) evaluation of security devices; (iii) installation and maintenance of security devices? In each case, if so, please explain your answer.

⁹⁵

Entry by insurance companies in a Member State through the establishment of subsidiaries/branches as opposed to the acquisition of insurance companies already existing in that Member State.

ANNEX 7

General Questions from Consultation

Note: You are requested to answer the questions with reference to the market or markets in which you are or have been active (this could be a single EU Member State or a number of EU Member States). Please always indicate to which Member State your comments relate. Wherever possible, please support your arguments with evidence.

1. Do you consider that the business risks or information asymmetries in the insurance industry are special compared to other sectors, such that the proper functioning of the sector requires a BER? Please explain your answer.
2. From your experience, do insurers use the forms of cooperation exempted in the BER? What forms of co-operation are used and why?
3. How do you consider the scope and level of cooperation changed after the BER came into force or the Member State in which you are active, entered the European Union? Please explain your answer.
4. (i) What is the relationship between the scope and level (intensity) of cooperation and the provisions / existence of the current BER? (ii) What other factors (e.g. market structure, maturity of the market, competitiveness, national legislation, etc.) influence the level of cooperation in the insurance industry and how? (iii) How does the level of cooperation influence market structure? Please explain your answer.
5. Please list all greenfield entries in the insurance sector⁹⁶ over the past 5 years.
6. If your company entered the insurance sector since the BER came into force, did the forms of co-operation exempted in the BER affect your entry and if so please explain how.
7. Would you expect a change in the current level of cooperation (e.g. that is currently covered by the BER) in the case of non-renewal of the insurance BER? Please explain what change you would expect and why you would expect it.
8. (i) What impact would you expect (e.g. economic, social, etc.) as a consequence of any change in cooperation? Please explain your answer. Please differentiate between any such kinds of impact according to stakeholder group. (ii) Please also state if you would expect any impact to affect certain groups of stakeholders more than others and why?
9. In your experience, does the BER give rise to any anti-competitive effects such as reduced supply of insurance products or higher prices due to agreements between competitors? Please provide examples to illustrate your response.
10. (i) How does the BER affect market integration in the insurance sector in the EU? (ii) Does the BER create obstacles to or facilitate cross-border provision of insurance services? Please explain your answer.

⁹⁶ Entry by insurance companies in a Member State through the establishment of subsidiaries/branches as opposed to the acquisition of insurance companies already existing in that Member State.

11. How do you consider expiration of the BER would affect supervision by supervisory authorities, and competition law enforcement? Please explain your answer.
12. Do you consider that non-renewal of the BER would lead to an inconsistent application of competition rules across EU Member States? Please explain your answer.
13. (i) Which justification for having the current BER (premium calculation argument, standard policy argument, pooling argument, etc.) is most important for you / your company? Please explain your answer. (ii) What percentage of your business is affected by the BER? Please explain how you make this calculation.
14. What specific elements of the BER if any, would you like to see improved if a new BER were adopted? Please explain your answer.
15. Do you think the BER should be more tailored to specific risks, e.g. according to the diversifiability and/or the frequency of the underlying risks? Please explain your answer.
16. (i) Do you think the expiry of the BER would have any cost implications (positive or negative) in the context of the new actuarial and risk management requirements to be imposed under the Solvency II project? (ii) Would the expiration of the BER have an impact on the conduct of quantitative impact studies (QIS)? If so please explain how and why.

ANNEX 8
Questionnaires to
Small and medium sized Insurers
following Consultation

1. Please provide the following information in relation to your company: (i) full name of company; (ii) your activities, and (iii) size e.g. by turnover / number of employees; (iv) in which Member States you are active.
2. (i) When did you enter the insurance sector? (ii) Was your entry greenfield⁹⁷ or through acquisition? (iii) Did use of the BER facilitate your entry and if so please explain how?
3. (i) Do you enter into any agreements with other insurers under the BER? If so (ii) what kinds of agreement; and (iii) how often.
4. What do you consider would be the impact if any, of the non-renewal of the BER on the scope and level of your cooperation with other insurers under the BER? Please explain why you expect this outcome.
5. What do you consider would be the economic effects (e.g. in terms of (i) insurance market structure , (ii) entry barriers, (iii) competitiveness of smaller insurers, (iv) level of customer mobility, etc.) of any such changes in cooperation? If available, please provide any analysis, report, study or surveys that you consider may substantiate your views.
6. Do you consider there to be a link between concentration in the insurance sector and the use of the BER. Please explain your answer.
7. Do you consider there to be any links between your co-operation under the BER and (i) your premiums and (ii) the range of products you offer to policy holders. Please explain your answer.
8. In the event that the BER is renewed, are there any changes to the BER that you consider may be useful to improve its functioning? Please be specific and give reasons for your answer.

Concerning Articles 1, 3 and 4 of the BER - Joint Calculations and Tables and Studies:

9. Do you consider that agreements of this kind are necessary in order to accurately assess risk? Please explain your answer. (ii) Is this information available through other sources e.g. publicly?
10. Do you think that without the BER, large insurers would continue to cooperate with smaller insurers in this way by sharing information on joint calculations, tables and studies?
11. (i) Do you think the expiry of the BER would have any implications (positive or negative) in the context of the new actuarial and risk management requirements to be imposed under the Solvency II project? (ii) Would the expiration of the BER have an

⁹⁷ Entry by insurance companies in a Member State through the establishment of subsidiaries/branches as opposed to the acquisition of insurance companies already existing in that Member State.

impact on the conduct of quantitative impact studies (QIS)? If so please explain how and why.

Concerning Articles 1, 7 and 8 of the BER - Pools

12. (i) Do you participate in any pools? (ii) Do you consider that those pools are covered by the BER. If so, please explain on what basis.
13. Do you consider that you would be able to offer this kind of insurance outside of the pool? Please explain your answer.

Concerning Articles 1, 5 and 6 of the BER - Standard Policy Conditions

14. (i) Where did you obtain the standard policy conditions that you use in your policy documents? (ii) Do you ever adapt these standard policy conditions? (iii) Do you consider that you are obliged in any way to use these standard policy conditions?
15. In terms of the products you offer, do you face competition on policy conditions or only on price? Please explain your answers.

Concerning Articles 1 and 9 of the BER - Technical Specifications, Rules or Codes of Practice for Security Devices

16. (i) What information do you use in order to assess risk involving security devices? (ii) Do you rely on testing results from other insurers / insurance associations?
17. In what way are you involved (if at all) in establishing, recognising and distributing technical specifications, rules or codes of practice for security devices.
18. Do you consider that the fact that you have the same technical specifications for security devices as other insurers - facilitates switching for policy holders between insurers.

ANNEX 9
Questionnaires to Pools following Consultation

1. Please provide the following information in relation to your pool / the pool in which you participate:
 - a. (i) name of the pool; (ii) the risks covered by the pool, and (ii) what you consider is the relevant product market of the pool;
 - b. where the pool is established;
 - c. when the pool was established;
 - d. list the members of the pool;
 - e. (i) are any members of your pool also members of any other pools and (ii) if so please list the other pools in which they are involved;
 - f. what do you consider is the geographic market covered by the pool (e.g national, European, global etc);
 - g. does the pool cover risks situated in countries other than the country in which the pool is established and if so, please list those countries.
2. (i) Do you consider that your pool is covered by the BER and if so, (ii) please explain why.
3. (i) Do you consider that it is possible (even if this is not currently happening) for any individual members of your pool to over the same risks individually (i.e. without the pool); (ii) *do* any individual members cover the same risks outside of the pool?
4. (i) What do you consider would be the impact if the BER were not renewed, on the scope and level of cooperation for pools? Please explain why you would expect this impact. (ii) What do you consider would be the economic effects (e.g. in terms of market structure, entry barriers, competitiveness of smaller insurers, level of customer mobility, etc.) of these changes in cooperation? Please provide any analysis, report, study or surveys to substantiate your claims.
5. Do you consider that the BER hinders setting-up pools with innovative policies on the basis that the risks are not new? Please give examples and explain.
6. In what sense, if any would non-renewal / absence of the BER affect the setting-up of cross-border pools? Please explain your answer.
7. In the event that the BER were renewed in relation to pools, are there any changes that you believe may be useful in the BER to improve its functioning? Please be specific and give reasons for your answer.

ANNEX 10
Questionnaires to
Producer Federations concerning
Security Devices following Consultation

1. Please provide the following information in relation to your association: (i) full name of the association; (ii) your activities, and (ii) list of your members together with contact details (name of company, name of contact person, email address and telephone number).
2. What do you consider is the impact of the kinds of agreements (between insurance companies) permitted by Article 1(f) of the BER (quoted in the cover letter) on (i) the demand and supply of security devices and/or the installation or maintenance of security devices and/or the evaluation of undertakings which install or maintain security devices? (ii) the demand and supply of insurance policies and (iii) the pricing of insurance policies?
3. (i) Do you consider that there is an enhanced need of cooperation between insurers in the areas permitted by Article 1(f) of the BER, which is specific to the insurance sector?
4. Are you aware of any other similar forms of cooperation in these areas (security devices and technical specifications etc) between companies other than insurers or insurance associations?
5. Do you consider that the forms of cooperation permitted by Article 1(f) of the BER have pro-competitive effects on the insurance market (e.g. by allowing policyholders to switch more easily between insurance companies accepting the same type of security devices)? Please explain your answer.
6. Do you consider that policyholders benefit from the forms of cooperation between insurers permitted by Article 1(f) of the BER? If so, what do you consider are the main benefits for policyholders?
7. Have you experienced any competition problems (since 2003) on the downstream market for security devices as a result of the kinds of agreements between insurers that are covered by the BER in the following sectors: (i) production of security devices; (ii) installation and maintenance of security devices; (iii) evaluation of undertakings which install or maintain security devices? In each case, if so, please explain your answer.
8. Do you consider that you are prevented from producing security devices or from issuing any specifications, rules or codes of practice in relation to the installation and maintenance of security devices or in relation to the evaluation of companies which install or maintain security devices which are not being agreed upon by insurers?
9. Given that cooperation between insurers on specifications, rules or codes of practice concerning security devices is possible to the extent to which these are *not* harmonised at EU level, do you consider that there remains any scope for cooperation between insurers in this area?
10. Do you consider that specifications, rules or codes of practice arising from cooperation between insurers in the areas covered by Article 1(f) of the BER are too difficult for you to comply with or, on the contrary, are you happy with them?

11. Do you actively participate in cooperation between insurers or insurance associations in relation to security devices and/or their installation and maintenance (e.g. are you asked for your views on codes of practice or technical specifications)? Could you please describe the role you play in any such cooperation?
12. In the event that the BER is renewed, are there any changes to the BER that you consider may be useful to improve its functioning? Please be specific and give reasons for your answer.

ANNEX 11
Fire Detection and Fire Alarm Systems
Harmonised European Standards

Standard reference	Title	Citation in OJ	Directive
CEN/TR 14568:2003	EN 54 - Fire detection and fire alarm systems - Interpretation of specific clauses of EN 54-2:1997	No	89/106/EEC,
			96/98/EC
CEN/TS 54-14:2004	Fire detection and fire alarm systems - Part 14: Guidelines for planning, design, installation, commissioning, use and maintenance	No	-
EN 14604:2005	Smoke alarm devices	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14)	
EN 14604:2005/AC:2008	Smoke alarm devices	Expected	89/106/EEC
EN 54-1:1996	Fire detection and fire alarm systems - Part 1: Introduction	No	89/106/EEC
EN 54-10:2002	Fire detection and fire alarm systems - Part 10: Flame detectors - Point detectors	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	
EN 54-10:2002/A1:2005	Fire detection and fire alarm systems - Part 10: Flame detectors - Point detectors	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	
EN 54-11:2001	Fire detection and fire alarm systems - Part 11: Manual call points	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	

EN 54-11:2001/A1:2005	Fire detection and fire alarm systems - Part 11: Manual call points	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	
EN 54-12:2002	Fire detection and fire alarm systems - Part 12: Smoke detectors - Line detectors using an optical light beam	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 165	
		(2003-07-16)	
EN 54-13:2005	Fire detection and fire alarm systems - Part 13: Compatibility assessment of system components	No	89/106/EEC
EN 54-16:2008	Fire detection and fire alarm systems - Part 16: Voice alarm control and indicating equipment	Cited in OJ	89/106/EEC
		C 321	
		(2008-12-16)	
EN 54-17:2005	Fire detection and fire alarm systems - Part 17: Short-circuit isolators	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 54-17:2005/AC:2007	Fire detection and fire alarm systems - Part 17: Short-circuit isolators	Cited in OJ	89/106/EEC
		C 321	
		(2008-12-16)	
EN 54-18:2005	Fire detection and fire alarm systems - Part	Cited in OJ	89/106/EEC

	18: Input/output devices	C 304	
		(2006-12-13)	
EN 54-18:2005/AC:2007	Fire detection and fire alarm systems - Part 18: Input/output devices	Cited in OJ	89/106/EEC
		C 290	
		(2007-12-04)	
EN 54-2:1997	Fire detection and fire alarm systems - Part 2: Control and indicating equipment	Cited in OJ	89/106/EEC,
		C 290	96/98/EC
		(2007-12-04)	
EN 54-2:1997/A1:2006	Fire detection and fire alarm systems - Part 2: Control and indicating equipment	Cited in OJ	89/106/EEC,
		C 290	96/98/EC
		(2007-12-04)	
EN 54-2:1997/AC:1999	Fire detection and fire alarm systems - Part 2: Control and indicating equipment	Cited in OJ	89/106/EEC,
		C 290	96/98/EC
		(2007-12-04)	
EN 54-20:2006	Fire detection and fire alarm systems - Part 20: Aspirating smoke detectors	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 54-20:2006/AC:2008	Fire detection and fire alarm systems - Part 20: Aspirating smoke detectors	Expected	89/106/EEC
EN 54-21:2006	Fire detection and fire alarm systems - Part 21: Alarm transmission and fault warning routing equipment	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 54-24:2008	Fire detection and fire alarm systems - Part	Cited in OJ	89/106/EEC

	24: Components of voice alarm systems - Loudspeakers	C 321	
		(2008-12-16)	
EN 54-25:2008	Fire detection and fire alarm systems - Part 25: Components using radio links	Cited in OJ	89/106/EEC
		C 321	
		(2008-12-16)	
EN 54-3:2001	Fire detection and fire alarm systems - Part 3: Fire alarm devices - Sounders	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08)	
EN 54-3:2001/A1:2002	Fire detection and fire alarm systems - Part 3: Fire alarm devices - Sounders	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 320	
		(2002-12-20)	
EN 54-3:2001/A2:2006	Fire detection and fire alarm systems - Part 3: Fire alarm devices - Sounders	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	
EN 54-4:1997	Fire detection and fire alarm systems - Part 4: Power supply equipment	Cited in OJ	89/106/EEC,
		C 319	96/98/EC

		(2005-12-14),	
		C 139	
		(2005-06-08)	
EN 54-4:1997/A1:2002	Fire detection and fire alarm systems - Part 4: Power supply equipment	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 165	
		(2003-07-16)	
EN 54-4:1997/A2:2006	Fire detection and fire alarm systems - Part 4: Power supply equipment	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	
EN 54-4:1997/AC:1999	Fire detection and fire alarm systems - Part 4: Power supply equipment	Cited in OJ	89/106/EEC,
		C 139	96/98/EC
		(2005-06-08)	
EN 54-5:2000	Fire detection and fire alarm systems - Part 5: Heat detectors - Point detectors	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08)	
EN 54-5:2000/A1:2002	Fire detection and fire alarm systems - Part	Cited in OJ	89/106/EEC,

	5: Heat detectors - Point detectors	C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 320	
		(2002-12-20)	
EN 54-7:2000	Fire detection and fire alarm systems - Part 7: Smoke detectors - Point detectors using scattered light, transmitted light or ionization	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08)	
EN 54-7:2000/A1:2002	Fire detection and fire alarm systems - Part 7: Smoke detectors - Point detectors using scattered light, transmitted light or ionization	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 320	
		(2002-12-20)	
EN 54-7:2000/A2:2006	Fire detection and fire alarm systems - Part 7: Smoke detectors - Point detectors using scattered light, transmitted light or ionization	Cited in OJ	89/106/EEC,
		C 304	96/98/EC
		(2006-12-13)	

Table 2 - Fire detection and fire alarm systems – harmonised European standards under development

Project reference	Title	Directive	Current status	Expected approval
prEN 54-23	Fire detection and fire alarm systems - Part 23: Fire alarm devices - Visual alarms		Under Approval	2008-10
		89/106/EEC		
prEN 54-22	Fire detection and fire alarm system - Part 22: Resettable line type heat detectors		Under Approval	2008-11
		89/106/EEC		
prEN 54-1	Fire detection and fire alarm systems - Part 1: Introduction		Under Approval	2011-05
		89/106/EEC		
prEN 54-26	Fire detection and fire alarm systems - Part 26: Point fire detectors using carbon monoxide sensors		Under Approval	2009-10
		89/106/EEC		
prEN 54-27	Fire detection and fire alarm systems - Part 27: Duct smoke detectors		Under Approval	2010-04
		89/106/EEC		
prEN 54-12 rev	Fire detection and alarm systems - Part 12: Line type smoke detectors using a transmitted optical beam		Under Development	2011-01
		89/106/EEC		
prCEN/TS 54-14 rev	Fire detection and fire alarm systems - Guidelines for planning, design, installation, commissioning, use and maintenance		Under Development	2009-10
EN 14604:2005/prA1	Smoke alarm devices		Under Development	2010-01
		89/106/EEC		
prEN 54-5 rev	Fire detection and fire alarm systems - Part 5: Heat detectors - Point detectors		Under Development	2011-04
		89/106/EEC		
prEN 54-7 rev	Fire detection and fire alarm systems -		Under	2011-04

	Part 7: Smoke detectors - Point detectors using scattered light, transmitted light or ionization	89/106/EEC	Development	
prEN 54-11 rev	Fire detection and fire alarm systems - Part 11: Manual call points		Under Approval	2009-06
		89/106/EEC		
prEN 54-3	Fire detection and fire alarm systems - Part 3: Fire alarm devices - Sounders		Under Approval	2010-11
prEN 54-10	Fire detection and fire alarm systems - Part 10: Flame detectors - Point detectors		Under Development	2011-08
		89/106/EEC		
prEN 54-2 rev	Fire detection and fire alarm systems - Part 2: Control and indicating equipment		Under Development	2010-10
		89/106/EEC		
prEN 54-30	Fire detection and fire alarm systems - Part 30: Multi-sensor fire detectors - Point detectors using a combination of carbon monoxide and heat sensors		Under Approval	2011-11
		89/106/EEC		

Table 3 – Fixed firefighting systems – Harmonised European standards already published

Standard reference	Title	Citation in OJ	Directive
CEN/TR 12101-4:2006	Smoke and heat control systems - Part 4: Installed SHEVS systems for smoke and heat ventilation	No	89/106/EEC
CEN/TR 12101-4:2009	Smoke and heat control systems - Part 4: Installed SHEVS systems for smoke and heat ventilation	No	-
CEN/TR 12101-5:2005	Smoke and heat control systems - Part 5: Guidelines on functional recommendations and calculation methods for smoke and heat exhaust ventilation systems	No	-
CEN/TR 15276-1:2009	Fixed firefighting systems - Condensed aerosol extinguishing systems - Part 1: Requirements and test methods for components	No	-
CEN/TR 15276-2:2009	Fixed firefighting systems - Condensed aerosol extinguishing systems - Part 2: Design, installation and maintenance	No	-
CEN/TS 14816:2008	Fixed firefighting systems - Water spray systems - Design, installation and maintenance	No	-
CEN/TS 14972:2008	Fixed firefighting systems - Watermist systems - Design and installation	No	-
CEN/TS 15176:2005	Evaluation of conformity for fixed firefighting systems standards	No	-
EN 12094-1:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 1: Requirements and test methods for electrical automatic control and delay devices	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-	

		14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12094-10:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 10: Requirements and test methods for pressure gauges and pressure switches	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12094-11:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 11: Requirements and test methods for mechanical weighing devices	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	

EN 12094-12:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 12: Requirements and test methods for pneumatic alarm devices	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12094-13:2001	Fixed firefighting systems - Components for gas extinguishing systems - Part 13: Requirements and test methods for check valves and non-return valves	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 202	
		(2001-07-18)	
EN 12094-13:2001/AC:2002	Fixed firefighting systems - Components for gas extinguishing systems - Part 13: Requirements and test methods for check valves and non-return valves	No	-
EN 12094-16:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 16: Requirements and test methods for odorizing devices for CO2 low pressure systems	No	89/106/EEC

EN 12094-2:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 2: Requirements and test methods for non-electrical automatic control and delay devices	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12094-3:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 3: Requirements and test methods for manual triggering and stop devices	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12094-4:2004	Fixed firefighting systems - Components for gas extinguishing systems - Part 4: Requirements and test methods for container valve assemblies and their actuators	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 263	
		(2004-10-26),	

		C 139	
		(2005-06-08)	
EN 12094-5:2006	Fixed firefighting systems - Components for gas extinguishing systems - Part 5: Requirements and test methods for high and low pressure selector valves and their actuators	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12094-6:2006	Fixed firefighting systems - Components for gas extinguishing systems - Part 6: Requirements and test methods for non-electrical disable devices	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12094-7:2000	Fixed firefighting systems - Components for gas extinguishing systems - Part 7: Requirements and test methods for nozzles for CO2 systems	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 202	
		(2001-07-18)	
EN 12094-7:2000/A1:2005	Fixed firefighting systems - Components for gas extinguishing systems - Part 7: Requirements and test methods for nozzles for CO2 systems	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 139	
		(2005-06-08)	

EN 12094-8:2006	Fixed firefighting systems - Components for gas extinguishing systems - Part 8: Requirements and test methods for connectors	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12094-9:2003	Fixed firefighting systems - Components for gas extinguishing systems - Part 9: Requirements and test methods for special fire detectors	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12101-1:2005	Smoke and heat control systems - Part 1: Specification for smoke barriers	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12101-1:2005/A1:2006	Smoke and heat control systems - Part 1: Specification for smoke barriers	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12101-10:2005	Smoke and heat control systems - Part 10: Power supplies	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12101-10:2005/AC:2007	Smoke and heat control systems - Part 10: Power supplies	Cited in OJ	89/106/EEC
		C 290	

		(2007-12-04)	
EN 12101-2:2003	Smoke and heat control systems - Part 2: Specification for natural smoke and heat exhaust ventilators	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12101-3:2002	Smoke and heat control systems - Part 3: Specification for powered smoke and heat exhaust ventilators	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 67	
		(2004-03-17),	
		C 139	
		(2005-06-08)	
EN 12101-3:2002/AC:2005	Smoke and heat control systems - Part 3: Specification for powered smoke and heat exhaust ventilators	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12101-6:2005	Smoke and heat control systems - Part 6: Specification for pressure differential	Cited in OJ	89/106/EEC
		C 319	

	systems - Kits	(2005-12-14)	
EN 12101-6:2005/AC:2006	Smoke and heat control systems - Part 6: Specification for pressure differential systems - Kits	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12259-1:1999 + A1:2001	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 1: Sprinklers	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 40	
		(2002-02-14),	
		C 139	
		(2005-06-08)	
EN 12259-1:1999 + A1:2001/A2:2004	Fixed firefighting systems components for sprinkler and waterspray systems - Part 1: Sprinklers	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 263	
		(2004-10-26),	
		C 139	
		(2005-06-08)	
EN 12259-1:1999 + A1:2001/A3:2006	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 1:	Cited in OJ	89/106/EEC
		C 304	

	Sprinklers	(2006-12-13)	
EN 12259-2:1999	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 2: Wet alarm valve assemblies	Cited in OJ	89/106/EEC
		C 139	
		(2005-06-08)	
EN 12259-2:1999/A1:2001	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 2: Wet alarm valve assemblies	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 358	
		(2001-12-15),	
		C 139	
		(2005-06-08),	
		C 97	
		(2004-04-22)	
EN 12259-2:1999/A2:2005	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 2: Wet alarm valve assemblies	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12259-2:1999/AC:2002	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 2: Wet alarm valve assemblies	Cited in OJ	89/106/EEC
		C 139	
		(2005-06-08)	

EN 12259-3:2000	Fixed firefighting systems - Components for automatic sprinkler and water spray systems - Part 3: Dry alarm valve assemblies	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 139	
		(2005-06-08)	
EN 12259-3:2000/A1:2001	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 3: Dry alarm valve assemblies	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 358	
		(2001-12-15),	
		C 139	
		(2005-06-08),	
		C 97	
		(2004-04-22)	
EN 12259-3:2000/A2:2005	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 3: Dry alarm valve assemblies	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 12259-4:2000	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 4: Water motor alarms	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-	

		14),	
		C 139	
		(2005-06-08)	
EN 12259-4:2000/A1:2001	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 4: Water motor alarms	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 358	
		(2001-12-15),	
		C 139	
		(2005-06-08)	
EN 12259-5:2002	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 5: Water flow detectors	Cited in OJ	89/106/EEC
		C 319	
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 47	
		(2003-02-27)	
EN 12416-1:2001+A2:2007	Fixed firefighting systems - Powder systems - Part 1: Requirements and test methods for components	No	-

EN 12416-2:2001+A1:2007	Fixed firefighting systems - Powder systems - Part 2: Design, construction and maintenance	No	-
EN 12845:2004	Fixed firefighting systems - Automatic sprinkler systems - Design, installation and maintenance	No	89/106/EEC
EN 13565-1:2003+A1:2007	Fixed firefighting systems - Foam systems - Part 1: Requirements and test methods for components	No	89/106/EEC
EN 15004-1:2008	Fixed firefighting systems - Gas extinguishing systems - Part 1: Design, installation and maintenance (ISO 14520-1:2006, modified)	No	89/106/EEC
EN 15004-10:2008	Fixed firefighting systems - Gas extinguishing systems - Part 10: Physical properties and system design of gas extinguishing systems for IG-541 extinguishant (ISO 14520-15:2005, modified)	No	-
EN 15004-2:2008	Fixed firefighting systems - Gas extinguishing systems - Part 2: Physical properties and system design of gas extinguishing systems for FK-5-1-12 extinguishant (ISO 14520-5:2006, modified)	No	-
EN 15004-3:2008	Fixed firefighting systems - Gas extinguishing systems - Part 3: Physical properties and system design of gas extinguishing systems for HCFC Blend A extinguishant (ISO 14520-6:2006, modified)	No	-
EN 15004-4:2008	Fixed firefighting systems - Gas extinguishing systems - Part 4: Physical properties and system design of gas extinguishing systems for HFC 125	No	-

	extinguishant (ISO 14520-8:2006, modified)		
EN 15004-5:2008	Fixed firefighting systems - Gas extinguishing systems - Part 5: Physical properties and system design of gas extinguishing systems for HFC 227ea extinguishant (ISO 14520-9:2006, modified)	No	-
EN 15004-6:2008	Fixed firefighting systems - Gas extinguishing systems - Part 6: Physical properties and system design of gas extinguishing systems for HFC 23 extinguishant (ISO 14520-10:2005, modified)	No	-
EN 15004-7:2008	Fixed firefighting systems - Gas extinguishing systems - Part 7: Physical properties and system design of gas extinguishing systems for IG-01 extinguishant (ISO 14520-12:2005, modified)	No	-
EN 15004-8:2008	Fixed firefighting system - Gas extinguishing systems - Part 8: Physical properties and system design of gas extinguishing systems for IG-100 extinguishant (ISO 14520-13:2005, modified)	No	-
EN 15004-9:2008	Fixed firefighting systems - Gas extinguishing systems - Part 9: Physical properties and system design of gas extinguishing systems for IG-55 extinguishant (ISO 14520-14:2005, modified)	No	-

EN 1568-1:2008	Fire extinguishing media - Foam concentrates - Part 1: Specification for medium expansion foam concentrates for surface application to water-immiscible liquids	No	89/106/EEC
EN 1568-2:2008	Fire extinguishing media - Foam concentrates - Part 2: Specification for high expansion foam concentrates for surface application to water-immiscible liquids	No	89/106/EEC
EN 1568-3:2008	Fire extinguishing media - Foam concentrates - Part 3: Specification for low expansion foam concentrates for surface application to water-immiscible liquids	No	89/106/EEC
EN 1568-4:2008	Fire extinguishing media - Foam concentrates - Part 4: Specification for low expansion foam concentrates for surface application to water-miscible liquids	No	89/106/EEC
EN 25923:1993	Fire protection - Fire extinguishing media - Carbon dioxide (ISO 5923:1989)	No	89/106/EEC
EN 27201-1:1994	Fire protection - Fire extinguishing media - Halogenated hydrocarbons - Part 1: Specifications for halon 1211 and halon 1301 (ISO 7201-1:1989)	No	89/106/EEC
EN 27201-2:1994	Fire protection - Fire extinguishing media - Halogenated hydrocarbons - Part 2: Code of practice for safe handling and transfer procedures (ISO 7201-2:1991)	No	89/106/EEC
EN 615:1994	Fire protection - Fire extinguishing media - Specification for powders (other than class D powders)	No	89/106/EEC
EN 615:1994/A1:2001	Fire protection - Fire extinguishing media - Specifications for powders (other than class	No	89/106/EEC

	D powders)		
EN 615:1994/AC:2006	Fire protection - Fire extinguishing media - Specifications for powders (other than class D powders)	No	89/106/EEC
EN 671-1:2001	Fixed firefighting systems - Hose systems - Part 1: Hose reels with semi-rigid hose	Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 202	
EN 671-1:2001/AC:2002	Fixed firefighting systems - Hose systems - Part 1: Hose reels with semi-rigid hose	(2001-07-18)	
		Cited in OJ	89/106/EEC,
		C 304	96/98/EC
EN 671-2:2001	Fixed firefighting systems - Hose systems - Part 2: Hose systems with lay-flat hose	(2006-12-13)	
		Cited in OJ	89/106/EEC,
		C 319	96/98/EC
		(2005-12-14),	
		C 139	
		(2005-06-08),	
		C 202	

		(2001-07-18)	
EN 671-2:2001/A1:2004	Fixed firefighting systems - Hose systems - Part 2: Hose systems with lay-flat hose	Cited in OJ	89/106/EEC
		C 304	
		(2006-12-13)	
EN 671-3:2000	Fixed firefighting systems - Hose systems - Part 3: Maintenance of hose reels with semi-rigid hose and hose systems with lay-flat hose	No	89/106/EEC
EN 671-3:2000/AC:2000	Fixed firefighting systems - Hose systems - Part 3: Maintenance of hose reels with semi-rigid hose and hose systems with lay-flat hose	No	89/106/EEC

Table 4 – Fixed firefighting systems – Harmonised European standards under development

Project reference	Title	Directive	Status	Expected approval
prEN 13565-2	Fixed firefighting systems - Foam systems - Part 2: Design, construction and maintenance		Under Approval	2007-07
prEN 12259-8	Fire protection - Components for automatic sprinkler systems - Part 8: Pressure switches	89/106/EEC	Under Development	2002-12
prEN 671-1	Fixed firefighting systems - Hose systems - Part 1: Hose reels with semi-rigid hose	89/106/EEC	Under Approval	2007-10
prEN 671-2	Fixed firefighting systems - Hose systems - Part 2: Hose system with lay-flat hose	89/106/EEC	Under Approval	2007-10
EN 671-3:2009	Fixed firefighting systems - Hose systems - Part 3: Maintenance of hose reels with semi-rigid hose and hose systems with lay-flat hose	89/106/EEC	Under Approval	2009-03
prEN 12094-7	Fixed firefighting systems - Components for gas extinguishing systems - Part 7: Requirements and test methods for nozzles	89/106/EEC	Under Approval	2007-10
EN 12845:2004/prA1	Fixed firefighting systems - Automatic sprinkler systems - Design, installation and maintenance		Under Approval	2008-04
EN 12845:2004/prA2	Fixed firefighting systems - Automatic sprinkler systems - Design, installation and maintenance		Under Approval	2008-04
prEN 615	Fire protection - Fire extinguishing media - Specifications for powders (other than class D powders)		Under Approval	2009-05
prEN 12259-6	Fixed firefighting systems - Sprinkler and water spray systems - Part 6: Pipe couplings		Under Development	2011-02
prEN 12259-12	Fixed firefighting systems - Sprinkler and water		Under	2011-02

	spray systems - Part 12: Sprinkler pumps	89/106/EEC	Development	
EN 12845:2004/prA3	Automatic sprinkler systems - Design and installation		Under Development	2011-11
prEN 12101-7	Smoke and heat control systems - Part 7: Smoke duct sections	89/106/EEC	Under Approval	2010-03
prEN 12101-8	Smoke and heat control systems - Part 8: Smoke control dampers	89/106/EEC	Under Approval	2010-03
EN 12101-1:2005/prA2	Smoke and heat control systems - Part 1: Specification for smoke barriers	89/106/EEC	Under Development	2010-10
prEN 12101-2 rev	Smoke and heat control systems - Part 2: Specification for natural smoke and heat exhaust ventilators	89/106/EEC	Under Development	2010-10
prEN 12101-9	Smoke and heat control systems - Part 9: Control panels	89/106/EEC	Under Approval	2010-10
EN 12101-10:2005/prA1	Smoke and heat control systems - Part 10: Power supplies	89/106/EEC	Under Approval	2010-10
prEN 12259-9	Fixed firefighting systems - Components for sprinkler and water spray systems - Part 9: Deluge valve assemblies	89/106/EEC	Under Development	2011-11