BLOCK EXEMPTION (INSURANCE): COMMISSION DRAFT

Subject: Block exemption

Industry: Insurance

Source: Commission Statement IP/02/1028, dated 10 July 2002

(Note. Most of the changes proposed by the Commission are somewhat technical and peculiar to the insurance field. However, one feature is important to all industries: that is, the trend in new block exemption regulations away from the so-called "white lists" and the "clause-based approach" to provisions based on a more economic approach.)

The Commission has published a draft of a revised block exemption Regulation in the insurance sector, intended to replace the existing Regulation when it expires next year. A number of changes have been made in the draft text as compared with the current Regulation; and the Commission invites comments on these from interested parties, with a deadline for comments of 30 September 2002. The draft Regulation is intended as a successor to Commission Regulation 3932/92, of 21 December 1992.

The principles applied by the Commission in preparing a new draft Regulation have been: legislative clarity, in that the text is rearranged to be clearer and more user-friendly; a modernised economic approach, with no listing of exempted ("white") clauses; and, an emphasis on consumers, in that restrictive agreements are not exempted unless there is incontrovertible proof that they serve consumers' interests. After the deadline for comments from interested parties, the Commission will evaluate the comments received and consider whether any changes in the draft Regulation are appropriate. Then, after consulting Member States, the Commission will adopt a new Regulation, around the end of this year.

In 1992, the Commission introduced a Block Exemption Regulation for certain types of agreement in the insurance sector, specifically agreements on:

- the establishment of common risk premium tariffs;
- the establishment of common standard policy conditions;
- the joint coverage of certain types of risks;
- the testing and acceptance of safety devices.

As Commission Regulation 3932/92 expires on 31 March 2003, it has been decided to prepare a revised draft Regulation to succeed the present Regulation on its expiry.

The legal presentation of the draft new Regulation differs from that of the existing Regulation, to take account of developments in this field since 1992. Moreover, in keeping with a more economic and less "clause-based" approach, it does not contain lists of approved ("white") clauses. The new draft covers the same four categories of agreements as the current Regulation, but does not include two

further categories of agreements between insurance undertakings, namely agreements on claims settlement, and on registers of aggravated risks. In these two areas, the Commission considers that it has not gained sufficient experience since 1992, nor has it encountered evidence of major competition issues likely to justify a block exemption for such agreements. The main changes in the draft, as compared with Commission Regulation 3932/92, can be summarised as follows.

Indicative risk premiums

Risk premiums are an indicative estimation of the likely future cost of claims for a risk in any particular category. The risk premium breaks down into two components, the first of which is the "pure premium"; this is a historical statistic on the number and cost of claims in the past for risks in a given category. The second element in the risk premium relates to the future; it is a correction, based on studies, to account for estimated future changes in the number and size of claims. National associations of insurers in the Member States normally produce statistics on pure premiums, based on information supplied by insurers, and carry out studies on likely future trends, and calculate an indicative risk premium on that basis. Regulation 3932/92 exempts this joint activity, on certain conditions.

None of the existing conditions for exemption has been removed in the new draft. However, one condition for exemption of joint calculation of indicative risk premiums implicit in the existing Regulation has been made explicit: as concerns pure premiums, statistics must be broken down into as much detail as is possible, while leaving a statistically useful sample. The reason for this condition is that the more statistics are broken down, the more freedom insurers have to differentiate their prices to end consumers. A further new condition for exemption is that the statistics on risk premiums be made available on reasonable and non-discriminatory terms, to any insurance undertaking which requests access to them. This condition aims particularly at insurance companies considering entering the market in question, but which need access to the statistics before taking their decision.

Standard policy conditions

Standard insurance policy conditions for many types of insurance policy are produced by national associations of insurance undertakings. Regulation 3932/92 does not authorise any compulsory clauses comprising standard conditions; all standard conditions must be optional. Certain standard conditions ("black clauses") are prohibited even if they are optional. Other than such clauses, Regulation 3932/92 grants an exemption to all standard policy conditions, on condition that they be indicative and non-binding. However, in the revised draft Regulation, standard policy conditions - even those which are non-binding and not defined as "black clauses" - are exempted only if they are agreed in conjunction with the joint calculation of pure premiums and joint studies related to risk premiums, and only in so far they are both necessary and exclusively used for such calculations or studies. This is because, in the Commission's view, the insurance sector has not so far conclusively demonstrated that such standard policy conditions serve consumer interest, except insofar as they are necessary to

calculate risk premiums. (Standard clauses are closely linked to indicative risk premiums, since statistical databases on numbers and amounts of claims for certain categories of risks are of little use without clarification of the insurance policy conditions to which they relate.)

Common coverage of certain types of risks (pools)

Insurance pools involving a number of insurers are frequent for the coverage of large or exceptional risks, such as aviation, nuclear and environmental risks, for which individual insurance companies are reluctant to insure the entire risk alone. Regulation 3932/92 subjects the exemption of pools to market share thresholds: 10% for co-insurance pools and 15% for co-reinsurance pools. The revised draft Regulation increases these market shares: pools will be authorised on condition that the combined market shares of their members do not exceed 20% for co-insurance pools and 25% for co-reinsurance pools. In addition, in the revised draft, a new exemption with no market share threshold applicable, is introduced for insurance pools which are newly-created in order to cover a new risk, for the first three years of their existence. This is based on the fact that for new risks, where no historical information on claims exists, it is not possible to know in advance what subscription capacity is necessary to cover the risk, and therefore it is considered appropriate to exempt a pooling arrangement for the insurance of new risks for a limited period of time three years in the draft Regulation - until there is sufficient historical information on claims to assess the necessity or otherwise of one single pool.

Safety Equipment

In most Member States, there are lists, drawn up by the national association of insurers on the basis of technical specifications, of approved safety equipment (alarms, anti-theft and anti-fire devices) which meet certain criteria. Most insurers grant an insured party a reduction in premiums if an approved safety device is used. Regulation 3932/92 grants an exemption to the joint determination of these lists and the technical specifications (but not to any agreements concerning the use to which the lists are put, such as the granting of reduced premiums, as this is a matter for individual insurers). There are great differences from one Member State to another in the level of stringency of the technical specifications. Many safety devices are thus eligible to qualify insured parties for reductions in their premiums in certain Member States but not others. In the revised draft Regulation, a new condition for exemption of agreements between insurers on technical specifications for security equipment has been introduced. Such agreements, in order to qualify for the block exemption, must explicitly provide for the recognition of security devices installers or maintenance undertakings approved by a similar such national agreement in another Member State. This is because currently differences between such national agreements constitute an obstacle to the free movement of goods. The new condition for exemption attempts to encourage the creation of a genuine single market in safety equipment, which does not currently exist. Furthermore, this condition is intended to act as a spur to the development of European-level standards and technical specifications. ■