

Consultation strategy for the evaluation of the two Block Exemption Regulations for horizontal co-operation agreements

1. Background information

Art. 101(1) of the Treaty on the functioning of the European Union (“the Treaty”) prohibits agreements between undertakings that restrict competition unless they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, in accordance with Art. 101(3) of the Treaty. The prohibition of Art. 101(1) of the Treaty covers amongst others co-operation agreements between actual or potential competitors (horizontal co-operation agreements).

Council Regulation (EEC) No 2821/71 empowers the Commission to apply Art. 101(3) of the Treaty by regulation to certain categories of horizontal agreements, decisions and concerted practices falling within Art. 101(1) of the Treaty for which it can be assumed with sufficient certainty that they satisfy the conditions of Art. 101(3) of the Treaty. The Commission made use of this empowerment by adopting two Block Exemption Regulations (“BERs”) for horizontal co-operation agreements: Commission Regulation (EU) No 1217/2010 (for research and development agreements, “R&D BER”), and Commission Regulation (EU) No 1218/2010 (for specialisation agreements, “Specialisation BER”), together referred to as the “Horizontal Block Exemption Regulations”.

The first R&D BER was Commission Regulation (EC) No 2659/2000 of 29 November 2000, which expired on 31 December 2010. It was replaced subsequently by the currently applicable Commission Regulation (EU) No 1217/2010 of 14 December 2010, which will expire on 31 December 2022.

The first Specialisation BER was Commission Regulation (EC) No 2658/2000 of 29 November 2000, which expired on 31 December 2010. It was replaced subsequently by the currently applicable Commission Regulation (EU) No 1218/2010 of 14 December 2010, which will expire on 31 December 2022.

The Commission also provided guidance in the corresponding Commission Notice (Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements or “Horizontal Guidelines”).

The purpose of this evaluation is to determine whether the Commission should let the two Block Exemption Regulations for horizontal co-operation agreements elapse, prolong their duration or revise them in light of new trends and developments since their adoption in 2010. The evaluation includes the guidance provided by the Horizontal Guidelines. For this purpose, an Inter-Service Steering Group (“ISSG”) consisting of representatives from interested Directorates-General of the European Commission has been set up in August 2019 in order to steer the evaluation during all key phases.

2. Consultation scope and objectives

To ensure that the general public interest of the European Union is reflected in the evaluation, the Commission wishes to consult as widely as possible through various means such as a public consultation and a dedicated stakeholder workshop on areas of particular interest for a possible review of the Horizontal Block Exemption Regulations. A study by an external contractor carried out in 2020 will contribute to the evaluation. Views from national competition authorities will also be collected.

The objective of the consultation process is to deliver an in-depth evaluation of high quality concerning the key competition issues arising in horizontal relationships from the perspective of the businesses, the wider public and of EU competition law enforcement. Allowing interested parties to provide feedback and contribute with suggestions will also ensure transparency and accountability of the evaluation process.

Stakeholder consultations are a dynamic process. The approach chosen by the Commission may therefore be altered during the evaluation phase if deemed necessary by the ISSG and/or the contractor carrying out the evaluation study. Any such changes will be announced on the dedicated website in a timely manner.

The findings of the public consultation will be summarised in a synopsis report, which will be made available to stakeholders in order to ensure full transparency. Stakeholders who participated in the consultation process will be able to see if their views have been taken into consideration and, if not, why.

3. Mapping of stakeholders

The purpose of the consultation process is to gather information and views from stakeholders in order to assess whether the Commission should let the two Block Exemption Regulations for horizontal co-operation agreements elapse, prolong their duration or revise them in light of the new market developments since their adoption in 2010.

As regards the business perspective, there is a very diverse stakeholder group with interest in the evaluation process. These are undertakings with business operations in the EU engaged in various different sectors of the economy, including both (i) companies that carry out research and development activities and (ii) companies that engage in production of goods and the supply of services. Industry associations and consumer organisations are also interested in the evaluation. Law firms and economic consultancy firms advising companies on related competition issues have a comparable interest in this evaluation process.

As regards the enforcement perspective, the experience gathered by the competition authorities and the courts of the EU Member States in applying the two Block Exemption Regulations for horizontal co-operation agreements, including the guidance provided by the Commission in the Horizontal Guidelines, will be of particular interest for this evaluation.

Other stakeholders with a possible interest in the evaluation are academics with a focus on EU competition law and notably on horizontal cooperation.

4. Consultation activities, accessibility and indicative timing

A **public consultation** of 14 weeks will be launched in November 2019 on the Commission's central [public consultations page](#), as well as on a dedicated webpage on the website of the Directorate-General for Competition. The questions will be published in the three working languages of the European Commission (English, French and German), while replies will be welcome in any of the official EU languages. The contributions made to the public consultation will be published on the consultation webpage in the language in which they were submitted, together with a synopsis report summarising the main findings.

A **stakeholder workshop** on areas of particular interest for the review process of the two Horizontal Block Exemption Regulations is planned for Q2/2020.

Discussions with the **competition authorities of the EU Member States** will be held in the framework of the Working Group on Horizontal Agreements and Abuse of Dominant position of the European Competition Network.

An **external evaluation support study** is planned to be commissioned in the first half of 2020.

The evaluation process will be closed with the adoption of a **Staff Working Document** at the beginning of 2021.

5. Consultation webpage

The consultation questionnaire and further information on the evaluation process can be found on the Commission's central [public consultations page](#), as well as on a dedicated webpage on the website of the Directorate-General for Competition.