

Public questionnaire for the 2019 Evaluation of the Research & Development and Specialisation Block Exemption Regulations

Fields marked with * are mandatory.

1

Introduction

Background and aim of the public questionnaire

Article 101(1) of the Treaty on the Functioning of the European Union ('the Treaty') prohibits agreements between undertakings that restrict competition unless they generate efficiencies in line with Article 101(3) of the Treaty. Agreements generate efficiencies in line with Article 101(3) of the Treaty if they contribute to improving the production or distribution of goods or services, or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits; they only impose restrictions that are indispensable for the attainment of these objectives and do not eliminate competition in respect of a substantial part of the product in question. The prohibition contained in Article 101(1) of the Treaty covers, amongst others, agreements entered into between actual or potential competitors (so-called 'horizontal agreements').

Commission Regulations (EU) No 1217/2010 (Research & Development Block Exemption Regulation - 'R&D BER') and 1218/2010 (Specialisation Block Exemption Regulation - 'Specialisation BER'), together referred to as the 'Horizontal block exemption regulations' (or 'HBERs'), exempt from the prohibition contained in Article 101(1) of the Treaty those R&D and specialisation agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty. The Commission Guidelines on horizontal cooperation agreements ('HGL') provide binding guidance on the Commission for the interpretation of the HBERs and for the application of Article 101 of the Treaty to other horizontal agreements. The HBERs will expire on 31 December 2022.

This public questionnaire represents one of the methods of information gathering in the evaluation of the HBERs, together with the HGL, which was launched on 5 September 2019. The purpose of this questionnaire is to collect views and evidence from the public and stakeholders on how the current rules work for them. The Commission will evaluate the current HBERs, together with the HGL, based on the following criteria:

- Effectiveness (Have the objectives been met?),
- Efficiency (Were the costs involved proportionate to the benefits?),
- Relevance (Do the objectives still match current needs or problems?),
- Coherence (Does the policy complement other actions or are there contradictions?), and
- EU added value (Did EU action provide clear added value?).

The collected information will provide part of the evidence base for determining whether the Commission should let the HBERs lapse, prolong their duration without changing them or prolong them in a revised form, together with the accompanying HGL.

The responses to this public consultation will be analysed and the summary of the main points and conclusions will be made public on the Commission's central public consultations page. **Please note that your replies will also become public as a whole, see below under Section 'Privacy and Confidentiality'.**

Nothing in this questionnaire may be interpreted as stating an official position of the Commission.

Submission of your contribution

You are invited to reply to this public consultation by answering the questionnaire online. To facilitate the analysis of your replies, we would kindly ask you to keep your answers concise and to the point. You may include documents and URLs for relevant online content in your replies.

While the questionnaire contains several questions of a more general nature, notably Section 4 and 5 also contain questions that are aimed at respondents with more specialised knowledge of the HBERs and HGL. We invite all respondents to provide answers to the questionnaire. In case a question does not apply to you or you do not know the answer, please choose the field 'Do not know' or 'Not applicable'.

For your information, you have the option of saving your questionnaire as a 'draft' and finalising your response later. In order to do this you have to click on 'Save as Draft' and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access the draft again.

The questionnaire is available in English, French and German. You may however respond in any EU language.

In case of questions, you can contact us via the following functional mailbox: COMP-HBERS-REVIEW@ec.europa.eu.

In case of technical problem, please contact the Commission's [CENTRAL HELPDESK](#).

Duration of the consultation

The consultation on this questionnaire will be open for 14 weeks, from 6/11/2019 to 12/2/2020.

Privacy and confidentiality

*** 1.1 Publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

☒ **Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

☒ **Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

Please note that your replies and any attachments you may submit will be published in their entirety even if you chose 'Anonymous'. Therefore, please remove from your contribution any information that you will not want to be published.

☒ 1.2 I agree with the [personal data protection provisions](#)

2 About you

* 2.1 Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ Gaelic
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* 2.2 First name

Theresa

* 2.3 Surname

Waizner

* 2.4 Email (this won't be published)

* 2.5 I am giving my contribution as

- ☐ Academic/research institution
- ☒ Business association
- ☐ Company/business organisation
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority
- ☐ Trade union
- ☐ Other

2.6 Other - please specify

If you chose "Other", please specify whether you are contributing as lawyer/law firm, economic consultancy or something else:

* 2.7 Organisation name

255 character(s) maximum

Gesamtverband der deutschen Versicherungswirtschaft e.V. (GDV)

If available, please provide your ID number of the [EU Transparency Register](#). If your organisation is not registered, we invite you to register, although it is not compulsory to be registered to reply to this consultation.

2.8 Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* 2.10 Organisation size

- ☐ Micro (1 to 9 employees)
- ☐ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☒ Large (250 or more)

* 2.11 The main activities of your organisation:

Text of 1 to 250 characters will be accepted

The Gesamtverband der Deutschen Versicherungswirtschaft (GDV) with its seat in Berlin is the association of the private insurance industry in Germany.

*** 2.12 Please describe the sectors where your organisation or your members are conducting business:**

Text of 1 to 250 characters will be accepted

Private insurance and reinsurance

*** 2.15 Country of origin**

Please add your country of origin, or that of your organisation.

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| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
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| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
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| <input type="radio"/> Argentina | <input type="radio"/> Ethiopia | <input type="radio"/> Malta | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Armenia | <input type="radio"/> Falkland Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore |
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| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
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| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |
| <input type="radio"/> Bangladesh | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova | <input type="radio"/> South Georgia and the South Sandwich Islands |

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| <input type="radio"/> Bermuda | <input type="radio"/> Greece | <input type="radio"/> Mozambique | <input type="radio"/> Suriname |
| <input type="radio"/> Bhutan | <input type="radio"/> Greenland | <input type="radio"/> Myanmar /Burma | <input type="radio"/> Svalbard and Jan Mayen |
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| <input type="radio"/> Bonaire Saint Eustatius and Saba | <input type="radio"/> Guadeloupe | <input type="radio"/> Nauru | <input type="radio"/> Switzerland |
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| <input type="radio"/> Brazil | <input type="radio"/> Guinea | <input type="radio"/> New Zealand | <input type="radio"/> Tanzania |
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| <input type="radio"/> British Virgin Islands | <input type="radio"/> Guyana | <input type="radio"/> Niger | <input type="radio"/> The Gambia |
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| <input type="radio"/> Bulgaria | <input type="radio"/> Heard Island and McDonald Islands | <input type="radio"/> Niue | <input type="radio"/> Togo |
| <input type="radio"/> Burkina Faso | <input type="radio"/> Honduras | <input type="radio"/> Norfolk Island | <input type="radio"/> Tokelau |
| <input type="radio"/> Burundi | <input type="radio"/> Hong Kong | <input type="radio"/> Northern Mariana Islands | <input type="radio"/> Tonga |
| <input type="radio"/> Cambodia | <input type="radio"/> Hungary | <input type="radio"/> North Korea | <input type="radio"/> Trinidad and Tobago |
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| <input type="radio"/> Canada | <input type="radio"/> India | <input type="radio"/> Norway | <input type="radio"/> Turkey |
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| <input type="radio"/> Chile | <input type="radio"/> Isle of Man | <input type="radio"/> Panama | <input type="radio"/> Ukraine |
| <input type="radio"/> China | <input type="radio"/> Israel | <input type="radio"/> Papua New Guinea | <input type="radio"/> United Arab Emirates |
| <input type="radio"/> Christmas Island | <input type="radio"/> Italy | <input type="radio"/> Paraguay | <input type="radio"/> United Kingdom |
| <input type="radio"/> Clipperton | <input type="radio"/> Jamaica | <input type="radio"/> Peru | <input type="radio"/> United States |
| <input type="radio"/> Cocos (Keeling) Islands | <input type="radio"/> Japan | <input type="radio"/> Philippines | <input type="radio"/> United States Minor Outlying Islands |

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| <input type="radio"/> Colombia | <input type="radio"/> Jersey | <input type="radio"/> Pitcairn Islands | <input type="radio"/> Uruguay |
| <input type="radio"/> Comoros | <input type="radio"/> Jordan | <input type="radio"/> Poland | <input type="radio"/> US Virgin Islands |
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| <input type="radio"/> Cuba | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia | <input type="radio"/> Wallis and Futuna |
| <input type="radio"/> Curaçao | <input type="radio"/> Laos | <input type="radio"/> Rwanda | <input type="radio"/> Western Sahara |
| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Barthélemy | <input type="radio"/> Yemen |
| <input type="radio"/> Czechia | <input type="radio"/> Lebanon | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

3 General Questions on the Horizontal Block Exemption Regulations and the Guidelines on horizontal cooperation agreements

* 3.6 How often do you consult the **R&D BER** for guidance on a horizontal cooperation agreement?

- ☐ Frequently (several times per year)
- ☐ Occasionally (once or twice per year)
- ☒ Never

* 3.7 How often do you consult the **Specialisation BER** for guidance on a horizontal cooperation agreement?

- ☐ Frequently (several times per year)
- ☒ Occasionally (once or twice per year)
- ☐ Never

* 3.8 How often do you consult the **HGL** for guidance on a horizontal cooperation agreement?

- ☒ Frequently (several times per year)
- ☐ Occasionally (once or twice per year)
- ☐ Never

4 Effectiveness (Have the objectives of the current HBERs and HGL been met?)

In this section, we would like to have your opinion on the extent to which the HBERs and the HGL have met their objectives.

The **purpose of the EU competition rules** is to ensure that competition is not distorted to the detriment of the public interest, individual undertakings and consumers. In line with this objective, the Commission's policy is to leave companies maximum flexibility when concluding horizontal co-operation agreements in order to increase the competitiveness of the European economy while at the same time promoting competition for the benefit of European businesses and consumers.

The **purpose of the HBERs and the HGL** is to make it easier for undertakings to cooperate in ways which are economically desirable and without adverse effect from the point of view of competition policy. The specific objectives of the HBERs and HGL are to ensure effective protection of competition and providing adequate legal certainty for undertakings.

* 4.1 In your view, do you perceive that the HBERs and the HGL have contributed to promoting competition in the EU?

- ☒ Yes
- ☐ Yes, but they have contributed only to a certain extent or only in specific sectors
- ☐ They were neutral
- ☐ No, they have negatively affected competition in the EU
- ☐ Don't know

* 4.2 Please explain your reply, distinguishing between sectors where relevant: (1500 characters max).

Text of 1 to 1500 characters will be accepted

Both the Horizontal Guidelines and the horizontal BERs have led to an increase in legal certainty in the German insurance industry as a whole. They give companies a better understanding of the limits of what is permitted under competition law, which leads to more competition overall. From the point of view of the German insurance sector, however, there is still room for improvement in individual questions.

Legal certainty provided by the HBERs and the HGL

* 4.3 In your view, have the R&D BER and Section 3 of the HGL on research and development agreements provided sufficient legal certainty on R&D agreements companies can conclude without the risk of infringing competition law?

- ☐ Yes
- ☐ No
- ☒ Do not know

* 4.5 In your view, does the R&D BER increase legal certainty compared with a situation where the R&D BER would not exist but only the HGL applied?

- ☐ Yes
- ☐ No
- ☒ Do not know

* 4.7 In your view, have the Specialisation BER and Section 4 of the HGL on production agreements provided sufficient legal certainty on production /specialisation agreements companies can conclude without the risk of infringing competition law?

- ☐ Yes
- ☒ No
- ☐ Do not know

* 4.8 Please explain your reply

Text of 1 to 1500 characters will be accepted

Since the termination of the Insurance BER there has been uncertainty in the German insurance sector with regard to the question of whether and, if so, to what extent the Specialization BER or Section 4 of the Horizontal Guidelines apply to co(re)insurance agreements (see in particular our response to question 4.36).

* 4.9 In your view, does the Specialisation BER increase legal certainty compared with a situation where the Specialisation BER would not exist but only the HGL applied?

- ☒ Yes
- ☐ No
- ☐ Do not know

* 4.10 Please explain your reply

Text of 1 to 1500 characters will be accepted

Due to the market share thresholds alone, the Specialization BER offers more legal certainty than the Horizontal Guidelines would do on their own. However, there are uncertainties regarding the application of the Specialization BER (see in particular our response to question 4.36)

In this section we would like to have your opinion on the extent to which the HGL have provided sufficient legal certainty on horizontal cooperation agreements companies can undertake without the risk of infringing competition law. Please specify your answer according to the different types of horizontal agreements.

* 4.11 In your view, have the HGL provided sufficient legal certainty on agreements involving **information exchange** in the sense of Section 2 of the HGL?

- ☐ Yes
- ☒ No
- ☐ Do not know

* 4.12 Please explain your reply

Text of 1 to 1500 characters will be accepted

Joint compilations, tables and studies in the insurance sector fell within the scope of the Insurance BER 267 /2010 until it expired in 2017. They are now essentially to be assessed according to Section 2 of the Horizontal Guidelines. In this respect, the problem arises that, according to the Horizontal Guidelines, an exchange of information is likely to have a restrictive effect on competition if the companies involved in the exchange cover a sufficiently large part of the relevant market (para. 87). This is in contradiction to the requirements of the Insurance BER, which deliberately did not set market share thresholds. There it was stated (and we agree to this assessment): “ The inclusion in such joint compilations, tables and studies of information from all insurers on a market, including large ones, in principle promotes competition by helping smaller insurers, and facilitates market entry. Given this specificity of the insurance sector, it is not appropriate to subject any exemption for such joint compilations, tables and studies to market share thresholds.” (Recital 12 of the Insurance BER). There is therefore a certain degree of legal uncertainty, even if we assume that the insurance-specific assessment of the Insurance BER is still valid.

- * 4.13 In your view, have the HGL provided sufficient legal certainty on **purchasing agreements** in the sense of Section 5 of the HGL?
- ☐ Yes
- ☐ No
- ☒ Do not know
- * 4.15 In your view, have the HGL provided sufficient legal certainty on **commercialisation agreements** in the sense of Section 6 of the HGL
- ☐ Yes
- ☐ No
- ☒ Do not know
- * 4.17 In your view, have the HGL provided sufficient legal certainty on **standardisation agreements** in the sense of Section 7 of the HGL
- ☐ Yes
- ☒ No
- ☐ Do not know
- * 4.18 Please explain your reply

Text of 1 to 1500 characters will be accepted

1. Standard terms: GDV is publishing non-binding standard policy conditions for insurance. These fell within the scope of application of the Insurance BER 358/2003, and they are currently to be assessed under the rules for „standard terms“ in the Horizontal Guidelines. In this respect, legal certainty has decreased compared to the legal situation under the Insurance BER 358/2003, since the latter made clear stipulations as to which clauses are inadmissible (“black clauses”). Under the Horizontal Guidelines, standard terms can give rise to restrictive effects on competition if a large part of an industry adopts standard terms defining the scope of the end-product, so customers have no option but to accept those standard terms (para. 270). In this respect, it is for example not clear what level of market penetration might actually give rise to competitive concerns. GDV incurs considerable costs due to the current legal situation (see also 5.7 below). Therefore, some clarification would be welcome. On a positive note, the example given in the Horizontal Guidelines (para. 335) has proven to be very helpful.

2. Standardisation agreements: The insurance sector relies on the rules on standardisation agreements, in particular when issuing non-binding standards on safety devices (see in particular para. 328 of the Horizontal Guidelines). The statements in the Horizontal Guidelines have proven to be very helpful in practice. In our view, changes are not necessary in this regard.

* 4.19 In your view, have the HGL provided sufficient legal certainty on **other types of horizontal cooperation agreements** that are currently not specifically addressed in the HGL (for example sustainability agreements)

- ☐ Yes
☒ No
☐ Do not know

* 4.20 Please explain your reply

Text of 1 to 1500 characters will be accepted

In our opinion, it would strengthen legal certainty if the horizontal guidelines would, in particular, address sustainability agreements.

* 4.21 In your view, are there other types of horizontal cooperation agreements outside those identified in the current HGL that should have been specifically addressed in order to increase legal certainty?

- ☒ Yes
☐ No
☐ Do not know

* 4.22 If Yes, please list those types of agreements and explain your reasons

Text of 1 to 3000 characters will be accepted

As mentioned above (question 4.20), it would strengthen legal certainty in our view if the Horizontal Guidelines would address sustainability agreements. In addition, the Horizontal Guidelines should also contain information on cooperation in the context of digitization so as to increase legal certainty in this area.

Identification of pro-competitive horizontal agreements

The R&D BER and the Specialisation BER set out a number of conditions that R&D and specialisation agreements need to meet in order to benefit from the block exemption. The HGL provide additional guidance on how to interpret these conditions. These conditions have been defined with the purpose to give exemption only to those agreements for which it can be assumed with sufficient certainty that they generate efficiencies that outweigh, in line with Article 101(3) of the Treaty, the harm caused by the restriction of competition.

Based on your experience, have the following provisions in the **R&D BER** allowed to correctly identify the horizontal cooperation agreements that are compliant with Article 101 of the Treaty?

- * 4.23 The list of definitions that apply for R&D agreements that can benefit from exemption in Article 1 of the R&D BER
 - ☐ Yes
 - ☐ No
 - ☒ Do not know

- * 4.25 The conditions for exemption listed in Article 3 of the R&D BER, regarding, for instance, access to the final results of the R&D, access to pre-existing know-how and joint exploitation.
 - ☐ Yes
 - ☐ No
 - ☒ Do not know

- * 4.27 The absence of a market share threshold for non-competing undertakings, the market share threshold of 25% for competing undertakings and the application thereof provided for in Articles 4 and 7 of the R&D BER
 - ☐ Yes
 - ☐ No
 - ☒ Do not know

- * 4.29 The limits regarding the duration of the exemption provided for in Article 4
 - ☐ Yes
 - ☐ No
 - ☒ Do not know

- * 4.31 The list identified in Article 5 of the R&D BER which make the exemption not available for agreements that have as their object certain restrictions or limitations ('hardcore restrictions')
 - ☐ Yes
 - ☐ No
 - ☒ Do not know

- * 4.33 The list of obligations included in agreements to which the exemption does not apply ('excluded restrictions'), identified in Article 6 of the R&D BER
 - ☐ Yes
 - ☐ No

☒ Do not know

Based on your experience, have the following provisions in the **Specialisation BER** allowed to correctly identify the horizontal cooperation agreements that are compliant with Article 101 of the Treaty?

* 4.35 The definitions that apply for the purposes of the Specialisation BER, in Article 1

- ☐ Yes
☒ No
☐ Do not know

* 4.36 If No, please explain what aspect of these definitions fails to correctly identify specialisation agreements that are compliant with Article 101 of the Treaty

Text of 1 to 1500 characters will be accepted

Joint production agreements are defined in Article 1 (1) (d) of the Specialisation BER as agreements by virtue of which two or more parties agree to produce certain products jointly. It is unclear whether this is to be understood in such a way that all companies involved in the joint production must make their own active contribution. This question has relevance for the insurance industry, because with co(re)insurance agreements, the contribution of certain participants often consists mainly in the provision of capital. The German insurance industry, however, assumes that co(re)insurance agreements generally fall under the scope of joint production, since the Commission stated in its Insurance BER impact assessment that "The Horizontal Guidelines acknowledge that joint production (such as co(re)insurance of a risk) allows parties to increase the number of different types of products and thereby achieve cost savings by means of economies of scope."

Similar questions also arise with regard to the requirements for joint sales within the meaning of the Specialization BER, namely whether the definition in Art. 1 (1) (q) is to be understood in such a way that the provision of the service cannot be delegated to a participant in the joint production alone.

* 4.37 The explanations on the type of specialisation agreements to which the exemption applies, provided by Article 2 of the Specialisation BER

- ☒ Yes
☐ No
☐ Do not know

* 4.39 The market share threshold of 20% and its application, provided for in Articles 3 and 5 of the Specialisation BER

- ☒ Yes
☐ No
☐ Do not know

* 4.41 The list identified in Article 4 of the Specialisation BER which make the exemption not available for agreements that have as their object price fixing, certain limitations of output or sales or market or customer allocation ('hardcore restrictions')

- ☒ Yes
☐ No
☐ Do not know

4.43 Based on your experience, are there other elements, besides those listed in the previous questions that should have been clarified, added, or removed to improve the guidance given by the BERs?

Text of 1 to 3000 characters will be accepted

* 4.44 Based on your experience, are there other types of horizontal cooperation agreements outside those identified in the R&D and Specialisation BERs which would satisfy the conditions of Article 101(3) of the Treaty?

- ☒ Yes
- ☐ No
- ☐ Do not know

* 4.45 If Yes, please list those types of agreements and explain your reasons

Text of 1 to 3000 characters will be accepted

We are of the opinion that co(re)insurance agreements within the meaning of the former Insurance BER continue to meet the requirements of Art. 101 (3) TFEU unless they already fall within the scope of the Specialization BER (see question 4.36 above). However, we are aware that an examination in individual cases is now also necessary.

* 4.46 Based on your experience, have the BERs and the HGL had any impacts that were not expected or not intended?

- ☐ Yes
- ☒ No
- ☐ Do not know

5 Efficiency (were the costs involved proportionate to the benefits?)

In this section, we would like to have your view concerning the efficiency of the HBERs and the HGL. In your view, do you consider that the costs (for example, legal fees, delays in implementation) of analysing the conditions and applying these instruments is proportionate to the benefits (for example, faster self assessment) of having the rules in place?

Costs

* 5.1 Please describe the different types of costs of applying the current R&D and Specialisation BERs; and the HGL

Text of 1 to 1500 characters will be accepted

The application of these legal instruments incurs costs for the competition law self-assessment based on them. Either due to the work of own employees in the legal department or - in more complex cases - from the advice of external, specialized lawyers

5.2 Please explain whether you can express the above costs in money terms

Text of 1 to 1000 characters will be accepted

Quantification is extremely difficult, since the lawyers in the legal department are employed and paid regardless of whether and which legal instruments they examine in detail. In addition, when it comes to specific competition law issues, it is not usually just the legal instruments mentioned that form the basis of the assessment. In many cases, other legal sources such as the TFEU, the German competition law (GWB), German and ECJ case law, the practice of the Federal Cartel Office and the EU Commission are also relevant. In our view, it is therefore impossible to give absolute numbers. Statements about increases or decrease of costs are nonetheless possible to a certain degree (see below).

5.3 Please provide an estimate of your quantifiable costs both in terms of value (in EUR) and as a percentage of your annual turnover (or, in the case of a business association, of the annual turnover of the members you are representing)

Text of 1 to 500 characters will be accepted

Due to the reasons cited above (question 5.2.), such a quantification is unfortunately not possible.

5.4 Please explain how you calculate these costs

Text of 1 to 1500 characters will be accepted

Due to the reasons cited above (question 5.2.), such a quantification is unfortunately not possible.

- * 5.5 In your view, how have the costs generated by the application of the R&D or the Specialisation BER or the HGL evolved **compared with the previous legislative framework** (Reg. 2659/2000 on R&D, Reg. 2658/2000 on Specialisation agreements and the accompanying horizontal guidelines)?

- ☒ Costs increased
- ☐ Costs decreased
- ☐ Do not know

- * 5.6 Please explain your reply

Text of 1 to 1500 characters will be accepted

From the perspective of the German insurance industry, the previous relevant legislation was

- Insurance BER 358/2003 for standard policy conditions and safety devices (until 2010)
- Insurance BER 267/2010 for joint statistics and for co(re)insurance agreements (until 2017).

In this regard, the costs for self-assessment have increased overall, since the insurance BERs offered clearer requirements which were also specifically aimed at the insurance industry.

5.7 Please provide an estimate of the possible change in costs and explain your estimation

Text of 1 to 1500 characters will be accepted

This differs greatly according to legal areas.

- In the areas of safety devices and statistics (especially at association level), the internal audit mechanisms had to be changed after the corresponding BER regulations had ceased to exist, which led to one-off costs. After that, however, there is only a slight difference in the costs incurred.
- In the case of standard policy conditions, an audit mechanism had to be installed in order to monitor the market penetration of policy conditions. This monitoring leads to considerable (and ongoing) extra costs that did not exist under the Insurance BER 358/2003.
- With regard to co(re)insurance agreements, due to the abolition of the Insurance BER and the associated legal uncertainty, the costs within the insurance companies have also increased.

In your view, would the costs of ensuring compliance of your horizontal cooperation agreements (or the agreements of your members) with Article 101 of the Treaty would be different **if the current HBERs were not in place but only the HGL applied?**

* 5.8 Were the **R&D BER** not in place, the cost of ensuring compliance

- ☐ Would increase
- ☐ Would decrease
- ☒ Do not know

5.11 Were the **Specialisation BER** not in place, the cost of ensuring compliance

- ☒ Would increase
- ☐ Would decrease
- ☐ Do not know

* 5.12 Please explain your reply

Text of 1 to 1500 characters will be accepted

If it were not the Specialization BER, but Section 4 of the Horizontal Guidelines and the general TFEU rules that form the basis for self-assessment, the costs would, in our opinion, tend to rise. The very existence of the market share thresholds of the Specialization BER simplifies self-assessment. However, as already stated, there is uncertainty as to whether and to what extent this BER is applicable to the joint insurance of risks within co(re)insurance agreements (see question 4.36).

5.13 Please provide an estimate of the possible change in costs and explain your estimation

Text of 1 to 1500 characters will be accepted

Due to the mentioned, existing uncertainties in the area of co-insurance and Specialization BER, the increase should only be slight (see question 4.36).

Benefits

*** 5.14 Please describe the benefits, if any, of having the R&D and Specialisation BERs; and the HGL**

Text of 1 to 1500 characters will be accepted

Especially after the termination of the sector-specific Insurance BER, the Specialization BER and the Horizontal Guidelines - despite the uncertainties described above - have great importance and benefit for the competitive assessment of horizontal cooperation in the insurance sector. Nonetheless, we see room for improvement in certain aspects (see question 4.2).

Benefits vs. costs

In your view, does the application of the R&D and Specialisation BERs and the HGL generate costs that are proportionate to the benefits they bring (or, in the case of a business association, the benefits for the members you are representing)?

*** 5.15 Regarding the R&D BER**

- ☐ Costs are proportionate to benefits
- ☐ Costs are not proportionate to benefits
- ☒ Do not know

*** 5.17 Regarding the Specialisation BER**

- ☒ Costs are proportionate to benefits
- ☐ Costs are not proportionate to benefits
- ☐ Do not know

*** 5.18 Please explain your reply**

Text of 1 to 1500 characters will be accepted

Despite the uncertainties described, the costs are in our opinion overall in reasonable proportion to the benefit.

*** 5.19 Regarding the HGL**

- ☒ Costs are proportionate to benefits
- ☐ Costs are not proportionate to benefits
- ☐ Do not know

* 5.20 Please explain your reply

Text of 1 to 1500 characters will be accepted

Despite the uncertainties described, the costs are in our opinion overall in reasonable proportion to the benefit.

6 Relevance (do the objectives still match the needs or problems?)

In this section, we would like to understand if the objectives of the HBERs and the HGL are still up-to-date considering the developments that have taken place since their publication.

6.1 Please identify major trends and developments (for example legal, economic, political) that, based on your experience, have affected the application of the BERs and HGL. Please provide a short explanation with concrete examples in case you consider that (parts of) the HBERs or HGL do not sufficiently allow to address them

1000 characters max. for each row

	Major trends/changes	Articles of the HBERs and/or recitals of the HGL	Short explanation/concrete examples
1			
2			
3			
4			
5			
6			
7			

Do you think that it is still relevant to have the current HBERs and HGL in light of major trends or developments listed above?

* 6.2 The R&D BER and Section 3 of the HGL are

- ☐ Still relevant
- ☐ No longer relevant
- ☒ Do not know

* 6.4 The Specialisation BER and Section 4 of the HGL are

- ☒ Still relevant
- ☐ No longer relevant
- ☐ Do not know

* 6.5 Please explain your reply

Text of 1 to 1500 characters will be accepted

With regard to the Specialization BER, we see no need for revision in light of major legal, economic or political developments. Regarding the existing uncertainties, we refer to our reply to question 4.36.

* 6.6 Section 2 of the HGL on agreements involving information exchange is

- ☒ Still relevant
- ☐ No longer relevant
- ☐ Do not know

* 6.7 Please explain your reply

Text of 1 to 1500 characters will be accepted

With regard to Section 2 of the Horizontal Guidelines, we see no need for revision in light of major legal, economic or political developments. Regarding the existing uncertainties, we refer to our reply to question 4.12.

* 6.8 Section 5 of the HGL on purchasing agreements is

- ☐ Still relevant
- ☐ No longer relevant
- ☒ Do not know

* 6.10 Section 6 of the HGL on commercialisation agreements is

- ☐ Still relevant
- ☐ No longer relevant
- ☒ Do not know

* 6.12 Section 7 of the HGL on standardisation agreements is

- ☒ Still relevant

- ☐ No longer relevant
- ☐ Do not know

* 6.13 Please explain your reply

Text of 1 to 1500 characters will be accepted

With regard to Section 7 of the Horizontal Guidelines, we see no need for revision in light of major legal, economic or political developments. Regarding the existing uncertainties, we refer to our reply to question 4.18.

7 Coherence (Does the policy complement other actions or are there contradictions?)

* 7.1 In your view, are the HBERs and the HGL coherent with other instruments and /or case law that provide(s) guidance on the interpretation of Article 101 of the Treaty (e.g., other Block Exemption Regulations, the Vertical Guidelines and the Article 101(3) Guidelines)?

- ☐ Yes
- ☐ No
- ☒ Do not know

* 7.3 In your view, are the HBERs and the HGL coherent with other existing or upcoming legislation or policies at EU or national level?

- ☐ Yes
- ☐ No
- ☒ Do not know

8 EU added value (Did EU action provide clear added value?)

In this section, we would like to understand if the HBERs and the HGL have had added value. In the absence of the HBERs and the HGL, undertakings would have had to self-assess their horizontal cooperation agreement with the help of the remaining legal framework. This would include for instance the case law of the EU and national courts, the Article 101(3) Guidelines, the enforcement practice of the Commission and national competition authorities, as well as other guidance at EU and national level.

Please indicate whether, in your view, the HBERs and the HGL have had added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 of the Treaty

* 8.1 Has the R&D BER had added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 of the Treaty?

- ☐ Yes
- ☐ No
- ☒ Do not know

*

8.3 Has the Specialisation BER had added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 of the Treaty?

- ☒ Yes
- ☐ No
- ☐ Do not know

* 8.4 Please explain your reply

Text of 1 to 1500 characters will be accepted

In our opinion, the Specialization BER has - despite the uncertainties in individual issues which we have addressed - clear added value. This arises in particular due to the existence of the market share thresholds as a "safe harbor".

* 8.5 Have the HGL had added value in the assessment of the compatibility of horizontal cooperation agreements with Article 101 of the Treaty?

- ☒ Yes
- ☐ No
- ☐ Do not know

* 8.6 Please explain your reply

Text of 1 to 1500 characters will be accepted

361/5000

In our opinion, the horizontal guidelines offer - despite the uncertainties described in individual questions - clear added value, since they offer substantial and detailed guidance on a large number of legal problems for questions in which such guidance is not available in the relevant case law, practice of the competition authorities or other legal sources

9 Specific questions

Final comments and document upload

9.1 Is there anything else with regard to the R&D and Specialisation BERs and the HGL that you would like to add?

Text of 1 to 3000 characters will be accepted

Ungeachtet der oben angesprochenen Unsicherheiten in Einzelfragen sind die Horizontal-Leitlinien ein unverzichtbarer Bestandteil der kartellrechtlichen Selbsteinschätzung und aus der rechtlichen Beurteilung aller Arten von horizontaler Kooperation nicht mehr wegzudenken. Man kann daher mit Fug und Recht von einer Erfolgsgeschichte sprechen. Einschneidende Änderungen sind daher auch aus unserer Sicht nicht erforderlich.

9.2 You may upload a file that further explains your position in more detail or further details the answers you have given

The maximum file size is 1 MB

* 9.3 Please indicate whether the Commission services may contact you for further details on the information submitted, if required

- ☒ Yes
☐ No

Contact

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