

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

Fields marked with \* are mandatory.

### 1

## Introduction

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### 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](mailto: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

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\* 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

Kay

\* 2.3 Surname

Jebelli

\* 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*

Computer and Communications Industry Association

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*

CCIA is an international not-for-profit membership organization for computer, communications and information technology industries.

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

*Text of 1 to 250 characters will be accepted*

CCIA's member include computer and communications companies, equipment manufacturers, software developers, service providers, re-sellers, integrators, and financial services companies.

**\* 2.15 Country of origin**

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

- |   |   |  |  |
|---|---|--|--|
| <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                    |
| <input type="radio"/> Albania             | <input type="radio"/> Dominican Republic                  | <input type="radio"/> Lithuania        | <input type="radio"/> Saint Vincent and the Grenadines             |
| <input type="radio"/> Algeria             | <input type="radio"/> Ecuador                             | <input type="radio"/> Luxembourg       | <input type="radio"/> Samoa  |
| <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                                 |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea                             | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                                      |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia                             | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                                       |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini                            | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                                   |
| <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                                    |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands                       | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                                 |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji                                | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                                     |
| <input type="radio"/> Austria             | <input type="radio"/> Finland                             | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                                     |
| <input type="radio"/> Azerbaijan          | <input type="radio"/> France                              | <input type="radio"/> Mayotte          | <input type="radio"/> Solomon Islands                              |
| <input type="radio"/> Bahamas             | <input type="radio"/> French Guiana                       | <input type="radio"/> Mexico           | <input type="radio"/> Somalia                                      |
| <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"/> Barbados                         | <input type="radio"/> Gabon                             | <input type="radio"/> Monaco                   | <input type="radio"/> South Korea                          |
| <input type="radio"/> Belarus                          | <input type="radio"/> Georgia                           | <input type="radio"/> Mongolia                 | <input type="radio"/> South Sudan                          |
| <input type="radio"/> Belgium                          | <input type="radio"/> Germany                           | <input type="radio"/> Montenegro               | <input type="radio"/> Spain                                |
| <input type="radio"/> Belize                           | <input type="radio"/> Ghana                             | <input type="radio"/> Montserrat               | <input type="radio"/> Sri Lanka                            |
| <input type="radio"/> Benin                            | <input type="radio"/> Gibraltar                         | <input type="radio"/> Morocco                  | <input type="radio"/> Sudan                                |
| <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               |
| <input type="radio"/> Bolivia                          | <input type="radio"/> Grenada                           | <input type="radio"/> Namibia                  | <input type="radio"/> Sweden                               |
| <input type="radio"/> Bonaire Saint Eustatius and Saba | <input type="radio"/> Guadeloupe                        | <input type="radio"/> Nauru                    | <input type="radio"/> Switzerland                          |
| <input type="radio"/> Bosnia and Herzegovina           | <input type="radio"/> Guam                              | <input type="radio"/> Nepal                    | <input type="radio"/> Syria                                |
| <input type="radio"/> Botswana                         | <input type="radio"/> Guatemala                         | <input type="radio"/> Netherlands              | <input type="radio"/> Taiwan                               |
| <input type="radio"/> Bouvet Island                    | <input type="radio"/> Guernsey                          | <input type="radio"/> New Caledonia            | <input type="radio"/> Tajikistan                           |
| <input type="radio"/> Brazil                           | <input type="radio"/> Guinea                            | <input type="radio"/> New Zealand              | <input type="radio"/> Tanzania                             |
| <input type="radio"/> British Indian Ocean Territory   | <input type="radio"/> Guinea-Bissau                     | <input type="radio"/> Nicaragua                | <input type="radio"/> Thailand                             |
| <input type="radio"/> British Virgin Islands           | <input type="radio"/> Guyana                            | <input type="radio"/> Niger                    | <input type="radio"/> The Gambia                           |
| <input type="radio"/> Brunei                           | <input type="radio"/> Haiti                             | <input type="radio"/> Nigeria                  | <input type="radio"/> Timor-Leste                          |
| <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                  |
| <input type="radio"/> Cameroon                         | <input type="radio"/> Iceland                           | <input type="radio"/> North Macedonia          | <input type="radio"/> Tunisia                              |
| <input type="radio"/> Canada                           | <input type="radio"/> India                             | <input type="radio"/> Norway                   | <input type="radio"/> Turkey                               |
| <input type="radio"/> Cape Verde                       | <input type="radio"/> Indonesia                         | <input type="radio"/> Oman                     | <input type="radio"/> Turkmenistan                         |
| <input type="radio"/> Cayman Islands                   | <input type="radio"/> Iran                              | <input type="radio"/> Pakistan                 | <input type="radio"/> Turks and Caicos Islands             |
| <input type="radio"/> Central African Republic         | <input type="radio"/> Iraq                              | <input type="radio"/> Palau                    | <input type="radio"/> Tuvalu                               |
| <input type="radio"/> Chad                             | <input type="radio"/> Ireland                           | <input type="radio"/> Palestine                | <input type="radio"/> Uganda                               |
| <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 checked="" 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 |
| <input type="radio"/> Congo                            | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal                                    | <input type="radio"/> Uzbekistan        |
| <input type="radio"/> Cook Islands                     | <input type="radio"/> Kenya      | <input type="radio"/> Puerto Rico                                 | <input type="radio"/> Vanuatu           |
| <input type="radio"/> Costa Rica                       | <input type="radio"/> Kiribati   | <input type="radio"/> Qatar                                       | <input type="radio"/> Vatican City      |
| <input type="radio"/> Côte d'Ivoire                    | <input type="radio"/> Kosovo     | <input type="radio"/> Réunion                                     | <input type="radio"/> Venezuela         |
| <input type="radio"/> Croatia                          | <input type="radio"/> Kuwait     | <input type="radio"/> Romania                                     | <input type="radio"/> Vietnam           |
| <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

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\* 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?)

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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*

By offering industry legal guidance binding on the EC, the HBERs and the HGL have increased legal certainty and provided business in the computer and communications industry assurances on how they can work together to improve technology and innovate.

#### ***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

\* 4.4 Please explain your reply

*Text of 1 to 1500 characters will be accepted*



Given the limits of any instrument of general principle applicable to the economy at large, the R&D BER and Section 3 of the HGL do a good job.

\* 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

\* 4.6 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

The block-exemption regulation has more authoritative value and is more definitive when dealing with competition counseling at national level.

\* 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*

Given the limits of any instrument of general principle applicable to the economy at large, the Specialisation BER and Section 4 of the HGL do a good job.

\* 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*

The block-exemption regulation has more authoritative value and is more definitive when dealing with competition counseling at national level.

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*

Section 2 of the HGL should provide more details and guidance with relation to exemptions for joint-lobbying and advocacy work, and the role of intermediaries and trade-associations in this regard. Exchanging information for the alignment of policy positions should be explicitly mentioned as not liable to restrict competition.

CCIA understands that the EC is already contemplating a separate regulation to cover data-pooling arrangements. To the extent such issues are not covered, further guidance is needed regarding the safe-harbour for data-pooling arrangements so that industry can build better products and compete more successfully regardless of their size.

\* 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

\* 4.14 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

Given the limits of any instrument of general principle applicable to the economy at large, the HGL does a good job.

\* 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

\* 4.16 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

Given the limits of any instrument of general principle applicable to the economy at large, the HGL does a good job.

\* 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*

Despite the EC and ECJ decisions regarding SEPs, there still remains much uncertainty around the antitrust safe-harbour afforded to patent owners who collaborate on setting standards that involve their own intellectual property. In particular, while it has now been established that a failure to offer a FRAND license can be anti-competitive, it is not clear whether licensors can discriminate between licensees at different levels of the implementer value chain. CCIA believes that when competitors collaborate to establish a standard, such a restriction has possible anti-competitive effects that are only ameliorated by a firm commitment to FRAND licensing which should limit their ability to use the monopoly power of the standard to extract rents from other places in the product value chain.

\* 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

\* 4.21 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

***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

\* 4.37 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

\* 4.46 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

\* 4.47 If Yes, please explain your answer

*Text of 1 to 3000 characters will be accepted*

Despite the language of the Guidelines and the general principles regarding standardisation, many SEP owners continue to use the monopoly power of the standard to demand disproportionate licensing fees. This is partially due to lack of enforcement and partially due to national courts that favour an interpretation of the law that strengthens patents and patent enforcement over prioritising improving competition and innovation.

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

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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 current R&D and Specialisation BERs and the HGL lower legal costs to the extent that they allow legal advisors to rely on Guidelines rather than having to spend time researching case law.

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

*Text of 1 to 1000 characters will be accepted*

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*

#### 5.4 Please explain how you calculate these costs

*Text of 1 to 1500 characters will be accepted*

- \* 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

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

- \* 5.9 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

The R&D BER provides added legal certainty, particular where National enforcement and national courts are concerned.

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

*Text of 1 to 1500 characters will be accepted*

- 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*

The Specialisation BER provides added legal certainty, particular where National enforcement and national courts are concerned.

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*

**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*

The R&D and Specialisation BERs and the HGL provide added legal certainty for industry.

**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

\* 5.16 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

See above



\* 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*

See above

\* 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*

See above

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

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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

\* 6.3 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

This is our general opinion based on observation and experience.

\* 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*

This is our general opinion based on observation and experience.

\* 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*

This is our general opinion based on observation and experience.

\* 6.8 Section 5 of the HGL on purchasing agreements is

- ☒ Still relevant
- ☐ No longer relevant

☐ Do not know

\* 6.9 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

This is our general opinion based on observation and experience.

\* 6.10 Section 6 of the HGL on commercialisation agreements is

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

\* 6.11 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

This is our general opinion based on observation and experience.

\* 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*

This is our general opinion based on observation and experience.

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

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\* 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

\* 7.2 Please explain

*Text of 1 to 3000 characters will be accepted*

This is our general opinion based on observation and experience.

\* 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?)

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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

\* 8.2 Please explain your reply

*Text of 1 to 1500 characters will be accepted*

This is our general opinion based on observation and experience.

\* 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*

This is our general opinion based on observation and experience.

\* 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*

This is our general opinion based on observation and experience.

## 9 Specific questions

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### 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*

No

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

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

\* 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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