

## 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

ALESSANDRA

\* 2.3 Surname

CASALE

\* 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*

Assonime

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.

2019-26872342-86

\* 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*

Assonime is the association of joint stock companies active in Italy. It is a private think tank, whose statutory aim is to improve the quality of European and national legislation and institutional environment, for a well functioning market economy.

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

*Text of 1 to 250 characters will be accepted*

Companies from all sectors (manufacturing, public utilities, financial services, commercial distribution, other services).

**\* 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        |
| <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                     |
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| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia           | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                     |
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| <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
<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
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<input type="radio"/> Belize	<input type="radio"/> Ghana	<input type="radio"/> Montserrat	<input type="radio"/> Sri Lanka
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<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"/> 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 checked="" type="radio"/> Italy	<input type="radio"/> Paraguay	<input type="radio"/> United Kingdom

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| <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 |
| <input type="radio"/> Colombia                         | <input type="radio"/> Jersey     | <input type="radio"/> Pitcairn Islands                            | <input type="radio"/> Uruguay                              |
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| <input type="radio"/> Costa Rica                       | <input type="radio"/> Kiribati   | <input type="radio"/> Qatar                                       | <input type="radio"/> Vatican City                         |
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| <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*

The HBERs and HGL have contributed to a uniform application of Art. 101 in all Member States. The HBERs are a true safe harbour, legally binding on NCAs and NCs. The criteria set out in the HGL provide important guidance for self-assessment and, although not binding for NCAs and NCs, encourage coherent approaches. Some areas (e.g. exchange of information, JV, legitimate ways to pursue sustainability objectives) should be clarified in order to enhance legal certainty for companies wishing to cooperate to enhance their competitiveness and/or pursue the objectives of sustainable development. The revision of the horizontal package is of the utmost importance: the challenge is to combine a strong protection of competition and consumers with the need to promote the global competitiveness of the EU economy. The HGL should also be updated to take into account market developments (e.g. role of platforms) and the recent case-law of the ECJ (e.g. Cartes Bancaires).

### ***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*

R&D is crucial for the competitiveness of the EU economy and is one of the main tools of EU industrial policy (IPCEI, European funds etc.) . The application of Art. 101 can play an important role in this context: on the one hand, it should ensure deterrence for those R&D agreements which may have an appreciable anticompetitive impact on price, quality, choice and innovation to the detriment of EU consumers; on the other, it should not impose unnecessary constraints on harmless or even pro-competitive R&D agreements. In this perspective, we wish for a careful revision of the R&D BER and of Section 3 of the HGL in order to avoid unjustified chilling effects, for instance with reference to the ways in which the results of joint R&D efforts should be exploited. Moreover, the HGL seem to suggest that, for key technologies, the parties should always grant licences in order to allow third parties to compete effectively. The text should be revised since, even in the case of dominant companies, a duty to license only exceptionally arises under Art. 102. Another weakness of the current framework is the legal uncertainty concerning the relations between joint ventures and parent companies, and in particular the possibility to exchange information between the JV and the parent companies. This problem is relevant not only for R&D agreements, but also for other cooperation agreements (e.g. production agreements). We will discuss it in more detail in section 4.47.

\* 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*

It is a true legal safe harbour, binding on NCAs and NCs

\* 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*

For production agreements, consistency with merger control is of the utmost importance and should be carefully ensured. The HGL should take into account that co-investment is encouraged in some sectors (e.g. for connectivity, by the EU Electronic Communications Code).

For the uncertainties concerning the relationship between JVs and parent companies, see section 4.47.

\* 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*

It is a true safe harbour, legally binding on NCAs and NCs.

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*

The 3 steps assessment is correct: whether the restriction is by object; whether the exchange of information, compared to the counterfactual scenario, may have a negative impact on competitive variables; efficiencies pursuant to Art. 101(3). As to restrictions by object, in Dole the ECJ included in the 'by object' box an exchange of information only indirectly linked to future prices. However, the general criteria to be used for RBO are those set out by the ECJ in Cartes Bancaires. Therefore, except for information related to future prices and quantities, the assessment pursuant to Art. 101(1) should be based on actual or potential effects on competitive variables (and not just on the reduction of uncertainty).

The revised HGL should also discuss the impact of digital tools on the assessment of information exchanges pursuant to Art. 101: Eturas judgement; how digital tools allowing to easily and rapidly collect online detailed information on competitors affect the public/non public nature of data and therefore the application of Art. 101.

Apart from the application of Art. 101, the Commission and NCAs should actively intervene when sectoral EU or national legislation impose on companies obligations to disclose strategic commercial information unless strictly justified by public interest objectives, since such disclosure may distort competition.

\* 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*

The Commission should evaluate whether experience justifies the establishment of some safe harbour also for purchasing agreements.

\* 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*

The update of the HGL may include a discussion of the impact of platforms and e-commerce on the assessment of commercialisation agreements.

The Commission should evaluate whether experience justifies the establishment of some safe harbour also for commercialisation agreements.

\* 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*

The section on standardisation agreements is helpful and is an important part of the EU legal framework on standardisation and standard essential patents. We suggest to keep it as it is, so as to maintain the balance achieved between the protection of technology contributors and the interests of companies implementing the standard.

\* 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*

Differently from the 2000 HGL, the current HGL do not contain a separate section on environmental agreements: some guidance on the assessment of agreements which have a positive impact on the environment or other sustainability goals can be found in the different sections (e.g. § 110, 149, 329 and 330 on environmental standards). In the light of the increasing importance of sustainability objectives in the EU and of the recent case-law in some Member States (NL), it would be useful to clarify in the HGL: a) when sustainability agreements do not restrict competition pursuant to Art. 101(1); b) when they can be considered compatible pursuant to Art. 101(3), in particular looking at the scope of the "pass-on to consumers" requirement and at the requirement not to eliminate competition; c) in view of the boundaries set by Article 101 and the uncertainties which may result from its application, what is the role of public policy in the promotion of sustainable products/processes (legislative measures, special procedures etc.)

\* 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

\* 4.26 If No, please explain what aspect of these conditions fails to correctly identify R&D agreements that are compliant with Article 101 of the Treaty

*Text of 1 to 1500 characters will be accepted*

We suggest reconsidering the conditions set out in Article 3, since they are very prescriptive and may unduly restrict the scope of the block exemption.

\* 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*

Currently parent companies and joint ventures are considered independent undertakings and therefore the exchange of strategic information may fall within the prohibition of Art. 101. This situation raises concerns because, on the one hand, companies are encouraged not to exchange information in order to comply with Art. 101 but, on the other hand, parent companies need to have access to some strategic information concerning the JV in order to act as an informed controlling shareholder. In the debate before the adoption of the 2010 HGL the option had been discussed to consider the parent companies and the JV as a single economic entity. If this scenario cannot be reached, at least the HGL should clarify the set of information which can be exchanged between the joint venture and the parent companies in order not to discourage the use of JV by companies in the EU.

In a broader perspective, the possibility to notify not full-function JV in order to obtain an ex ante assessment pursuant to Art. 101 should be explored, since significant investments are involved and a derogation from the self-assessment approach of the modernization regulation may be justified.

## 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 costs include:

a) those resulting from chilling effects on the use of some cooperative agreements which do not have a negative impact on competitive variables

b) the costs of legal advice

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*



Legal certainty and uniformity of application of Art. 101 would decrease

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*

Legal certainty and uniformity of application of Art. 101 would decrease

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*

### ***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

\* 5.19 Regarding the **HGL**

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

## **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	Digital transformation	Section 2 HGL	The HGL should discuss the impact of digital tools on the assessment of information exchanges pursuant to Art. 101: Eturas judgement; how digital tools allowing to easily and rapidly collect online detailed information on competitors affect the public/non public nature of data and therefore the application of Art. 101.
2	Platforms and e-commerce	Section 6 HGL	Impact on assessment of commercialization agreements
3	Global competition	R&D BER; HGL Section 3 and 4	need to eliminate unjustified deterrence: EU competition law should deter only the agreements which may have an appreciable negative impact on price, quality, choice and innovation and, therefore, on EU consumers. More legal certainty for non full-function JV
4	Sustainability	HGL	More legal certainty on the possibility to consider sustainability agreements compatible pursuant to Art. 101
5	Cartes Bancaires judgment	HGL - Section 1 etc.	The approach to restrictions by object clarified by the ECJ in Cartes Bancaires should be reflected and duly emphasised in the HGL

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*

see above

\* 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*

see above

\* 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*

see above

\* 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*

Still relevant. However, the possibility to add some block exemption may be considered

\* 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*

Still relevant. However, the possibility to add some block exemption may be considered

\* 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*

see above the answers on standardization agreements

## 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*

Broadly coherent

\* 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

\* 7.4 Please explain

*Text of 1 to 3000 characters will be accepted*

An effort should be made to ensure consistency with policies concerning connectivity, sustainability, IPCEI, EU industrial policy etc.

## 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*

Legal certainty and uniform application

\* 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*

Legal certainty and uniform application

\* 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*

The most important contribution provided by the HGL is the suggestion of a methodology for the self-assessment of agreements

## 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*



**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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