



Internationally United
Commercial Agents and Brokers - IUCAB
Wiedner Hauptstrasse 57 | A-1040 Vienna
T +43 5 90 900 - 3379
E info@iucab.com
I www.iucab.com

Vienna, 17th September 2021

Vertical Block Exemption Regulation (VBER) and Guidelines (VGL)

IUCAB views on the Commission proposed drafts

(IUCAB's transparency register ID: 119913534218-35)

IUCAB is the Worldwide Alliance of National Associations of commercial agents, brokers as well as independent sales companies. IUCAB is representing 17 National Associations throughout Europe with approximately 600,000 commercial agencies acting in the EU, practically all SMEs. The agencies generate a turnover of approximately EUR 1.000 billion and provide employment to over 1.6 million people.

Commercial agencies are independent professional providers of field sales and marketing services to manufacturers or suppliers. They are organised as sole proprietorship or micro-entrepreneur and arrange the sales for an estimated 1.7 million manufacturers/principals, of which 88% are SMEs.

IUCAB welcomes the opportunity offered by the European Commission to comment on the draft Vertical Block Exemption Regulation and Guidelines (VBER and VGL) published by the Commission on its website on 9 July 2021.

In advance, IUCAB would like to underline that the vertical rules which are currently in force work very well according to commercial agency agreements. IUCAB stresses the importance of maintaining the exception of commercial agency agreements from the prohibition on restrictive agreements.

To 3.2.1. (28) sentence 1 of the guidelines

The proposed wording suggests that the commercial agent who is acting as an independent economic operator represents the common practice, while the commercial agent, who is integrated as an intermediary in the organisational structure of the company represented (principal) and thus acts as an extended arm of the principal, is the exception. In practice, however, the relationship, in which the commercial agent acts as the extended arm of the principal, is the rule.

Therefore, IUCAB proposes the following formulation:

"The relationship between a commercial agent and its principal may be usually characterised as a relationship in which the commercial agent does not act as an independent economic operator."

To 3.2.1. (31) (a) sentence 1 of the guidelines

According to (31) (a) sentence 1, an agreement is to be considered as an agency agreement, if the commercial agent does not provide the contract services itself.

The provision of additional services by commercial agents which are separately remunerated by the principals as part of their agency agreement has increased significantly in recent years.



Nowadays, these additional services already represent an essential part of the activity of a commercial agent in the B2B area, with an increasing tendency in order to ensure the existence of commercial agents on the market, especially taking into consideration the growing e-commerce sector.

However, the draft does not take this development into account, since in such a case no commercial agency agreement should exist.

IUCAB therefore proposes

to delete the part "and does not itself supply the contract services"

or

to clarify that this does not apply to additionally agreed services (which are separately remunerated) and thus does not call into question the classification as a commercial agency agreement.

To 3.2.1. (32) of the guidelines

In contrast to the guidelines currently in force, the draft does not contain any reference that the list of risks in (31) (a) to (h) is not exhaustive.

The lack of reference to a non-exhaustive list of risks could result in the fact that the commercial agent is no longer considered as a commercial agent under antitrust perspective when taking over a new, remunerated service not mentioned in the guidelines.

IUCAB therefore proposes to include the following wording at the beginning of 3.2.1. (32):

"This list is not exhaustive."

To 3.2.3. (44) of the guidelines

IUCAB welcomes the Commission's clarification that providers of online intermediation services are not qualified as agents for the purpose of applying of Article 101(1).

Providers of online intermediation services cannot be considered as an integral part of the principals' sales activities as they usually serve a large number of suppliers. In addition, such providers usually have considerable bargaining power as they are often much larger than the suppliers/principals who use their services.

IUCAB hopes that its suggestions will be taken into account.