EUROPEAN
COMMISSION

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SENSITIVE*
UNTIL ADOPTION

COMMISSION REGULATION (EU) …/…

of XXX

on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements

(Text with EEA relevance)

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COMMISSION REGULATION (EU) …/…

of XXX

on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EEC) No 2821/71 of the Council of 20 December 1971 on application of Article 85(3) of the Treaty to categories of agreements, decisions and concerted practices[1], and in particular Article 1(1), point (b), thereof,

Having published a draft of this Regulation[2],

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation (EEC) No 2821/71 empowers the Commission to apply Article 101(3) of the Treaty by regulation to certain categories of agreements, decisions and concerted practices falling within the scope of Article 101(1) of the Treaty which have as their object the research and development of products, technologies or processes up to the stage of industrial application, and the exploitation of the results, including provisions regarding intellectual property rights.

(2) Article 179(2) of the Treaty calls upon the Union to encourage undertakings, including small and medium-sized undertakings, in their research and technological development activities of high quality, and to support their efforts to cooperate with one another. Cooperation between undertakings on research and development can contribute to achieving the objectives of the European Green Deal[3].

(3) Commission Regulation (EU) No 1217/2010[4] defines categories of research and development agreements that the Commission regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty. That Regulation expires on 30 June 2023. In view of the overall positive experience with the application of that Regulation and the results of the evaluation of that Regulation, it is appropriate to adopt a new block exemption regulation.

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1 OJ L 285, 29.12.1971, p. 46.

2 OJ C 120, 15.3.2022, p. 9.

3 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - The European Green Deal (COM(2019)640 final).

4 Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements (OJ L 335, 18.12.2010, p. 36).

(4) This Regulation aims to facilitate research and development while at the same time effectively protecting competition. This Regulation also aims to provide adequate legal security for undertakings. The pursuit of those objectives should take account of the need to simplify administrative supervision and the legislative framework to the greatest extent possible.

(5) Below a certain level of market power, it can in general be presumed, for the application of Article 101(3) of the Treaty, that the positive effects of research and development agreements will outweigh any negative effects on competition.

(6) For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those agreements which are capable of falling within the scope of Article 101(1) of the Treaty. In the individual assessment of agreements under Article 101(1) of the Treaty, account has to be taken of several factors, and in particular the structure of the relevant market.

(7) Cooperation in joint or paid-for research and development and in the exploitation of the results is most likely to promote technical and economic progress if the parties contribute complementary skills, assets or activities to the cooperation.

(8) Consumers can generally be expected to benefit from the increased volume and effectiveness of research and development through the introduction of new or improved products, technologies or processes, a quicker launch of such products, technologies or processes, or a reduction of prices brought about by new or improved products, technologies or processes.

(9) The joint exploitation of results can take different forms, such as the production and distribution of products, the application of technologies or processes, or the assignment or licensing of intellectual property rights or communication of know-how required for such production or application that substantially contribute to technical or economic progress.

(10) In order to justify the exemption established by this Regulation, the joint exploitation should relate to products (including goods and services), technologies or processes for which the use of the results of the research and development is indispensable.

(11) Moreover, all the parties should agree in the research and development agreement that they will all have full access to the final results of the joint research and development, including any arising intellectual property rights and know-how, for the purpose of further research and development, and for the purpose of exploitation, as soon as the final results become available. Access to the results should generally not be limited as regards the use of the results for the purposes of further research and development. However, where the parties, in accordance with this Regulation, limit their rights of exploitation, in particular where they specialise in the context of exploitation, access to the results for the purposes of exploitation may be limited accordingly. Furthermore, where academic bodies, research institutes, or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results participate in research and development, they may agree to use the results of research and development solely for the purpose of further research and development.

(12) Depending on their capabilities and commercial needs, the parties may make unequal contributions to their research and development cooperation. Therefore, in order to reflect, and to make up for, the differences in the value or the nature of the parties' contributions, a research and development agreement benefiting from the exemption established by this Regulation may provide that one party is to compensate another for

obtaining access to the results for the purposes of further research and development or exploitation. However, the compensation should not be so high as to effectively impede such access.

(13) Where the research and development agreement does not provide for joint exploitation of the results, the parties should agree in the research and development agreement to grant each other access to their respective pre-existing know-how if such know-how is indispensable for the purpose of the exploitation of the results by the other parties. Any compensation (for example, licence fees) charged should not be so high as to effectively impede access to the know-how by the other parties.

(14) The exemption established by this Regulation should be limited to research and development agreements that do not afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products, technologies or processes in question. It is therefore necessary to exclude from the block exemption agreements between competitors whose combined share of the market for products, technologies or processes capable of being improved, substituted or replaced by the results of the research and development exceeds a certain level at the time the agreement is entered into.

(15) Where one party finances several research and development projects carried out by competitors with regard to the same products, technologies or processes, it cannot be excluded that anti-competitive foreclosure effects may arise, in particular where that party obtains the exclusive right to exploit the results vis-à-vis third parties. Therefore, as regards paid-for research and development agreements, the benefit of the exemption established by this Regulation should be limited to agreements under which the combined market share of all the parties involved in the connected agreements, namely the financing party and all the parties carrying out the research and development, does not exceed a certain level.

(16) However, the exemption established by this Regulation should not be subject to a market share threshold where the parties to the research and development agreement are not competing undertakings in respect of products, technologies or processes capable of being improved, substituted or replaced by the products, technologies or processes arising from the agreement. This includes, for example, agreements relating to the development of products, technologies or processes that would create an entirely new demand, or research and development that is not closely related to a specific product, technology or process, or is not yet targeted at a specific objective.

(17) There is no presumption that research and development agreements are either caught by Article 101(1) of the Treaty or that they fail to satisfy the conditions of Article 101(3) of the Treaty where the market share threshold set out in this Regulation is exceeded or other conditions of this Regulation are not met. In such cases, it is necessary to conduct an individual assessment of the research and development agreement under Article 101 of the Treaty.

(18) In order to ensure the maintenance of effective competition during the joint exploitation of the results of the joint or paid-for research and development, provision should be made for the block exemption to cease to apply if the parties' combined share in the market for the products, technologies or processes arising from the research and development exceeds a certain level. However, the exemption should continue to apply irrespective of the parties' market shares for a certain period after the commencement of joint exploitation, so as to await stabilisation of their market

shares, in particular after the introduction of an entirely new product, and to guarantee a minimum period of return on the investments involved.

(19) The exemption established by this Regulation should not apply to agreements containing restrictions which are not indispensable to the attainment of the positive effects generated by a research and development agreement. In principle, agreements containing certain types of severe restrictions of competition, such as limitations on the freedom of parties to carry out research and development in a field unconnected to the agreement, the fixing of prices charged to third parties, limitations on output or sales, and limitations on effecting passive sales of the products, technologies or processes arising from the joint or paid-for research and development should be excluded from the benefit of the exemption established by this Regulation, irrespective of the market share of the parties. In this context, field of use restrictions do not constitute limitations of output or sales, and do not constitute territorial or customer restrictions.

(20) The market share thresholds, the non-exemption of certain agreements and the conditions provided for in this Regulation generally ensure that the agreements to which the block exemption applies do not enable the parties to eliminate competition in respect of a substantial part of the products, technologies or processes in question.

(21) Agreements between undertakings which are not competing suppliers of products, technologies or processes capable of being improved, substituted or replaced by the results of the research and development and which satisfy the conditions of this Regulation will only eliminate effective innovation competition in exceptional circumstances. It is therefore appropriate to enable such agreements to benefit from the exemption established by this Regulation irrespective of market share and to address any exceptional cases by way of withdrawal of the benefit of the exemption established by this Regulation. The exemption of such agreements pursuant to this Regulation is without prejudice to the competitive assessment of research and development agreements that do not meet the conditions of this Regulation or agreements in respect of which the benefit of the exemption established by this Regulation has been withdrawn.

(22) This Regulation should indicate typical situations in which it may be considered appropriate to withdraw the benefit of the exemption established by it, pursuant to Article 29 of Council Regulation (EC) No 1/2003[5].

(23) As research and development agreements are often of a long-term nature, especially where the cooperation extends to the exploitation of the results, the period of validity of this Regulation should be fixed at 12 years,

[5] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(1) ‘research and development agreement’ means an agreement entered into between two or more parties which relates to the conditions under which those parties pursue any of the following:

(a) joint research and development of contract products or contract technologies which:

(i) does not include joint exploitation of the results of that research and development; or

(ii) includes joint exploitation of the results of that research and development;

(b) paid-for research and development of contract products or contract technologies which:

(i) does not include joint exploitation of the results of that research and development; or

(ii) includes joint exploitation of the results of that research and development;

(c) joint exploitation of the results of research and development of contract products or contract technologies carried out pursuant to a prior agreement falling under point (a) between the same parties;

(d) joint exploitation of the results of research and development of contract products or contract technologies carried out pursuant to a prior agreement falling under point (b) between the same parties;

(2) ‘agreement’ means an agreement between undertakings, a decision by an association of undertakings or a concerted practice;

(3) ‘research and development’ means activities aimed at acquiring know-how relating to products, technologies or processes, the carrying out of theoretical analysis, systematic study or experimentation, including experimental and demonstrator production, technical testing of products or processes, the establishment of the necessary facilities up to demonstrator scale and the obtaining of intellectual property rights for the results;

(4) ‘product’ means a good or a service, including both intermediary goods or services and final goods or services;

(5) ‘contract technology’ means a technology or process arising out of the joint or paid-for research and development;

(6) ‘contract product’ means a product arising out of the joint or paid-for research and development or produced by applying the contract technologies;

(7) ‘exploitation of the results’ means the production or distribution of the contract products or the application of the contract technologies or the assignment or

licensing of intellectual property rights or the communication of know-how required for such production, distribution or application;

(8) 'intellectual property rights' include industrial property rights, for example patents and trademarks, as well as copyright and neighbouring rights;

(9) 'know-how' means a package of practical information, resulting from experience and testing, which is:

(a) 'secret', meaning that it is not generally known or easily accessible;

(b) 'substantial', meaning that it is significant and useful for the production of the contract products or the application of the contract technologies; and

(c) 'identified', meaning that it is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

(10) 'joint', in the context of activities carried out under a research and development agreement, means activities where the work involved is:

(a) carried out by a joint team, organisation or undertaking;

(b) jointly entrusted to a third party; or

(c) allocated between the parties by way of specialisation in the context of research and development or specialisation in the context of exploitation;

(11) 'specialisation in the context of research and development' means that each of the parties is involved in the research and development activities covered by the research and development agreement and they divide the research and development work between them in any way that they consider appropriate; this does not include paid-for research and development;

(12) 'specialisation in the context of exploitation' means that the parties allocate between them individual tasks such as production or distribution, or impose restrictions upon each other regarding the exploitation of the results, such as restrictions in relation to certain territories, customers or fields of use; this includes a scenario where only one party produces and distributes the contract products or applies the contract technologies on the basis of an exclusive licence granted by the other parties;

(13) 'paid-for research and development' means research and development that is carried out by one party and financed by a financing party;

(14) 'financing party' means a party financing paid-for research and development while not carrying out any of the research and development activities itself;

(15) 'competing undertaking' means an actual or a potential competitor:

(a) 'actual competitor' means an undertaking that is supplying a product, technology or process capable of being improved, substituted or replaced by the contract product or the contract technology on the relevant geographic market;

(b) 'potential competitor' means an undertaking that, in the absence of the research and development agreement, would, on realistic grounds and not just as a mere theoretical possibility, be likely to undertake, within not more than 3 years, the necessary additional investments or incur the

necessary costs to supply a product, technology or process capable of being improved, substituted or replaced by the contract product or contract technology on the relevant geographic market;

(16) 'relevant product market' means the relevant market for the products capable of being improved, substituted or replaced by the contract products;

(17) 'relevant technology market' means the relevant market for the technologies or processes capable of being improved, substituted or replaced by the contract technologies;

(18) 'active sales' means all forms of selling other than passive sales;

(19) 'passive sales' means sales made in response to unsolicited requests from individual customers, including delivery of products to the customer, without the sale having been initiated by actively targeting the particular customer, customer group or territory, and including sales resulting from participating in public procurement or responding to private invitations to tender.

2. For the purposes of this Regulation, the terms 'undertaking' and 'party' shall include their respective connected undertakings. 'Connected undertakings' means:

(1) undertakings in which a party to the research and development agreement, directly or indirectly, has one or more of the following rights or powers:

(a) the power to exercise more than half the voting rights;

(b) the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking;

(c) the right to manage the undertaking's affairs;

(2) undertakings which directly or indirectly have, over a party to the research and development agreement, one or more of the rights or powers listed in point (1);

(3) undertakings in which an undertaking referred to in point (2) has, directly or indirectly, one or more of the rights or powers listed in point (1);

(4) undertakings in which a party to the research and development agreement together with one or more of the undertakings referred to in points (1), (2) or (3), or in which two or more of the latter undertakings, jointly have one or more of the rights or powers listed in point (1);

(5) undertakings in which one or more of the rights or powers listed in point (1) are jointly held by:

(a) parties to the research and development agreement or their respective connected undertakings referred to in points (1) to (4); or

(b) one or more of the parties to the research and development agreement or one or more of their connected undertakings referred to in points (1) to (4) and one or more third parties.

Article 2

Exemption

1. Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation, Article 101(1) of the Treaty shall not apply to research and development agreements.

2. The exemption established in paragraph 1 shall apply to the extent that research and development agreements contain restrictions of competition falling within the scope of Article 101(1) of the Treaty.

3. The exemption established in paragraph 1 shall also apply to research and development agreements which include provisions on the assignment or licensing of intellectual property rights to one or more of the parties or to an entity established by the parties to carry out the joint or paid-for research and development or joint exploitation of the results, provided that those provisions are directly related to and necessary for the implementation of the agreement and do not constitute the primary object of the agreement.

Article 3

Access to the final results

1. The exemption established in Article 2 shall apply subject to the conditions set out in paragraphs 2, 3 and 4 of this Article.

2. The research and development agreement must stipulate that all the parties have full access to the final results of the joint or paid-for research and development for the purpose of further research and development and for the purpose of exploitation.

3. The access provided for in paragraph 2 must:

   (a) include any resulting intellectual property rights and know-how;

   (b) be granted as soon as the results of the research and development become available.

4. Where the research and development agreement provides that the parties compensate each other for giving access to the results for the purposes of further research and development or for the purpose of exploitation, the compensation must not be so high as to effectively impede such access.

5. Research institutes, academic bodies, or undertakings which supply research and development as a commercial service without normally being active in the exploitation of results may agree to confine their use of the results for the purposes of further research and development.

6. Where the parties limit their rights of exploitation in accordance with this Regulation, in particular where they specialise in the context of exploitation, access to the results for the purposes of exploitation may be limited accordingly.

Article 4

Access to pre-existing know-how

1. Where the research and development agreement does not include joint exploitation of the results, the exemption established in Article 2 shall apply subject to the conditions set out in paragraphs 2 and 3 of this Article.

2. The agreement must stipulate that each party shall be granted access to any pre-existing know-how of the other parties if such know-how is indispensable for the purposes of exploitation of the results.

3. Where the agreement provides that the parties compensate each other for giving access to their pre-existing know-how, the compensation must not be so high as to effectively impede such access.

Article 5

Joint exploitation

1. The exemption established in Article 2 shall apply on condition that any joint exploitation only pertains to results which fulfil both of the following conditions:

   (a) the results are indispensable for the production of the contract products or the application of the contract technologies;

   (b) the results are protected by intellectual property rights or constitute know-how.

2. Where one or more parties are charged with the production of the contract products by way of specialisation in the context of exploitation, the exemption established in Article 2 shall apply on condition that those parties are required to fulfil orders for supplies of the contract products from the other parties, except where one of the following applies:

   (a) the research and development agreement also provides for distribution to be carried out by a joint team, organisation or undertaking or to be jointly entrusted to a third party;

   (b) the parties have agreed that only the party producing the contract products may distribute them.

Article 6

Market share thresholds and duration of exemption

1. Where two or more of the parties are competing undertakings within the meaning of Article 1(1), point (15), the exemption established in Article 2 shall apply for the duration of the research and development if, at the time the agreement is entered into:

   (a) for the research and development agreements referred to in Article 1(1), points (1) (a) and (c), the combined market share of the parties to the agreement does not exceed 25 % on the relevant product and technology markets;

   (b) for the research and development agreements referred to in Article 1(1), points (1) (b) and (d), the combined market share of the financing party and all the parties with which the financing party has entered into research and development agreements with regard to the same contract products or contract

technologies does not exceed 25 % on the relevant product and technology markets.

2. Where the parties are not competing undertakings within the meaning of Article 1(1), point (15), the exemption established in Article 2 shall apply for the duration of the research and development.

3. For research and development agreements where the results are jointly exploited, the exemption established in Article 2 shall continue to apply for 7 years from the time the contract products or contract technologies are first put on the market within the internal market, if the conditions provided for in paragraphs 1 or 2 of this Article are satisfied at the time the agreement referred to in Article 1(1), point (1) (a) or (b) is entered into. For the research and development agreements referred to in Article 1(1), point (1) (c) and (d) to benefit from such a continued exemption, the conditions provided for in paragraphs 1 or 2 of this Article must be satisfied at the time the prior agreement referred to in Article 1(1), point (1) (a) or (b) was entered into.

4. After the end of the 7 year period referred to in paragraph 3 of this Article, the exemption established in Article 2 shall continue to apply as long as:

   (a) for the research and development agreements referred to in Article 1(1), points (1) (a) and (c), the combined market share of the parties to the agreement does not exceed 25 % on the relevant markets to which the contract products or contract technologies belong;

   (b) for the research and development agreements referred to in Article 1(1), points (1) (b) and (d), the combined market share of the financing party and all the parties with which the financing party has entered into research and development agreements relating to the same contract products or contract technologies does not exceed 25 % on the relevant markets to which the contract products or contract technologies belong.

5. If the combined market share of the relevant parties does not exceed the relevant threshold referred to in paragraph 4 at the end of the 7 year period referred to in paragraph 3, but subsequently rises above that threshold, the exemption established in Article 2 shall continue to apply for a period of 2 consecutive calendar years following the year in which the relevant market share threshold was first exceeded.

Article 7

Application of the market share thresholds

1. For the purpose of applying the market share thresholds provided for in Article 6(1) and (4), the rules set out in paragraphs 2, 3 and 4 of this Article shall apply.

2. Market shares shall be calculated on the basis of market sales value or, if market sales value data are not available, on the basis of market sales volumes. If market sales volumes data are not available, estimates based on other reliable market information, including expenditure on research and development, or research and development capabilities may be used.

3. Market shares shall be calculated on the basis of data relating to the preceding calendar year. If the preceding calendar year is not representative of the parties'

position in the relevant market(s), the market share shall be calculated as an average of the parties' market shares for the 3 preceding calendar years.

4. The market share held by the undertakings referred to in Article 1(2), point (5), shall be apportioned equally to each undertaking having one or more of the rights or powers listed in Article 1(2), point (1).

Article 8

Hardcore restrictions

The exemption established in Article 2 shall not apply to research and development agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object any of the following restrictions:

(a) the restriction of the freedom of the parties to carry out research and development independently or in cooperation with third parties:

  (i) in a field unconnected with that to which the research and development agreement relates; or

  (ii) after the completion of the joint or paid-for research and development, in the field to which the research and development agreement relates or in a connected field;

(b) the limitation of output or sales, with the exception of:

  (i) the setting of production targets, where the joint exploitation of the results includes the joint production of the contract products;

  (ii) the setting of sales targets, where the joint exploitation of the results:

    (1) includes the joint distribution of the contract products or the joint licensing of the contract technologies, and

    (2) is carried out by a joint team, organisation or undertaking, or is jointly entrusted to a third party;

  (iii) practices constituting specialisation in the context of exploitation;

  (iv) the restriction of the freedom of the parties to produce, sell, assign or license products, technologies or processes which compete with the contract products or contract technologies during the period for which the parties have agreed to jointly exploit the results;

(c) the fixing of prices when selling the contract products or licensing the contract technologies to third parties, with the exception of the fixing of prices charged to immediate customers or the fixing of licence fees charged to immediate licensees where the joint exploitation of the results:

  (i) includes the joint distribution of the contract products or the joint licensing of the contract technologies, and

  (ii) is carried out by a joint team, organisation or undertaking, or is jointly entrusted to a third party;

(d) the restriction of the territory in which, or of the customers to whom, the parties may passively sell the contract products or license the contract technologies, with the

exception of the requirement to exclusively license the results of the research and development to another party;

(e) the restriction of active sales of the contract products or contract technologies in territories or to customers which have not been exclusively allocated to one of the parties by way of specialisation in the context of exploitation;

(f) the requirement to refuse to meet demand from customers in the parties' respective territories, or from customers otherwise allocated between the parties by way of specialisation in the context of exploitation, where such customers would market the contract products in other territories within the internal market;

(g) the requirement to make it difficult for users or resellers to obtain the contract products from other resellers within the internal market.

Article 9

Excluded restrictions

1. The exemption established in Article 2 shall not apply to the following obligations in research and development agreements:

   (a) the obligation not to challenge:

      (i) after completion of the research and development, the validity of intellectual property rights which:

         (1) the parties hold in the internal market, and

         (2) are relevant to the research and development; or

      (ii) after the expiry of the research and development agreement, the validity of intellectual property rights which:

         (1) the parties hold in the internal market, and

         (2) protect the results of the research and development.

   (b) the obligation not to grant licences to third parties to produce the contract products or to apply the contract technologies unless the agreement provides for the exploitation of the results of the joint or paid-for research and development by one or more of the parties and such exploitation takes place in the internal market vis-à-vis third parties.

2. Paragraph 1, point (a), is without prejudice to the possibility to provide for the termination of the research and development agreement in the event that one of the parties challenges the validity of the intellectual property rights referred to in paragraph 1, points (a) (i) and (ii).

3. If the research and development agreement includes any of the excluded restrictions referred to in paragraph 1 of this Article, the exemption established in Article 2 shall continue to apply to the remaining part of the research and development agreement, provided that the excluded restrictions can be severed from that remaining part and provided that the other conditions of this Regulation are met.

Article 10

Withdrawal in individual cases by the Commission

1. The Commission may withdraw the benefit of the exemption established by this Regulation, pursuant to Article 29(1) of Regulation (EC) No 1/2003, where it finds in any particular case that a research and development agreement to which the exemption established by this Regulation applies, nevertheless has effects which are incompatible with Article 101(3) of the Treaty.

2. The Commission may withdraw the benefit of the exemption established by this Regulation, pursuant to Article 29(1) of Regulation (EC) No 1/2003, in particular where:

   (a) the existence of a research and development agreement substantially restricts the scope for third parties to carry out research and development in field(s) related to the contract products or contract technologies;

   (b) the existence of a research and development agreement substantially restricts the access of third parties to the relevant market for the contract products or contract technologies;

   (c) the parties do not exploit the results of the joint or paid-for research and development vis-à-vis third parties without any objectively valid reason;

   (d) the contract products or contract technologies are not subject in the whole or a substantial part of the internal market to effective competition; or

   (e) the existence of the research and development agreement would substantially restrict innovation competition in a particular field.

Article 11

Withdrawal in individual cases by the competition authority of a Member State

The competition authority of a Member State may withdraw the benefit of the exemption established by this Regulation where the conditions of Article 29(2) of Regulation (EC) No 1/2003 are fulfilled.

Article 12

Transitional period

The prohibition laid down in Article 101(1) of the Treaty shall not apply during the period from 1 July 2023 to 30 June 2025 in respect of agreements already in force on 30 June 2023 which do not satisfy the conditions for exemption established by this Regulation but which satisfy the conditions for exemption established by Regulation (EU) No 1217/2010.

Article 13

Entry into force and application

This Regulation shall enter into force on 1 July 2023.

It shall apply until 30 June 2035.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula von der Leyen