

# Consultation strategy for the evaluation of the Vertical Block Exemption Regulation

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## 1. Background information

Art. 101(1) of the Treaty on the Functioning of the European Union (“the Treaty”) prohibits agreements between undertakings that restrict competition unless they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, in accordance with Art. 101(3) of the Treaty. The prohibition of Art. 101(1) of the Treaty covers amongst others agreements entered into between two or more undertakings operating at different levels of the production or distribution chain and relating to the conditions under which the parties may purchase, sell or resell certain goods or services (so-called “vertical agreements”).

Council Regulation 19/65/EEC empowers the Commission to apply Art. 101(3) of the Treaty by regulation to certain categories of vertical agreements and corresponding concerted practices falling within Art. 101(1) of the Treaty for which it can be assumed with sufficient certainty that they satisfy the conditions of Art. 101(3) of the Treaty. The Commission made use of this empowerment by adopting a measure that declares Art. 101(1) of the Treaty not applicable to certain categories of vertical agreements (so-called “Vertical Block Exemption Regulation”). The first Vertical Block Exemption Regulation adopted by the Commission was Commission Regulation (EC) No 2790/1999. It was replaced subsequently by the currently applicable Commission Regulation (EU) No 330/2010 which will expire on 31 May 2022. The Commission also adopted a Commission Notice providing guidance on the interpretation of the relevant Vertical Block Exemption Regulation (“Guidelines on Vertical Restraints”).

The purpose of this evaluation is to gather evidence on the functioning of the Regulation (and the relevant Guidelines) that will serve as a basis for the Commission to decide whether it should let the Vertical Block Exemption Regulation lapse, prolong its duration or revise it, together with the accompanying Guidelines on Vertical Restraints, in light of the new market developments since their adoption in 2010, notably the increased importance of online sales and the emergence of new market players such as online platforms. For this purpose, an Inter-Service Steering Group (“ISSG”) consisting of representatives from interested Directorates-General of the European Commission has been set up in order to steer the evaluation during all key phases. A study by an external contractor to be commissioned in the first half of 2019 will support the evaluation.

## 2. Consultation scope and objectives

To ensure that the general public interest of the European Union is well reflected in the evaluation, the Commission wishes to consult as widely as possible through various means such as a public consultation and a dedicated stakeholder workshop on areas of particular interest for gathering data on the functioning of the Vertical Block Exemption Regulation, together with the accompanying Guidelines on Vertical Restraints, in light of a possible review.

The objective of the consultation process is to collect in-depth and high quality evidence on the key competition issues arising in vertical relationships from the perspective of the businesses, consumers and EU competition law enforcers. Allowing interested parties to provide feedback and contribute suggestions will also ensure transparency and accountability of the evaluation process.

Stakeholder consultations are a dynamic process. The approach chosen by the Commission may therefore be altered during the evaluation phase if deemed necessary by the ISSG and/or the contractor carrying out the evaluation support study. Any such changes will be announced on the dedicated website in a timely manner.

The findings of the public consultation will be summarised in a summary report which will be made available to stakeholders in order to ensure full transparency. Stakeholders who participated in the consultation process will be able to see if their views have been taken into consideration and, if not, why.

### 3. Mapping of stakeholders

The purpose of the consultation process is to gather information and views from stakeholders in order to assess whether the Commission should let the Vertical Block Exemption Regulation lapse, prolong its duration or revise it, together with the accompanying Guidelines on Vertical Restraints, in light of the new market developments since their adoption in 2010, notably the increased importance of online sales and the emergence of new market players such as online platforms.

The Commission has conducted a mapping exercise relying on the Commission's experience with enforcing Art. 101 of the Treaty, the information gathered through the E-commerce Sector Enquiry and the feedback received on the Roadmap for the Evaluation of the Vertical Block Exemption Regulation. The outcome of the mapping exercise points to several stakeholder groups similarly interested in (and also similarly affected by) the evaluation of the Vertical Block Exemption Regulation, together with the accompanying Guidelines on Vertical Restraints. These groups are expected to be: (i) companies with business operations in the EU, including but not limited to suppliers of goods and services, distributors/retailers of goods and services and platforms/intermediaries active in e-commerce, together with (ii) law firms advising them on related competition issues, (iii) industry associations, (iv) consumer organizations and (v) academics with a focus on EU competition law and notably on vertical restraints. All these groups are expected to have similar level of interest on this procedure.

As regards the enforcement perspective, the experience gathered by the competition authorities and the courts of the EU Member States in applying the Vertical Block Exemption Regulation, including the guidance provided by the Commission in its Guidelines on Vertical Restraints, will be of particular interest for this evaluation.

### 4. Consultation activities, accessibility and indicative timing

An open **public consultation** of 16 weeks will be launched in Q1/2019 on the Commission's central [public consultations page](#), as well as on [a dedicated webpage](#) on the website of the Directorate-General for Competition. The questions will be published in the three working languages of the European Commission (English, French and German), while replies will be welcome in any of the official EU languages. The contributions made to the public consultation will be published on the central [public consultations page](#) in the language in which they were submitted. The findings of the public consultation will also be summarised in a **summary report** which will be made available on the Commission's central [public consultations page](#).

An **external evaluation support study** is planned to be commissioned in the first half of 2019.

An open **stakeholder workshop** on areas of particular interest for a possible review process of the Vertical Block Exemption Regulation, together with the accompanying Guidelines on Vertical Restraints, is planned for Q4/2019.

The Commission is also interested in a constructive dialogue with stakeholders beyond these formal consultation activities, notably where confidentiality concerns do not allow for an exhaustive discussion of relevant issues in public.

Discussions with the **competition authorities of the EU Member States** will be held in the framework of the Working Group on Vertical Restraints of the European Competition Network.

An **evaluation Staff Working Document** will be published in the first half of 2020. The findings of the public consultation will also be summarised in a **synopsis report** which will be annexed to the Staff Working Document.

## **5. Consultation webpage**

The consultation questionnaire and further information on the evaluation process can be found on the Commission's central [public consultations page](#), as well as on a dedicated webpage on the website of the Directorate-General for Competition.