

## ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have.

<b>TITLE OF THE INITIATIVE</b>	Evaluation of the two Block Exemption Regulations for horizontal co-operation agreements
<b>LEAD DG – RESPONSIBLE UNIT</b>	DG COMP – A1 – HT.5454
<b>LIKELY TYPE OF INITIATIVE</b>	Evaluation
<b>INDICATIVE PLANNING</b>	Q1/2021
<b>ADDITIONAL INFORMATION</b>	<a href="http://ec.europa.eu/competition/antitrust/legislation/horizontal.html">http://ec.europa.eu/competition/antitrust/legislation/horizontal.html</a>

This Roadmap is provided for information purposes only and its content might change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Roadmap, including its timing, are subject to change.

### A. Context, Purpose and Scope of the evaluation

#### Context

Article 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 services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, in accordance with Article 101(3) of the Treaty. The prohibition of Article 101(1) of the Treaty covers amongst others co-operation agreements between actual or potential competitors (horizontal co-operation agreements).

Council Regulation (EEC) No 2821/71 empowers the Commission to apply Article 101(3) of the Treaty by regulation to certain categories of horizontal agreements, decisions and concerted practices falling within Article 101(1) of the Treaty for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty. The Commission made use of this empowerment by adopting Commission Regulation (EC) No 1217/2010 with regard to research and development agreements and Commission Regulation (EC) No 1218/2010 with regard to specialisation agreements (the “Block Exemption Regulations for horizontal co-operation agreements”).

The Commission also provided guidance in the corresponding Commission Notice (Guidelines on the applicability of Article 101 of the Treaty to horizontal co-operation agreements).

#### Purpose and scope

The purpose of this evaluation is to gather evidence on the functioning of the two Block Exemption Regulations for horizontal co-operation agreements in order to inform also the decision on whether the Commission should let them elapse, prolong their duration or revise them in order to take proper account of new market developments since their adoption in 2010. The Commission will also evaluate its Guidelines on horizontal co-operation agreements that accompany the Block Exemption Regulations. The assessment will be based on the following evaluation criteria:

- **Relevance:** The Commission will evaluate whether, in light of new market developments, the two Block Exemption Regulations for horizontal co-operation agreements and the Commission Guidelines are still relevant in light of their objective, which is to exempt from the prohibition of Article 101(1) of the Treaty those horizontal co-operation agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.
- **Effectiveness:** The Commission will evaluate the extent to which the current provisions of the two Block Exemption Regulations for horizontal co-operation agreements, notably the hardcore and excluded restrictions defined therein, and the Commission Guidelines have proven effective in identifying those horizontal co-operation agreements for which it cannot be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty.
- **Efficiency:** The Commission will evaluate whether the two Block Exemption Regulations for horizontal co-operation agreements, including the guidance provided by the Commission in its Guidelines, have contributed to reducing the costs for (i) undertakings and (ii) the competent competition authorities in ensuring compliance with the prohibition of Article 101(1) of the Treaty.
- **Coherence:** The Commission will evaluate whether the two Block Exemption Regulations for horizontal

co-operation agreements and the Commission Guidelines are in line with the developments of the Commission's overall policy and practice in the field of EU (competition) law, including in the area of mergers and State aid.

- **EU added value:** The Commission will evaluate the extent to which the two Block Exemption Regulations for horizontal co-operation agreements, including the guidance provided by the Commission in its Guidelines on horizontal co-operation agreements, have contributed to ensuring a consistent application of Article 101(1) of the Treaty to horizontal co-operation agreements by the competition authorities and the courts of the EU Member States.

## B. Better regulation

### Consultation strategy

The objective of the consultation process is to deliver an in-depth evaluation of high quality concerning key competition issues arising in horizontal co-operation agreements from the perspective of the businesses and of EU competition law enforcement. Allowing interested parties to provide feedback and contribute suggestions will also ensure transparency and accountability of the evaluation process.

As regards the business perspective, there is a very diverse stakeholder group with interest in the evaluation process. These are undertakings with business operations in the EU, engaged in various different sectors of the economy, including companies that carry out research and companies engaged in production activities. Law firms and economic consultancy firms advising them on related competition issues will have a comparable interest. In addition, the experience gathered by the competition authorities and the courts of the EU Member States in applying the two Block Exemption Regulations for horizontal co-operation agreements will be of interest for this evaluation. Other main stakeholders with a possible interest in the evaluation are consumer organisations, consumers and academics with a focus on EU competition law and notably on horizontal co-operation.

The following consultations are planned during the evaluation process:

- A **public consultation** of 12 weeks will be launched in Q4/2019. 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 official EU language. The consultation will be published on the Commission's [central public consultation portal](#).
- A **stakeholder workshop** with representatives from all main stakeholder groups on areas of particular interest for the review of the two Block Exemption Regulations for horizontal co-operation agreements and the Commission Guidelines is planned for Q2/2020.

Discussions with the **competition authorities of the EU Member States** will be held in the framework of the Working Group on Horizontal Agreements and Abuse of Dominant position of the European Competition Network.

A synopsis report will summarise the results of all consultation activities and will be annexed to the evaluation staff working document.

### Data collection and methodology

The **evaluation of the relevance, effectiveness and efficiency** of the two Block Exemption Regulations for horizontal co-operation agreements and the Commission Guidelines requires *inter alia* an analysis of new market developments since their adoption in 2010 and of their impact on co-operation between actual and potential competitors in the EU. Information will be collected through a literature review, together with an external evaluation study, as well as from stakeholders in the public consultation and during a stakeholder workshop. In this context, stakeholders will also be asked to estimate the cost savings associated with the two Block Exemption Regulations for horizontal co-operation agreements, including the guidance provided by the Commission in its Guidelines.

The **evaluation of the coherence** of the two Block Exemption Regulations for horizontal co-operation agreements and the Commission Guidelines requires an assessment of the internal coherence of these acts, of the coherence with the Commission's overall competition law enforcement policy and practice and with the wider EU policy and practice. For this purpose, the Commission will gather additional information on the stakeholders' perception during the public consultation.

The **evaluation of the EU added value** of the two Block Exemption Regulations for horizontal co-operation agreements requires an analysis of their application, including of the guidance provided by the Commission in its Guidelines on horizontal co-operation agreements, by the competition authorities and the courts of the EU Member States. This analysis will be carried out in the context of an external evaluation study on the basis of information gathered through a public consultation with targeted questionnaires and during the discussions with the competition authorities of the EU Member States in the framework of the Working Group on Horizontal Agreements and Abuse of Dominant position of the European Competition Network.