



European Commission (http://ec.europa.eu/index_en.htm) >

EUSurvey

Stakeholder consultation on the review of the HBERs

Fields marked with * are mandatory.

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Introduction

Article 101(1) of the Treaty on the Functioning of the European Union ('TFEU') prohibits agreements that restrict competition unless they generate efficiencies in line with Article 101(3) of the Treaty. To improve the production or distribution of goods or services, or to promote technical or economic progress, and to ensure 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. Article 101(1) of the Treaty covers, amongst others, agreements entered into between actual or potential competitors ('horizontal cooperation').

Horizontal cooperation relates, in most cases, to cooperation between actual or potential competitors in research and development ('R&D'), production, purchasing, commercialisation or standardisation. It can also relate to cooperation in the context of another type of horizontal cooperation. Such agreements may cause a restriction of competition but also give rise to substantial efficiencies. They often involve the combination of complementary activities, skills or assets.

The European Commission (the 'Commission') is empowered to adopt block exemption regulations for agreements for which it can be presumed with sufficient certainty that they fulfil the conditions of Article 101(3) TFEU. The Commission has made use of this empowerment by adopting two block exemption regulations. Article 101(1) TFEU is not applicable to certain categories of R&D agreements and certain categories of vertical agreements. The R&D Block Exemption Regulation (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32015R0853>)

and Specialisation Block Exemption Regulation ([https://eur-lex.europa.eu/legal-content/EN/ALL](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0114%2804%29) ('Specialisation BER) (together the 'Horizontal Block Exemption Regulations' or 'HBERs') entered into force on 1 May 2017 and will expire on 31 December 2022. The HBERs are accompanied by Guidelines on the applicability of the Functioning of the European Union to horizontal cooperation agreements (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0114%2804%29>) ('Horizontal Guidelines').

In May 2021, the Commission finalised its evaluation of the HBERs and the Horizontal Guidelines. The Staff Working Document (https://ec.europa.eu/competition-policy/system/files/2021-05/HBERs_evaluation_results.pdf) showed that the HBERs and the Horizontal Guidelines are useful instruments for businesses and other stakeholders. Nonetheless, the evaluation identified a number of potential issues. On the basis of this evaluation, the Commission is now looking into policy options for a revision of certain areas of the HBERs with the aim to have the current rules expire on 31 December 2022, when the current rules will expire.

On 7 June 2021, the Commission published an Inception Impact Assessment (https://ec.europa.eu/economy_finance/your-say/initiatives/13058-Horizontal-agreements-between-companies-revision-of-EU-competition-rules) for areas for which the Commission proposed policy options and asked stakeholders to provide feedback. In the next impact assessment phase, the Commission will collect views from stakeholders on these policy options and the issues identified in the evaluation. The Commission will also collect feedback on other areas of the Horizontal Guidelines for which the results of the evaluation identified room for improvement or clarification. The Commission will use the key instruments to collect stakeholders' views and the replies to the questionnaire will inform the development of the final policy options.

2 How to answer this consultation

You are invited to reply to this public consultation by filling out the EUSurvey questionnaire online.

The questionnaire is structured as follows:

1. The first part of the questionnaire (Sections 3 and 4) concerns **general information** on the respondents and their companies.
2. The second part focuses on **policy options** for a possible revision of the HBERs (Section 5) and views from stakeholders to assess the impact of the policy changes that the Commission is considering.
3. The third part of the questionnaire addresses **other issues and elements** (e.g. impact assessment issues) considered during the impact assessment phase (Section 6).

Languages

The questionnaire is available in **English, French and German** but you may respond to the questionnaire in any official EU language.

Next steps

The Commission will summarise the results in a **report**, which will be made publicly available on the Regulation Portal.

Practical remarks:

1. To facilitate the analysis of your reply, we would kindly ask you to keep your answers concise
2. You may include documents and URLs for relevant online content in your replies.
3. You are not required to answer every question. You may respond 'no opinion' to questions particular knowledge, experience or opinion. Where applicable, this is strongly encouraged if the evidence gathered by the Commission is solid.
4. You have the option of saving your questionnaire as a 'draft' and finalising your response 'Save as Draft' and save the new link that you will receive from the EUSurvey tool on your computer. *this new link you will not be able to access the draft again* and continue replying to your questionnaire. Once you have submitted your response, you will be able to download a copy of your completed questionnaire.
5. Whenever there is a text field for a short description, the maximum number of characters will be indicated.
6. Questions marked with an asterisk (*) are mandatory.
7. To avoid any confusion about the numbering of the questions, please note that you will be able to choose a particular reply to the respective previous one(s).

No statements, definitions, or questions in this public consultation may be interpreted as an official position of the Commission. The definitions provided in this document are strictly for the purposes of this public consultation and are not binding. The Commission may use under current or future EU law or in decisions.

You are invited to read the **privacy statement** attached to this consultation for information on how your personal data contribution will be dealt with.

In case **you have questions**, you can contact us via the following functional mailbox: COMP (mailto:COMP-VBER-REVIEW@ec.europa.eu).

If you encounter **technical problems**, please contact the Commission's IT helpdesk (https://ec.europa.eu/eusurvey/home/support).

3 About you

* 1 I am giving my contribution as

* 2 First name

* 3 Surname

* 4 Email (this won't be published)

* 6 Language of my contribution

* 12 Country of origin 

The Commission will publish all contributions to this public consultation. You can choose to have your details published or to remain anonymous when your contribution is published. **transparency, the type of respondent (for example, 'business association, 'consumer citizen') country of origin, organisation name and size, and its transparency register published. Your e-mail address will never be published.** Opt in to select the privacy options. Privacy options default based on the type of respondent selected

*

I agree with the personal data protection provisions (<https://ec.europa.eu/info/law/better-regulation>)

4 About your organisation

15) Please provide the main activity of your organisation (e.g. product(s) and/or service(s) provided)
500 character(s) maximum

0 / 500

16) Please describe the sectors in which your organisation or your clients or members conduct business
500 character(s) maximum

0 / 500

17) Please indicate the 2 digit NACE Rev.2 code(s) referring to the level of 'division' that applies to your organisation (pages 61 – 90 of Eurostat's statistical classification of economic activities in the European Community (<https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF/dd5443f5-b87d-4000-b013-287363290000> version=1.0)):

250 character(s) maximum

0 / 250

18) Please mark the countries/geographic areas where your main activities are located:

Austria

- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Others in Europe
- The Americas
- Asia
- Africa
- Australia

19) Please describe the **relevance** of the **HBERs** and the **Horizontal Guidelines** for your activiti

| Regulations and Guidelines | Relevance |
|-----------------------------------|------------------|
| R&D BER | |
| Specialisation BER | |
| Horizontal Guidelines | |

20) Please indicate whether your organisation is or has been a party to any of the following **horizontal cooperation agreements**. Alternatively, please indicate whether you have experience with any of the following horizontal cooperation agreements.

| Horizontal cooperation agreements | Yes | No |
|---|--------------------------|--------------------------|
| R&D agreements | <input type="checkbox"/> | <input type="checkbox"/> |
| Production (or specialisation) agreements | <input type="checkbox"/> | <input type="checkbox"/> |
| Information exchanges | <input type="checkbox"/> | <input type="checkbox"/> |
| Joint purchasing agreements | <input type="checkbox"/> | <input type="checkbox"/> |
| Commercialisation agreements | <input type="checkbox"/> | <input type="checkbox"/> |
| Standardisation agreements | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (e.g. agreements pursuing sustainability goals, etc.) | <input type="checkbox"/> | <input type="checkbox"/> |

21) If you have been **discouraged or dissuaded** in the last ten years from entering into a **pro-competitive cooperation agreement** (taking the form of any of the ones mentioned in the previous question),

(i) indicate the type of horizontal cooperation agreement you are referring to

(ii) explain the main reasons for the decision not to pursue the cooperation and

(iii) describe any obstacles/deterrents arising from any provision in the HBERs and/or the Horizontal Cooperation Agreement

5000 character(s) maximum

0 / 5000

5 Policy options for the HBERs

During the impact assessment phase, the Commission is exploring **policy options** aimed at improving the HBERs. The scenario against which these policy options will be assessed is a renewal of the HBERs and a *substantive change*.

5.1) Policy options relating to SMEs, research institutes and academic bodies

The Commission is exploring options to encourage the participation of SMEs, research institutes and production/specialisation agreements that do not raise competition concerns. The policy options are:

SMEs – R&D and specialisation

- Option 1: No change

- Option 2: The potential **introduction of a specific category of R&D agreements** exempt conditions to be defined, in case such agreements are **concluded by SMEs**; and/or
- Option 3: The potential **introduction of a specific category of specialisation/productic Specialisation BER**, subject to conditions to be defined, in case such agreements are **conclu**

Research institutes /academic bodies – R&D

- Option 4: Clarifying the **definition of competing undertakings** in case **research institutu** involved in R&D agreements; and/or

SMEs and research institutes /academic bodies – R&D

- Option 5: **Limiting (and/or potentially removing) the condition(s) in the R&D BER of fi access to pre-existing know-how** in case R&D agreements are concluded with SMEs, ; institutes.

Options 2 to 5 could be applied cumulatively.

22) **Type of R&D agreements.** Please indicate which type of R&D agreement(s) you are current to in the last ten years.

- Joint R&D of products/technologies
- Joint R&D of products/technologies and joint exploitation of R&D results (e.g. production, dis assignment and/or licensing)
- Paid-for R&D of products/technologies (i.e. one party finances the R&D activity, that is carrie
- Paid-for R&D of products/technologies and joint exploitation of R&D results (e.g. production, assignment and/or licensing)
- Joint exploitation of R&D results jointly carried out pursuant to a prior agreement between th
- Joint exploitation of the results of paid-for R&D pursuant to a prior agreement between the s;
- Other type(s) of R&D cooperation agreement(s)
- None

24) **Type of specialisation/production cooperation agreements.** Please indicate which type o agreement(s) you are currently a party to, or have been a party to in the last ten years.

- ‘*Unilateral specialisation agreement*’ (i.e. an agreement between two parties which are active by which one party agrees to fully or partly refrain/cease production of certain products and t other party, who agrees to produce and supply those products to it)

- 'Reciprocal specialisation agreement' (i.e. an agreement between two or more parties which product market, by which two or more parties on a reciprocal basis agree to fully or partly ce certain but different products and to purchase these products from the other parties, who agr them)
- 'Joint production agreement' (i.e. an agreement by which two or more parties agree to produ
- 'Horizontal subcontracting agreements with a view to expanding production' (i.e. an agreeme entrusts the subcontractor with the production of a good, while the contractor does not at the own production of the good)
- Other type(s) of specialisation/production agreement(s)
- None

5.1.1) New categories of exempted agreements.

The Commission is exploring options to encourage the participation of SMEs in R&D and specialis

26) Based on your experience, would the introduction of a specific exemption for **R&D agreemer** such an objective (i.e. encourage the participation of SMEs)?

- Yes
- No
- No opinion

28) Based on your experience, would the introduction of a specific exemption for **production/sp** **concluded by SMEs** achieve such an objective (i.e. encourage the participation of SMEs)?

- Yes
- No
- No opinion

30) **Impact (R&D - SMEs).** Based on your experience, what would be the impact of **exempting a cooperation agreements concluded by SMEs** on the following aspects:

| Impact on: | Very negative | Negative | Neutral |
|--|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation / Investment in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of horizontal R&D agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Cooperation by SMEs in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for your organisation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for your organisation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| Impact on: | Very negative | Negative | Neutral |
|---|---------------|----------|---------|
| Harmonised application of competition rules by national competition authorities and national courts | ○ | ○ | ○ |

32) **Impact (Specialisation/Production - SMEs).** Based on your experience, what would be the category of specialisation (production) cooperation agreements concluded by SMEs on the

| Impact on: | Very negative | Negative | Neutral |
|---|---------------|----------|---------|
| Competition on the market | ○ | ○ | ○ |
| Prices | ○ | ○ | ○ |
| Quality of products/services | ○ | ○ | ○ |
| Innovation | ○ | ○ | ○ |
| Self-assessment of horizontal specialisation/production agreements | ○ | ○ | ○ |
| Cooperation by SMEs in specialisation/production | ○ | ○ | ○ |
| Level of production | ○ | ○ | ○ |
| Costs for your organisation | ○ | ○ | ○ |
| Legal certainty for your organisation | ○ | ○ | ○ |
| Harmonised application of competition rules by national competition authorities and national courts | ○ | ○ | ○ |

5.1.2) Potential conditions for exempting horizontal cooperation agreements by SMEs.

34) **R&D agreements.** Based on your experience, please consider the potential conditions under which SMEs could be exempted and indicate which of the possible conditions listed below would be the

- Conditions based on market shares of the parties to the agreement
- Conditions based on revenues of the parties to the agreement
- Conditions linked to the duration of the agreement
- Other
- No opinion

36) **Specialisation/production agreements.** Based on your experience, please consider the potential conditions under which specialisation/production agreements by SMEs could be exempted and indicate which of the possible conditions would be the easiest to apply?

- Conditions based on market shares of the parties to the agreement
- Conditions based on revenues of the parties to the agreement
- Conditions linked to the duration of the agreement
- Other
- No opinion

5.1.3) Conditions for exemption under the R&D BER.

The Commission is exploring options to ensure that the rules encourage the participation of (i) SM institutes/academic bodies in R&D agreements, when these agreements do not raise competition Commission is exploring may include limiting (and/or potentially removing) the condition(s) for exemption regarding full access to the results and/or to pre-existing know-how in case R&D agreements are concluded by SMEs and/or research institutes. Limitations to the condition of full access to the final R&D results could include limitations to the duration of full access, or the scope of the access, etc. Limitations to the condition of full access to pre-existing know-how could for instance include limitations to the duration of access, the exploitation activity the access is linked to, etc.

38) Based on your experience, would the following options concerning **R&D agreements concerning full access to the final R&D results** objective (i.e. ensure that the rules encourage the participation of SMEs in R&D agreements)?

| Options |
|--|
| Limiting the condition of full access to the final R&D results (for example, by limiting the duration of full access or the scope thereof, etc.) |
| Limiting the condition of access to pre-existing know-how if this know-how is <i>indispensable</i> for the <u>purposes of exploitation</u> of the R&D results (for example by limiting the duration of access to pre-existing know-how or the exploitation activity it is linked to, etc.) |
| Removing the condition of full access to the final R&D results |
| Removing the condition of access to pre-existing know-how if this know-how is <i>indispensable</i> for the <u>purposes of exploitation</u> of the R&D results |

40) Based on your experience, do you consider that the limitations that are identified in the table above (i.e. **Limiting** the condition of **full access to the final R&D results** or the scope thereof or **Limiting** the duration of access to pre-existing know-how or the exploitation activity it is linked to, etc.) would be most appropriate to achieve the objective (i.e. ensure the participation of SMEs in R&D agreements)?

5000 character(s) maximum

41) If, based on your experience, you consider that other types of limitations to the conditions of full access to pre-existing know-how than the ones listed in the table above would be more appropriate to achieve the objective (i.e. ensure that the rules encourage the participation of SMEs in R&D agreements), please list them and explain the reasons.
5000 character(s) maximum

0 / 5000

42) Based on your experience, would the following options concerning **R&D agreements concluded with research institutes/academic bodies** achieve such objective?

| Options |
|---|
| Limiting the condition of full access to the final R&D results (for example, by limiting the duration of full access or the scope thereof, etc.) |
| Limiting the condition of access to pre-existing know-how if this know-how is <i>indispensable</i> for the <u>purposes of exploitation</u> of the R&D results (for example by limiting the duration of access to exploitation activity it is linked to, etc.) |
| Removing the condition of full access to the final R&D results |
| Removing the condition of access to pre-existing know-how if this know-how is <i>indispensable</i> for the <u>purposes of exploitation</u> of the R&D results |

44) Based on your experience, do you consider that the limitations that are identified in the table above (i.e. limiting full access to the final R&D results or the scope thereof or limiting the duration of access to pre-existing know-how or exploitation activity it is linked to, etc.) would be most appropriate to achieve the objective (i.e. ensure the participation of research institutes/academic bodies in R&D agreements)?

5000 character(s) maximum

0 / 5000

45) If, based on your experience, you consider that other types of limitations to the conditions of full access to pre-existing know-how than the ones listed in the table above would be more appropriate to achieve the objective (i.e. ensure that the rules encourage the participation of research institutes/academic bodies in R&D agreements), please list them and explain the reasons.

5000 character(s) maximum

0 / 5000

46) **Impact (R&D full access to results)**. Based on your experience, what would be the impact (i.e. removing) the condition of full access to the final results from R&D cooperation agreements?

institutes and/or academic bodies on the following aspects:

| Impact on: | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation / Investment in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of horizontal R&D agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Cooperation with SMEs in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Cooperation with research institutes/academic bodies in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for your organisation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for your organisation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

48) **Impact (R&D access to pre-existing know-how)**. Based on your experience, what would be **potentially removing) the condition of access to pre-existing know-how** from R&D cooperative SMEs, research institutes and/or academic bodies on the following aspects:

| Impact on: | Negative | Neutral |
|---|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> |
| Innovation / Investment in R&D | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of horizontal R&D agreements | <input type="radio"/> | <input type="radio"/> |
| Cooperation with SMEs in R&D | <input type="radio"/> | <input type="radio"/> |
| Cooperation with research institutes/academic bodies in R&D | <input type="radio"/> | <input type="radio"/> |
| Costs for your organisation | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for your organisation | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> |

5.1.4) Research institutes and academic bodies.

The R&D BER currently defines academic bodies and research institutes as undertakings which s service without normally being active in the exploitation of results (e.g. production, distribution, etc

50) Based on your experience, under which circumstances would you consider **research institut** be **actual or potential competitors** to another organisation in R&D? Please be as detailed as pos areas (e.g. development/improvement of new/existing products and/or technologies)?

5000 character(s) maximum

0 / 5000

51) The Commission is exploring options to ensure that the rules encourage the participation of r bodies in R&D agreements. Based on your experience, would a clarification of the definition of cor to **research institutes and/or academic bodies** involved in R&D agreements achieve such objec

- Yes
- No
- No opinion

53) **Impact (R&D - research institutes/academic bodies).** Based on your experience, what wo **further clarifications to the definition of competing undertakings** for R&D cooperation agreen **institutes and/or academic bodies** on the following aspects:

| Impact on: | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation / Investment in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of horizontal R&D agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Cooperation with research institutes/academic bodies in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for your organisation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for your organisation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

5.1.5) **Additional remarks on policy options regarding SMEs, research institutes and acad**

55) Based on your experience, please explain whether there are any other measures that could e SMEs, research institutes and/or academic bodies in horizontal R&D and production/specialisation agreements do not raise competition concerns.

5000 character(s) maximum

0 / 5000

5.2) **Policy options relating to the R&D BER: Conditions for exemption**

The Commission is exploring options to encourage the conclusion of R&D agreements **by all typ** are unlikely to raise competition concerns. The Commission will assess the following policy option:

- Option 1: No change.
- Option 2: Allowing for limitations to the condition of **full access to the results** of the R&D co
- Option 3: Allowing for limitations to the condition of **access to pre-existing know-how** in exploitation of the R&D results.

Options that the Commission is exploring may include limiting (and/or potentially removing) the co R&D BER regarding full access to the results and/or to pre-existing know-how for R&D agreement full access to the final R&D results could for instance include limitations to the duration of full acce etc. Limitations to the condition of access to pre-existing know how could for instance include limit the exploitation activity the access is linked to, etc.

Options 2 and 3 could be applied cumulatively.

56) **Conditions for exemption.** Based on your experience, how do the conditions for exemption cooperation agreements? Please consider agreements concluded by **all types of undertakings** (

| Conditions for exemption under the R&D BER | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Condition of <u>full access to the final R&D results</u> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Condition of <u>access to any pre-existing know-how</u> of other parties if it is indispensable for the exploitation (e.g. production, distribution, application, assignment, licensing) of the R&D results | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

58) **Full access to the final R&D results.** Based on your experience, do you consider that a **lim access to the final R&D results** would encourage the conclusion of R&D cooperation agreements concerns? Please consider agreements concluded **by all types of undertakings** (e.g. large, med

- Yes
- No
- No opinion

60) **Access to pre-existing know-how.** Based on your experience, do you consider that **limiting access to pre-existing know-how** would encourage the conclusion of R&D cooperation agreeme concerns? Please consider agreements concluded **by all types of undertakings** (e.g. large, med

- Yes
- No
- No opinion

62) **Impact (access to final R&D results).** Based on your experience, what would be the impact **access to the final R&D results** on the following aspects?

| Impact on: | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation / Investment in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of horizontal R&D agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for businesses | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

64) **Impact (access to pre-existing know-how).** Based on your experience, what would be the **to provide access to pre-existing know-how if such know-how is indispensable for the expl** following aspects:

| Impact on: | Very negative | Negative | Neutral |
|---------------------------|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| Impact on: | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation / Investment in R&D | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of horizontal R&D agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for businesses | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

5.3) **Policy options regarding the Specialisation BER - Scope and conditions**

The Commission aims at clarifying the scope and the conditions for exemption under the Specialisation BER. The Commission is exploring the following separate options:

- Option 1: No change.
- Option 2: To widen the scope of the Specialisation BER by **expanding the definition of unilateral specialisation agreements** concluded between more than two parties; *and/or*
- Option 3: To verify whether **horizontal subcontracting agreements with a view to expansion** meet the requirements of Article 101(3) and hence should be included in the scope of the Specialisation BER.
- Option 4: To review the conditions for exemption as regards **joint distribution** for unilateral specialisation agreements.

Options 2 to 4 could be applied cumulatively.

66) **Unilateral specialisation.** Based on your experience, do you consider that **expanding the scope of unilateral specialisation agreements to include agreements concluded between more than two parties** is likely to be a **competitive agreement** among competitors (actual or potential)?

[The Specialisation BER defines 'Unilateral specialisation agreement' as an **agreement between two parties** which is likely to be a competitive agreement by virtue of which one party agrees to fully or partly refrain/cease production of certain products and to purchase them from the other party or to produce and supply those products to it]

Very likely

- Likely
- Neutral
- Unlikely
- Very unlikely
- No opinion

68) **Horizontal subcontracting with a view to expanding production.** Based on your experience, what would be the impact of the exemption in the Specialisation BER to **include subcontracting agreements with a view to expanding production** to allow to exempt pro-competitive agreements?

[Under the Horizontal Guidelines, subcontracting agreements with a view to expanding production are agreements with a subcontractor with the production of a good, while the contractor does not at the same time cease or limit its own production.]

- Very likely
- Likely
- Neutral
- Unlikely
- Very unlikely
- No opinion

70) **Impact (unilateral specialisation).** Based on your experience, what would be the impact of the Specialisation BER by allowing **unilateral specialisation agreements between more than two parties**?

| Impact on: | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Level of production | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of specialisation/production agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for businesses | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

72) **Impact (expand production)**. Based on your experience, what would be the impact of expa Specialisation BER by **exempting horizontal sub-contracting agreements with a view to expa** following aspects:

| Impact on: | Very negative | Negative | Neutral |
|---|-----------------------|-----------------------|-----------------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Prices | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Quality of products/services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Innovation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Level of production | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Self-assessment of specialisation/production agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs for business | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal certainty for businesses | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Harmonised application of competition rules by national competition authorities and national courts | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

5.3.1) **Joint distribution**

- According to the Specialisation BER, unilateral and reciprocal specialisation agreements shc regulation where they provide for supply and purchase obligations or joint distribution. Under **distribution** means that the parties: (i) carry out the distribution of the products by way of a j undertaking; or (ii) appoint a third party distributor on an exclusive or non-exclusive basis, pr competing undertaking (recital 9 and Article 1(1)(q) Specialisation BER).
- Under the R&D BER, **'joint' distribution** includes a scenario where only one party produces products on the basis of an exclusive licence granted by the other parties (Articles 1(1)(m)(iii

74) Based on your experience, what would be the impact of allowing under the Specialisation BE **distributes the contract products** on the following aspects:

| Impact on: | Very negative | Negative | Neutral | Positive | Very |
|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-------------|
| Competition on the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Level of market concentration | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Volume of products in the market | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |

| Impact on: | Very negative | Negative | Neutral | Positive | Very |
|------------------------------|---------------|----------|---------|----------|------|
| Prices for consumers | ○ | ○ | ○ | ○ | |
| Innovation/Investment in R&D | ○ | ○ | ○ | ○ | |
| Investment in production | ○ | ○ | ○ | ○ | |

6 Other areas for review

The evaluation has identified **further areas** where the HBERs and Horizontal Guidelines may be i relate to such possible improvements.

6.1) General questions

77 Based on your experience, please indicate what would be the best way to determine which cha takes priority in the assessment of a horizontal agreement that combines different types of cooper: different chapters that apply (e.g. an agreement combining R&D and commercialisation, or inform: purchasing):

- The 'centre of gravity' that prevails for the entire cooperation [*two factors are relevant to dete the starting point of the cooperation and (ii) the degree of integration of the different function.*
- The nature of the activity that constitutes the starting point of the cooperation (e.g. R&D, pro
- The degree of integration of the different functions which are combined
- The nature of the activity that constitutes the end point of the cooperation (e.g. distribution, c
- The rules of the most stringent chapter of the Horizontal Guidelines
- Other criteria
- I do not know
- No opinion

79) Based on your experience, should the Horizontal Guidelines clarify whether and in which circ applies to horizontal agreements between a joint venture and its parent(s) provided that the creati infringe competition law? Please also consider in your answer the scenario of horizontal cooperati parents of a joint venture outside the scope of the joint venture.

5000 character(s) maximum

0 / 5000

6.2) Information exchange

The Horizontal Guidelines contain a chapter on information exchange. Paragraphs 55 and 56 can take many different forms and can take place in different contexts. Information exchange in competitive markets and may generate various types of efficiency gains. Companies can for information sharing may allow them to calculate possible risks better.

Information exchange can also be necessary for the efficient distribution of goods and services. Information exchange can be processed into a form that has meaning and is useful. The next questions concern the exchange of information.

80) Is information exchange relevant in your industry or sector? Please explain how it is relevant:
1000 character(s) maximum

0 / 1000

81) Have you shared information with your (potential) competitors, or do you intend to do so in the future?
at most 3 choice(s)

- Yes: I shared information in the past
- Yes: I am currently sharing information
- Yes: I intend to share information in the future
- No
- Not applicable/no opinion

84) Do you expect that information exchange in your industry or sector will change in the next 10 years?
5000 character(s) maximum

0 / 5000

Data pooling and data sharing

Technological advances have made it possible for companies to collect, store, and use large amounts of relevant data has become important to compete in certain industries and sectors. Data pooling and sharing arrangements may also be used to develop better products or services. However, data pooling and sharing arrangements may also have certain scenarios. As with other types of information exchange, they may facilitate collusion when companies are aware of the market strategies of their competitors. In addition, (potential) competitors who do not share information may be foreclosed from the market.

The next questions concern data pooling and data sharing.

85) Is **data pooling** and **data sharing** important in your industry or sector?

- Yes
- No

I do not know

87) Have you been or are you involved in data pooling or data sharing or do you intend to do so i
at most 3 choice(s)

- Yes, I was involved in data pooling/data sharing
- Yes, I am still involved in data pooling/data sharing
- Yes, I will take part in data pooling/data sharing in the future
- No
- Not applicable / no opinion

Information exchange in dual distribution scenarios

The Horizontal Guidelines mainly cover agreements between (potential) competitors. The growth suppliers now selling their goods or services directly to end customers, thereby competing with i (dual distribution). While information exchange in a vertical relationship will often not raise compe be different if the supplier is competing with its distributors at the retail level.

The next questions concern information exchange in mixed horizontal and vertical relationships.

89) Are you or your supplier engaged in dual distribution?

at most 2 choice(s)

- Yes, I am a supplier and I am also selling directly at retail level
- Yes, I am a distributor and my supplier also sells directly at retail level
- No
- Not applicable / no opinion

Other information exchange, data sharing and data pooling

The following question concerns both information exchange and data sharing and data pooling scenario.

93) Do you feel disadvantaged by other companies who are sharing information or data?

- Yes
- No
- I do not know
- No opinion/not applicable

6.3) **Standardisation agreements**

The Guidelines on Horizontal Cooperation include a chapter on standardisation agreements. The questions in this section cover these types of agreements.

For the purposes of the following questions, standard-setting organisations are standardisation bodies and the private independent bodies, alliances, partnerships or consortia that develop and adopt industry standards.

95) Have you engaged in standardisation efforts / the development of standards in standard setting or the development of standard terms in the past ten years?

- Yes
- No
- No opinion/not applicable

98 Does any of the standard setting organisations that you have experience with also provide guidance on the interpretation of "FRAND"?

- Yes
- No
- No opinion/not applicable

100) Do you have experience with standard setting organisations which require (for example in their 'IPR' policy) that participants disclose their IPR that might be essential for the implementation of the standard, for instance by identifying specific IPR, specific IPR claims, applications to patent offices for IPR protection?

- Yes
- No
- No opinion / not applicable

104) Have you negotiated the licensing of standards essential patents (SEPs) with potential licensees (for example a licensing negotiation group)?

- Yes, as owner of a SEP
- Yes, as potential licensee of a SEP
- No
- No opinion/not applicable

6.4) **Joint purchasing agreements**

The Guidelines on Horizontal Cooperation contain a chapter on joint purchasing agreements. Joint purchase of products by several buyers may take different forms and be used in different ways. Joint purchasing agreements usually aim at creating buying power vis-à-vis suppliers which often can improve the quality or services for consumers. Buying power may, under certain circumstances, also give rise to

The following questions concern such joint purchasing agreements, their qualification as either a restriction by object and the potential benefits and negative effects associated with the creation of buying power.

106) Have you negotiated the purchase of products / services together with other buyers?

- Yes
- No
- Not applicable

115) Based on your experience or knowledge, which of the following elements should play a role either as a **restriction of competition by object** or as a **restriction of competition by effect** (see below)?

| Qualification as a restriction <u>by object</u> or <u>by effect</u> | Relevant for qualification as <u>by object</u> restriction | Not relevant for qualification as <u>by object</u> restriction | Relevant for qualification as restriction <u>by effect</u> |
|--|---|---|---|
| Buyers are competing downstream | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Degree of integration on the buyer side (e.g. separate joint purchasing entity) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Aggregated share of the buyers in total demand in the (upstream) purchasing market | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Degree of concentration of sellers in the (upstream) purchasing market | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Aggregated market share of the buyers in the (downstream) selling markets | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The buyer cooperation is secret towards sellers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

117) Based on your experience or knowledge, what would be **potential pro-competitive benefits** between buyers on the following elements (several options are possible)?

| Potential pro-competitive benefits | No pro-competitive benefits | Insignificant pro-competitive benefits | Some pro-competitive benefits | Significant pro-competitive benefits |
|---|------------------------------------|---|--------------------------------------|---|
| | | | | |

| Potential pro-competitive benefits | No pro-competitive benefits | Insignificant pro-competitive benefits | Some pro-competitive benefits | Significant pro-competitive benefits |
|--|------------------------------------|---|--------------------------------------|---|
| Prices for consumers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prices for upstream suppliers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prices for buyers, party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prices for buyers, not party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for consumers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for upstream suppliers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for buyers, party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for buyers, not party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for consumers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for upstream suppliers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for buyers, party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for buyers, not party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

118) Based on your experience or knowledge, what would be **potential anti-competitive effects** between buyers on the following elements (several options are possible)?

| Potential anti-competitive effects | No anti-competitive effects | Insignificant anti-competitive effects | Some anti-competitive effects | Significant anti-competitive effects |
|--|------------------------------------|---|--------------------------------------|---|
| Prices for consumers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prices for upstream suppliers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prices for buyers, party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prices for buyers, not party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for consumers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for upstream suppliers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for buyers, party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Choice/quality of products for buyers, not party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for consumers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for upstream suppliers | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for buyers, party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Innovation for buyers, not party to the purchasing agreement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

119) Please explain your choices for both the pro-competitive benefits and the anti-competitive effects. Please explain which elements you mean.

5000 character(s) maximum

0 / 5000

6.5) **Horizontal commercialisation agreements**

Commercialisation agreements involve co-operation between competitors in the selling, distribution or production of products. This type of agreement can have widely varying scope, depending on the commercialisation aspects related to the sale of the product, including price. At the other end of the spectrum, there are more limited agreements that focus on one specific commercialisation function, such as distribution, after-sales service, or advertising.

120) Please explain for which of the following clauses/subjects of commercialisation agreements guidance would be necessary in the Horizontal guidelines:

| Clauses / Subjects | Yes | No | No opinion |
|--|-----------------------|-----------------------|-----------------------|
| Pricing | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Cross selling | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Data pooling/access to data/data sharing | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Algorithms | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Online sales | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

122) Based on your experience/knowledge, should the **scope of the chapter on commercialisation agreements** in the Horizontal Guidelines be extended in order to include the following categories of agreements?

| | Yes | No | No opinion |
|-----------------------------------|-----------------------|-----------------------|-----------------------|
| Industrial Alliances | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Data commercialisation agreements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Platforms | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

124) **Consortia arrangements.** *According to paragraph 237 of the Horizontal Guidelines, consortia arrangements allow companies involved to participate in projects that they would not be able to undertake individually, without raising competition concerns, as the parties to the consortia arrangement are not potential competitors. However, the Horizontal Guidelines do not provide any guidance on consortia arrangements.*

parties can compete on their own or are able on their own to meet the tender requirements). Base consider that introducing a specific example regarding a consortium among competitors would pro

- Yes
- No
- No opinion

125) Please explain your reply and, in particular, explain which specific aspects should be expres
5000 character(s) maximum

0 / 5000

6.6) **Sustainability**

The evaluation of the current Horizontal Guidelines suggested that there is need assessment of horizontal cooperation agreements that pursue sustainability object objective for the purpose of this survey pertains to economic, social and environmental the Treaty on European Union.

126) Have you been a party to cooperation agreements that pursue **sustainability objectives** or agreements in the near future?

- Yes
- No
- Not applicable

132) Are you required by law/regulation to comply with certain sustainability targets? Please expl sustainability targets you are bound by.

5000 character(s) maximum

0 / 5000

134) Please explain what prompted you to consider cooperation with your competitors instead of objective on your own and why the agreement was necessary to reach that objective.

5000 character(s) maximum

0 / 5000

138) Have you abstained from concluding an actual cooperation agreement that pursued sustain may breach competition rules (e.g. Article 101 TFEU that prohibits anti-competitive agreements)?

- Yes
- No
- Not applicable

140) Based on your experience, please indicate any concrete provisions in the current Horizontal [lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0114%2804%29](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0114%2804%29)) that in your view cooperation agreements pursuing sustainability objectives. Please explain your reply.

5000 character(s) maximum

0 / 5000

141) Please indicate in which chapter(s) of the current Horizontal Guidelines (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011XC0114%2804%29>) it would be helpful to have more specific guidance on it pursuing sustainability objectives? Please explain your reply.

5000 character(s) maximum

0 / 5000


142) Do you have any additional comments that you want to make in relation to the assessment pursuing sustainability objectives?

5000 character(s) maximum

0 / 5000

7 Additional remarks

143) Please feel free to **upload a concise document**, such as a position paper, explaining your additional information and data. Please note that the uploaded document will be published alongside questionnaire that is the essential input to this open public consultation. The document is an optional additional background reading to better understand your position.

 Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Select file to upload

144) Do you have any **further comments** on this initiative on aspects not covered by the previous questionnaire? Please explain your reply.

5000 character(s) maximum

0 / 5000

145) Please indicate whether the Commission services may **contact you** for further details on th required.

- Yes
- No

THANK YOU FOR YOUR COOPERATION



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