

EVALUATION ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative 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, including on possible impacts of the different options.

TITLE OF THE EVALUATION/FC	Evaluation of the Vertical Block Exemption Regulation
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG COMP – A1 – HT.5455
INDICATIVE PLANNING (PLANNED START DATE AND COMPLETION DATE)	<i>Start date:</i> Q4 2018 <i>End date:</i> Q2 2020
ADDITIONAL INFORMATION	http://ec.europa.eu/competition/antitrust/legislation/vertical.html

The Roadmap is provided for information purposes only. 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 document, including its timing, are subject to change.

A. Context, Purpose and Scope of the evaluation

Context

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 services 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 Vertical Block Exemption Regulation (“Guidelines on Vertical Restraints”).

Purpose and Scope

The purpose of this evaluation is to gather evidence on the functioning of the Vertical Block Exemption Regulation (and the relevant Guidelines) that will allow the Commission to determine whether it should let the Regulation lapse, prolong its duration or revise it in order to take proper account of new market developments since its adoption in 2010, notably the increased importance of online sales and the emergence of new market players such as online platforms. This evaluation will be based on the following evaluation criteria:

- **Effectiveness:** The Commission will evaluate the extent to which the current provisions of the Vertical Block Exemption Regulation have proven effective in identifying the vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Art. 101(3) of the Treaty. The Commission's analysis will focus on whether the hardcore and excluded restrictions defined in the Vertical Block Exemption Regulation effectively capture the agreements not likely to satisfy the conditions of Art. 101(3) of the Treaty.
- **Efficiency:** The Commission will evaluate whether the Vertical Block Exemption Regulation, including the guidance provided by the Commission in its Guidelines on Vertical Restraints, has contributed to reducing the costs for (i) undertakings and (ii) the competent competition authorities in ensuring compliance with the prohibition of Art. 101 of the Treaty.

- **Relevance:** The Commission will evaluate whether, in light of the new market developments, the scope of the Vertical Block Exemption Regulation still corresponds to its objective, which is to exempt from the prohibition of Art. 101(1) of the Treaty those vertical agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Art. 101(3) of the Treaty.
- **Coherence:** The Commission will evaluate whether the Vertical Block Exemption Regulation is in line with the developments of the Commission's overall enforcement 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 Vertical Block Exemption Regulation, including the guidance provided by the Commission in its Guidelines on Vertical Restraints, has contributed to ensuring a consistent application of Art. 101 of the Treaty to vertical agreements by the national competition authorities and the courts of the EU Member States.

B. Better Regulation

Consultation strategy

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

Based on the Commission's experience with enforcing Art. 101 of the Treaty and the information gathered through the E-commerce Sector Enquiry, the stakeholder groups interested in the evaluation of the Vertical Block Exemption Regulation are: (i) companies with business operations in the EU, notably suppliers of goods and services, distributors/retailers of goods and services and platforms/intermediaries active in e-commerce, (ii) law firms advising on related competition issues, (iii) industry associations, (iv) consumer organisations, as well as (v) academics with a focus on EU competition law and notably on vertical restraints.

In addition, the experience gathered by the competition authorities and the courts of the EU Member States in applying the Vertical Block Exemption Regulation will be of particular interest for this evaluation.

The following consultations are planned during the evaluation process:

- A **public consultation** of 12 weeks will be launched in Q1/2019 and will be published on 'Have your say': https://ec.europa.eu/info/law/better-regulation/have-your-say_en#gathering-evidence-public-consultations. 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.
- An open public **stakeholder workshop** on areas of particular interest for a possible review of the Vertical Block Exemption Regulation is planned for Q4/2019 in Brussels.
- 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.

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 (see https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5068981_en). Stakeholders who participated in the consultation process will be able to see if their views have been taken into consideration and, if not, why. The results of all consultation activities will be gathered in the Synopsis Report accompanying this initiative.

Data collection and methodology

The **evaluation of the effectiveness and efficiency** of the Vertical Block Exemption Regulation requires evidence to be collected on the functioning of the Vertical Block Exemption Regulation, notably on whether the hardcore and excluded restrictions effectively capture the agreements which are not likely to satisfy the conditions of Art. 101(3) of the Treaty. It also requires the collection of available evidence of cost savings associated with the Vertical Block Exemption Regulation, including the guidance provided by the Commission in its Guidelines on Vertical Restraints, as opposed to a baseline without it. For that purpose, the Commission may rely on different sources such as the public consultation, an external evaluation support study and an open public stakeholder workshop.

The **evaluation of the relevance** of the Vertical Block Exemption Regulation requires an analysis of new market developments since its adoption in 2010 and of their impact on the supply and distribution of goods and services in the EU. The Commission has already gathered significant information on new market trends during the E-commerce Sector Enquiry, the results of which are summarised in the final report of 10 May 2017 (see http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html). Updated and additional information will be collected through an external evaluation support study, as well as from stakeholders in the public

consultation and during an open public stakeholder workshop.

The **evaluation of the coherence** of the Vertical Block Exemption Regulation requires an assessment of the Commission's overall competition law enforcement policy and practice. For this purpose, the Commission will also seek additional information on the perception of stakeholders during the public consultation.

The **evaluation of the EU added value** of the Vertical Block Exemption Regulation requires an analysis of its application, including of the guidance provided by the Commission in its Guidelines on Vertical Restraints, by the competition authorities and the courts of the EU Member States. This analysis will be carried out in the context of an external study on the basis of information gathered through targeted questionnaires and during the discussions with the competition authorities of the EU Member States in the framework of the Working Group on Vertical Restraints of the European Competition Network.