

ROADMAP

Title of the initiative: **Revision of Commission Regulation No 2658/2000 for Specialisation agreement and Regulation No 2659/2000 for Research and Development agreements, as well as the accompanying Horizontal Guidelines**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG: DG Competition

Expected date of adoption of the initiative (month/year): December 2010

Date of modification: 25 March 2010

Version No: 2

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Commission Regulation 2658/2000, the Specialisation Block Exemption Regulation (the Specialisation BER), and Commission Regulation 2659/2000, the Research and Development Block Exemption Regulation (the R&D BER) entered into force on 1 January 2001 and expire by default on 31 December 2010. Both regulations are based on Council Regulation 2821/71 which delegates to the Commission the power to adopt block exemption regulations for certain categories of agreements i.a. specialisation agreements and R&D agreements.

On the basis of the Council Regulation mentioned above, the Commission has, in particular, previously adopted two regulations for specialisation agreements, Commission Regulation No 417/85 (as amended by Commission Regulation No 2236/97) and the Specialisation BER (presently under revision) and two regulations for R&D agreements, Commission Regulation 418/85 (as amended by Regulation No 2236/97) and the R&D BER (presently under revision).

The Specialisation BER and the R&D BER are accompanied by a comprehensive set of guidelines covering certain types of horizontal cooperation agreements (Horizontal Guidelines) which in the absence of market power are efficiency enhancing. The Horizontal Guidelines are intended to assist the legal and business community in assessing whether their agreements risk having restrictive effects on competition and thereby infringe Article 101 of the Treaty on the functioning of the European Union (TFEU).

What are the main problems identified?

Specialisation agreements and R&D agreements as well as the other type of agreements covered by the Horizontal Guidelines are, in certain cases, pro-competitive (either because they do not lead to a restrictive effect on competition, i.e. fall outside the scope of Article 101(1) TFEU, or because they create significant efficiencies which are passed on to the consumers, i.e. the conditions for exemption under Article 101(3) TEFU are fulfilled).

On the other hand cooperation on specialisation and on R&D and the other type of agreements covered by the Horizontal Guidelines might also restrict competition, especially if the cooperation takes place between competitors with some market power.

There is therefore a clear need for legal certainty and guidance in relation to specialisation and R&D agreements as well as the other type of agreements covered by the Horizontal Guidelines.

Who is affected?

A wide range of stakeholders would be affected: companies in different sectors wishing to cooperate in specialisation or R&D, consumers, National Competition Authorities of the Member States as well as national courts.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

N/A. The Commission, entrusted by Article 105 TFEU with the task of ensuring application of the principles laid down in Articles 101 and 102 TFEU, is responsible for defining and implementing the orientation of Community competition policy. It is therefore the Commission's task to provide guidance and clarity in this field.

B. Objectives of EU initiative

What are the main policy objectives?

The overall policy objective is to ensure the effective protection of competition and to provide legal security for undertakings as regards specialisation and R&D agreements as well as the other types of agreements covered by the Horizontal Guidelines.

In more precise terms the BERs and the Horizontal Guidelines intend to ensure effective competition by providing certainty to the companies as to what business actions they can undertake without adverse effects from the point of view of competition policy. A linked objective is to allow for increased legal certainty thereby reducing the compliance costs of the companies that will have to do a self-assessment of whether their agreements are in compliance with competition law.

In addition, the BERs and the accompanying Horizontal Guidelines will also aim to further simplify administrative supervision of these types of agreements.

There are also specific objectives for certain of the particular changes. This will be discussed further in the context of the impact assessment work.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No. There is already a Block Exemption Regime in place as regards Specialisation and R&D agreements. The current BERs will expire automatically and the intention is to replace these by two revised BERs accompanied by the revised Horizontal Guidelines.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

The policy options are, in general, the following:

- (a) No action: BERs expire end 2010.
- (b) Renewal of the BERs and the Horizontal Guidelines without amendments.
- (c) Modified renewal of the BERs and the Horizontal Guidelines drawing on recent experience and case-law.

The Impact Assessment will also focus on certain more specific issues (those that are expected to be subject to debate) over and beyond these very broad and general options.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The revision affects primarily competition policy. However, certain parts of the revision, inter alia the standards chapter of the Horizontal Guidelines and the R&D BER also touch upon issues related to intellectual property rights of direct relevance to for example the on-going revision of standardisation in DG ENTR. Standardisation and intellectual property rights are also important for the EU 2020 strategy and therefore of strategic interest for the Commission as a whole.

Explain how the options respect the proportionality principle

Yes. The Commission will only undertake options that are proportionate to the objective to be achieved, having completed the Impact Assessment.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

The main sources and channels of impact of the different options will be analysed during the course of this Impact Assessment and the consultation process. It is clear that any action that may be proposed may have economic impacts on the degree of competition in the market (between companies, between products), on conduct of business and on costs (and benefits) to business and consumers. Social and environmental impacts however appear to be limited.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

No.

E. Planning of further impact assessment work

When will the impact assessment work start?

The Commission has already consulted the business community and their representatives as well as other stakeholders including industry associations and consumer associations on the general functioning of the current regime for the assessment of horizontal cooperation agreements under EU competition law (in particular, the Specialisation and R&D BERs and the Horizontal Guidelines). This consultation was open from 4 December 2008 to 3 January 2009. The Commission received input from 22 stakeholders. In general, stakeholders are satisfied with the existing system. The legal certainty for the business community by being able to rely on BERs and Guidelines for these type of agreements is widely appreciated.

Moreover, on 1-2 February 2010 DG COMP met with the members of the European Competition Network (composed of the National Competition Authorities) on the basis of draft texts of the BERs and the Horizontal Guidelines. The European Competition Network supports that the system is functioning well and that there should only be incremental improvements in the existing texts.

A first inter service consultation took place between 28 February and 18 March 2010 and the First Advisory Committee is planned for April 2010. The second public consultation, on the basis of draft texts, will start in May 2010 by publication on the Europa Website. The second Advisory Committee should take place in September 2010. Finally, the meeting with the Impact Assessment Board could also be planned for September 2010.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

There is already a significant amount of information available obtained in the first public consultation on the review and further input will be received through the second public consultation on the basis of draft texts. In addition, the Commission has already consulted the National Competition Authorities within the European Competition Network (see above).

DG COMP does not intend to use any external contractors for the purpose of this Impact Assessment.

Considering that this initiative is a revision of existing texts which in general are perceived to be well functioning, the Impact Assessment will be proportionate to these incremental changes.

Which stakeholders & experts have been/will be consulted, how and at what stage?
See above.