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**COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION**

of the

Horizontal Block Exemption Regulations

{SWD(2021) 103 final}

1. Background and Objectives

The purpose of this Staff Working Document is to evaluate Commission Regulation (EU) No 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements and Commission Regulation (EU) No 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements (the “HBERs”). The HBERs will expire on 31 December 2022. The Commission also evaluates the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (the “Horizontal Guidelines”).

Article 101(1) of the Treaty on the Functioning of the European Union (“the Treaty”) prohibits agreements that restrict competition. The HBERs establish that R&D and specialisation agreements fulfilling certain conditions are exempted from the application of Article 101(1) of the Treaty because they are presumed to meet the conditions of the exemption pursuant to Article 101(3) of the Treaty. The HBERs therefore create a safe harbour for those agreements. For horizontal cooperation agreements not covered by the HBERs, companies have to carry out a self-assessment of their agreement in view of Article 101 of the Treaty. First, to check whether their agreement restricts competition in breach of Article 101(1) and secondly, to determine whether the pro-competitive effects of their agreement outweigh its restrictive effects on competition in order to benefit from an exemption under Article 101(3). The Horizontal Guidelines provide guidance on how to interpret and apply the HBERs and how to self-assess compliance with Article 101(1) and Article 101(3) of the Treaty, for their R&D, specialisation and other types of horizontal cooperation agreements that the HBERs do not exempt.

2. Methodology

The evaluation is based on data from a number of sources. The Commission gathered views from stakeholders via an open public consultation. National competition authorities (“NCAs”) provided feedback via a targeted consultation, based on their enforcement practice investigating horizontal cooperation agreements and on national court cases. An evaluation support study provided additional data, notably from small and medium sized enterprises. The Commission further benefited from input gathered through other initiatives, such as the review of the Vertical Block Exemption Regulation and the Vertical Guidelines, the Green Deal consultation, a JRC/AGRI report on retail alliances in the agricultural and food supply chain and the EU Survey on Industrial R&D Investment Trends.

3. Findings

Effectiveness: Overall, the evaluation indicates that the HBERs and Horizontal Guidelines meet their objectives. They make it easier for companies to cooperate in ways which are economically desirable and without adverse effects from the point of view of competition policy. The intervention promotes competition and offers legal certainty to companies in the

conception and implementation of their horizontal cooperation agreements. The direct applicability of the HBERs provides additional legal certainty compared to a hypothetical situation in which only the Horizontal Guidelines would exist. The Horizontal Guidelines offer legal certainty in the self-assessment by companies of their horizontal cooperation agreements, even beyond those types of agreements explicitly mentioned in the specific chapters. The HBERs and Horizontal Guidelines also meet their objective of simplifying administrative supervision by the Commission, the NCAs and national courts.

The evaluation however identifies several areas where effectiveness can be strengthened. In particular, there are indications that the HBERs and Horizontal Guidelines are not fully adapted to economic and societal developments of the last ten years, such as digitisation and the pursuit of sustainability goals. Some of the provisions in the HBERs are considered rigid and complex, while other provisions are considered unclear and difficult to interpret by companies. The level of legal certainty provided by the Horizontal Guidelines is found to be uneven for different types of horizontal cooperation agreements covered.

Efficiency: Overall, compliance and enforcement costs are considered proportionate to the benefits of having the HBERs and the Horizontal Guidelines.

Relevance: The objectives of the HBERs and Horizontal Guidelines are considered to remain relevant today. For companies involved in R&D and specialisation agreements, the combination of a block exemption regulation and guidelines is deemed appropriate. However, recent trends and developments, in particular the pursuit of sustainability goals and digitisation, caused that not all chapters of the Horizontal Guidelines remain equally relevant for stakeholders.

Coherence: The HBERs and Horizontal Guidelines are found to be overall coherent with other Commission rules and guidance on the application of Article 101 of the Treaty. Nevertheless, the evaluation indicates that there is room for improvement, in particular regarding the coherent treatment of horizontal cooperation and vertical agreements and the alignment between the current texts and recent case law of the Union courts.

EU added value: Based on the information and data gathered, the HBERs and Horizontal Guidelines provide EU added value.

4. Conclusions

Overall, the information and data gathered in the evaluation suggests that the HBERs, together with the Horizontal Guidelines, are useful instruments and remain relevant for stakeholders. The evaluation however identifies areas for possible improvement in effectiveness, relevance and coherence. The evaluation also identifies a number of areas where the texts of the HBERs and Horizontal Guidelines are considered insufficiently clear, overly strict or otherwise difficult to interpret.