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# Review of the Vertical Block Exemption Regulation

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(Speaking in a personal capacity. The views expressed are not necessarily those of the European Commission.)



# Outline

- State of Play of the VBER review
- Framework
- Stakeholder feedback (main areas)
- Next steps

# State of Play

➤ Review process:

- **Evaluation phase** (from 10/2018 until publication of Staff Working Document around mid-2020)
- **Impact Assessment phase** (from Q3/2020 until the expiry of the current rules in May 2022)

➤ Evaluation milestones:

- ✓ **Evaluation roadmap** (Q4/2018)
- ✓ **Public consultation** (1H/2019)
- ✓ **Stakeholder workshop** (Nov'2019)
- ✓ **NCA contributions** (summary published in Dec'2019)
- Ongoing **evaluation support study**, incl. consumer survey on purchasing behaviour (until early April 2020)

# Framework

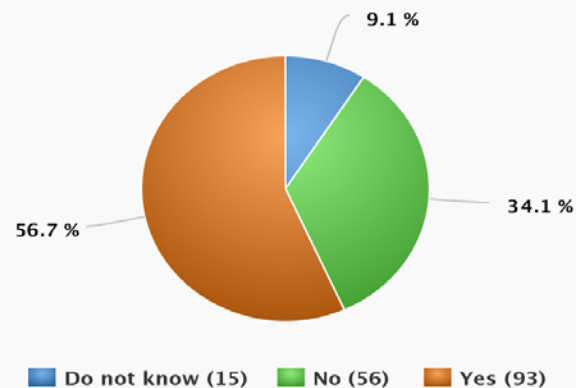
- Better Regulation principles
  - Procedural steps & transparency
  - Mandatory evaluation criteria
- Evidence-based decision making
  - Different information sources
  - Focus on in-depth analysis of areas flagged by stakeholders
- Empowerment in Council Reg. 19/65/EEC
  - Vertical agreements for which it can be assumed with sufficient certainty that Art. 101(3) requirements fulfilled
- Relevant case-law from the Union Courts
- Compatibility with Art. 101 TFEU (no supply chain regulation)

# Stakeholder feedback

*Effectiveness (Have the objectives been met?)*

*- LEGAL CERTAINTY -*

Do you consider that the VBER and the related guidance in the VGL provide a sufficient level of legal certainty for the purpose of assessing whether vertical agreements and/or specific clauses are exempted from the application of Article 101 of the Treaty and thus compliant with this provision (i.e. are the rules clear and comprehensible, and do they allow you to understand and predict the legal consequences)?

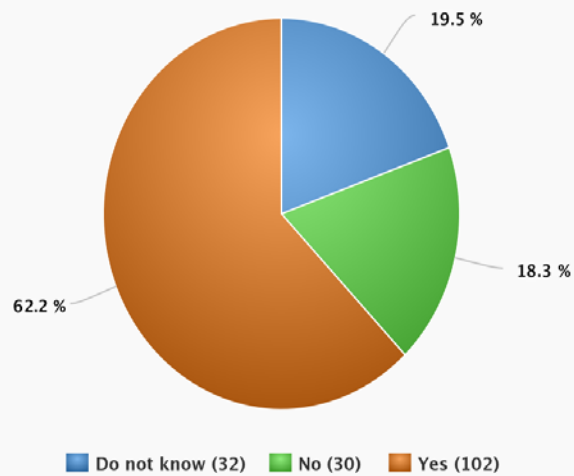


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# Stakeholder feedback (c'nd)

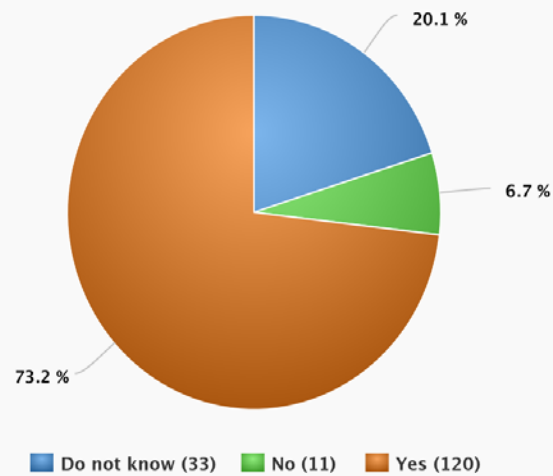
## *Relevance (EU action still needed?)*

Do you see the need for a revision of the VBER in light of major trends and/or changes during the past 5 years (e.g. the increased importance of online sales and the emergence of new market players)?



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Do you see the need for a revision of the VGL (including Section VI) in light of major trends and/or changes during the past 5 years (e.g. the increased importance of online sales and the emergence of new market players)?



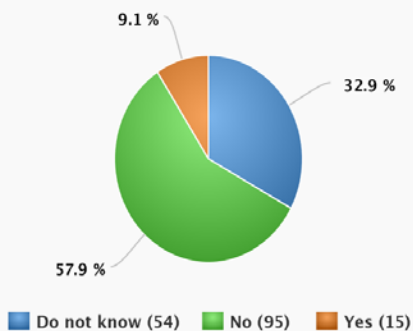
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# Stakeholder feedback (c'nd)

*Effectiveness (Have the objectives been met?)*

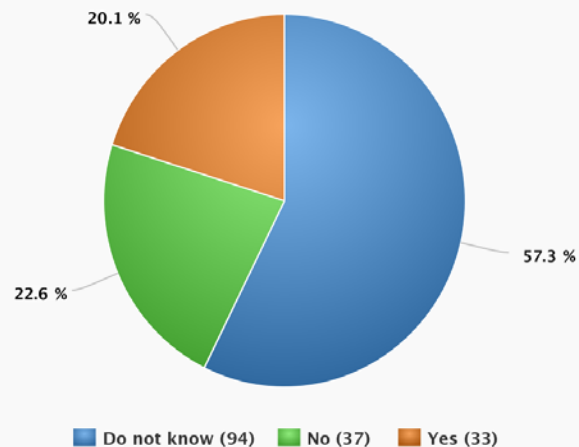
*- SCOPE: Art. 2 & 3 VBER -*

Leaving aside the appropriateness of the scope of the current list of hardcore restrictions (Article 4 VBER) and excluded restrictions (Article 5 VBER) (see the last three questions in this section), do you consider that the additional conditions defined in the VBER (i.e. Article 2 and 3 VBER) lead to the exemption of types of vertical agreements that do not generate efficiencies in line with Article 101(3) of the Treaty?



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Are there other types of vertical agreements for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty but which are not covered by the current scope of the exemption?



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# Stakeholder feedback (c'nd)

- Treatment of online platforms:
  - Suppliers or distributors pursuant to the VBER
  - Applicability of agency concept to distribution platforms
  
- Dual distribution:
  - Increasing direct distribution by manufacturers
  - Treatment of hybrid platforms
  - Information exchange within vertical supply chain
  - Scope (wholesalers/importers excluded)



# Stakeholder feedback (c'nd)

## ➤ Agency concept:

- Conceptual clarifications (e.g. insignificant risks, ownership)
- Treatment of atypical situations (e.g. "fulfilment contracts")

## ➤ Market share thresholds:

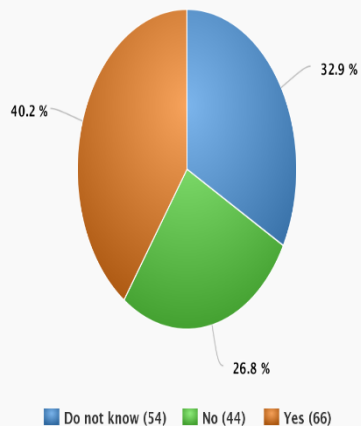
- Market definition (e.g. digital and multi-sided markets)
- Level (online platforms < 30% < dominance threshold)
- Oligopolistic markets
- Transition rules

# Stakeholder feedback (c'nd)

*Effectiveness (Have the objectives been met?)*

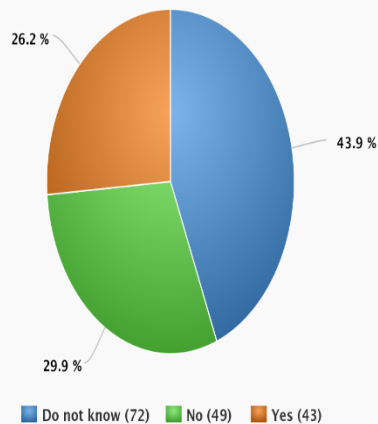
*- SCOPE: Art. 4 & 5 VBER -*

Are there any types of vertical restrictions that the VBER considers as hardcore (Article 4 VBER), but for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty?



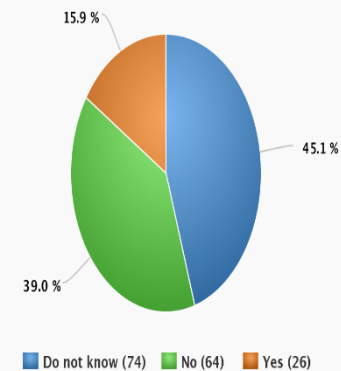
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Does the list of excluded vertical restrictions (Article 5 VBER) exclude types of vertical restrictions for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty?



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Are there other types of vertical restrictions for which it cannot be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty but which are not captured by the current list of hardcore restrictions (Article 4 VBER) or excluded restrictions (Article 5 VBER)?



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# Stakeholder feedback (c'nd)

- Conceptual issues:
  - Hardcore vs by object
  - Active vs passive sales (notably in online context)
- Resale price maintenance:
  - Grey areas of RPM
  - Debate on the harmful nature of RPM
  - Scope of possible efficiencies
- Online sales restrictions:
  - Restrictions on the use of online intermediaries
  - Online advertising restrictions
  - Dual pricing (hybrid retailers)
  - Retail MFNs
- Non-compete obligations exceeding 5-year limit

# Stakeholder feedback (c'nd)

- Withdrawal/disapplication mechanism:
  - Lack of guidance on procedure & requirements
  - Difficult to apply in practice (e.g. geographic market)
  
- General issues:
  - Complexity of the current rules (notably for SMEs)
  - Lack of consistency in the application of the rules across the EU
  - General approach (intra/inter-brand; price vs quality/innovation)
  - Limitations of selective distribution systems
  - Interplay between different distribution systems
  - Lack of guidance on franchising

# Next steps

➤ Evaluation phase:

- Finalisation of evaluation support study (early April 2020)
- Adoption of Staff Working Document (around mid-2020)

➤ Impact assessment phase:

- Subsequent to evaluation (approx. Q3/2020)
- Inception impact assessment
- Public consultation



**THANK YOU !**

**ANY QUESTIONS ?**