

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0217/2000

29 August 2000

REPORT

on the Commission communication on competition rules relating to horizontal
co-operation agreements
(C5-0304/2000 – 2000/2154(COS))

Committee on Economic and Monetary Affairs

Rapporteur: Jonathan Evans

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A RESOLUTION	5
EXPLANATORY STATEMENT	7

PROCEDURAL PAGE

The Commission published in OJ C 118 of 27 April 2000 its communication on competition rules relating to horizontal co-operation agreements (2000/2154(COS)).

At the sitting of 3 July 2000 the President of Parliament announced that she had referred the communication to the Committee on Economic and Monetary Affairs as the committee responsible (C5-0304/2000).

The Committee on Economic and Monetary Affairs had appointed Jonathan Evans rapporteur at its meeting of 24 May 2000.

The committee considered the Commission document and the draft report at its meetings of 6 June 2000, 10 July 2000 and 29 August 2000.

At the last meeting it adopted the motion for a resolution by 35 votes, with 3 abstentions.

The following were present for the vote: William Abitbol, acting chairman and vice chairman; José Manuel García-Margallo y Marfil and Ioannis Theonas, vice-chairmen; Jonathan Evans, rapporteur; Richard A. Balfe, Luis Berenguer Fuster, Pervenche Berès, Hans Blokland, Hans Udo Bullmann, Martin Callanan (for Alejandro Agag Longo), Richard Graham Corbett (for Simon Francis Murphy), Benedetto Della Vedova, Harald Ettl (for Christa Randzio-Plath), Göran Färm (for Peter William Skinner), Ingo Friedrich (for Othmar Karas), Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Christopher Huhne, Pierre Jonckheer, Giorgos Katiforis, Piia-Noora Kauppi, Gorka Knörr Borràs, Werner Langen (for Christoph Werner Konrad), Alain Lipietz, Astrid Lulling, Karla M.H. Peijs (for Alain Madelin), Fernando Pérez Royo, John Purvis (for Marianne L.P. Thyssen), Alexander Radwan, Bernhard Rapkay, Amalia Sartori, Olle Schmidt, Charles Tannock, Helena Torres Marques, Bruno Trentin, Jaime Valdivielso de Cué (for José Javier Pomés Ruiz), Theresa Villiers and Karl von Wogau.

The report was tabled on 29 August 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission communication on competition rules relating to horizontal co-operation agreements (C5-0304/2000 – 2000/2154(COS))

The European Parliament,

- having regard to the Commission communication pursuant to Article 5 of Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 81 (3) of the Treaty to categories of agreements, decisions and concerted practices modified by Regulation (EEC) No 2743/72 (C5-0304/2000¹),
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the report of the Committee on Economic and Monetary Affairs (A5-0217/2000),
- A. considering that in the field of anti-trust and mergers and vertical restraints it is the practice that draft texts are sent to the European Parliament before they are published, even in the absence of any official legal obligation;
 - B. convinced of the importance of extending such practice to the field of horizontal co-operation agreement;
 - C. aware of the necessity to modify the current legislative framework and practices in order to take into consideration the changing economy as far as research and development and specialisation agreements and other horizontal agreements are concerned;
1. Welcomes the proposal of the Commission to assess horizontal co-operation agreements on the basis of an economic approach, within the context of the Commission's wide-ranging reform of Competition policy;
 2. Expresses its concern at the opinion chosen by the Commission for dealing with horizontal restraints, which differs from that used for vertical restraints. In this case, instead of a single exemption regulation by category, there are two specific draft regulations which do not cover all the exempted restraints, together with a set of guidelines covering many agreements not referred to in the regulations, which implies different legal treatment for various types of agreement;
 3. Considers that some of the agreements included in the guidelines, such as those on purchasing and marketing agreements, should be included in an exemption regulation by category;
 4. Calls for the maximum duration for exemption where the results are jointly exploited to be increased from 5 years as proposed in the regulation to ten years, in order to provide

¹ OJ C 118, 27.04.2000, p. 3..

- legal certainty and security to the parties in respect of significant R & D projects;
5. Calls on the Commission to consider the new drafts as an intermediate step in the development of a comprehensive block exemption regulation for horizontal restraints;
 6. Expresses its concern at the Commission's proposed exclusive use of market share as the measure of market power, and calls on the Commission to examine additional means of more accurately assessing such market power;
 7. Considers that Article 2.3 unduly restricts the ability of the parties to reach agreement on the exploitation of the results of joint research and development projects, and urges the Commission to modify this proposal;
 8. Welcomes the Commission's proposals to move to adopt an economic approach in relation the assessment of horizontal agreements, but urges the Commission for improved clarification of the provisions governing whether horizontal or vertical guidelines should be applied;
 9. Calls on the Commission to make it perfectly clear, by including them in the guidelines, that reciprocal or unilateral agreements on supply ('trade supplies') are not affected by the ban laid down in Article 81(1);
 10. Recognises the need to prevent the re-nationalisation of EU competition law and urges the Commission to discourage national competition authorities from undertaking a second consideration of such exempted agreements under their own national law;
 11. Expresses its concern that guidelines 122 and 141 set an arbitrary market power threshold of 15%, and urges the Commission to increase this threshold to a minimum figure of 20%;
 12. Calls on the Commission to increase the length of the transitional period for introduction of these regulations to two years;
 13. Instructs its President to forward this resolution to the Council and Commission and the parliaments of the Member States.

EXPLANATORY STATEMENT

Background

On April 27 the Commission published new draft rules and guidelines on the horizontal co-operation agreements between competitors. The aim of these proposals is to adapt competition rules in this area to the changing economy of today. These revised competition rules should enter into force in the year 2001.

Following a procedure which had already been put into force as far as anti-trust and mergers and vertical restraints are concerned, the Commission took the initiative to inform the Parliament, via the Chair of the Committee on Economic and Monetary Affairs, before the official publication of the texts.

The content of the Commission's new proposals

Horizontal co-operation agreements are agreements between companies operating at the same level of the market. These agreements fall under the provisions of Article 81 of the EC Treaty. Till now the existing legal framework was based on the provisions of the treaty and two "block exemptions" Regulations (Commission Regulations (EEC) No. 417/85 on Research and Development agreements and (EEC) No 418/85 on Specialisation agreements accompanied by two interpretative Notices). These "block exemption" regulations will expire on 31 December 2000. For this reason the Commission is currently suggesting the adoption of three new texts:

- a draft "block exemption" Regulation on the application of Article 81(3) of the EC Treaty to categories of specialisation agreements;
- a draft "block exemption" regulation on the application of Article 81(3) of the Treaty to categories of Research and Development agreements;
- draft guidelines on the applicability of Article 81 to horizontal co-operation agreements.

The review of the current legislation started in 1997 with a wide-ranging consultation of European companies. The result of the consultation showed a need for clearer rules and more precise guidance. The parties concerned will benefit of a greater contractual freedom. In addition the Commission aims to provide companies with a more friendly and clear legislative framework.

The basic principle is a general exemption for companies holding no significant market power. The market share threshold for exemption is set at 20% for specialisation agreements and at 25% for Research and Development agreements.

The so-called « hardcore » restrictions, such as price-fixing, allocation of markets or customers, will remain prohibited.

The new guidelines are applicable to the Research and Development and production agreements which are not covered by the block exemptions. They will help companies to assess with greater certainty whether or not an agreement is restrictive for competition.

The position of the rapporteur

The Commission's proposals constitute a positive step forward in the light of the changing needs of the markets and of the consequent reform of the European Union competition policy.

From an institutional point of view your rapporteur welcomes the decision of the Commission to inform the Parliament before the official adoption of the regulations and of the guidelines ; this step shows the existing great degree of confidence between the Parliament and the Commission.

Your rapporteur broadly supports the approach chosen by the Commission ; nevertheless he believes that some changes are still needed in order to improve the efficiency of this new legislative framework :

- i) as far as Research and Development agreements are concerned, the maximum length of the exemption should go up to 10 years in order to provide better legal certainty and security to the parties. Furthermore it seems not entirely appropriate to use market share thresholds as the measure of market power ; in this respect alternative and more accurate means should be taken into consideration ; finally the ability of the parties to reach an agreement on the exploitation of the results of the joint research should not be limited as it could be the case according to the provisions of article 2.3 of the draft regulation ;
- ii) in the case of specialisation agreements, again the question of the accuracy of market share threshold should be investigated ;
- iii) as to the guidelines one major concern is the need for improved clarification of the provisions governing whether horizontal and vertical guidelines should be applied. On the other hand guidelines 122 and 141 set an arbitrary market power threshold of 15% which should increase at least to 20%.

More generally this new legislative framework should enter into force after a transitional period of two years.

Conclusions

The European Parliament is invited to approve the new regulations and the draft guidelines : it expects the Commission to pay duly consideration to its remarks which are intended to better adapt the competition policy of the Commission to the changing economic reality in this fields.