

## **Factual summary of the contributions received in the context of the open public consultation on the evaluation of the Vertical Block Exemption Regulation (EU) No 330/2010**

The European Commission ('Commission') ran an open public consultation on the evaluation of the Vertical Block Exemption Regulation (EU) No 330/2010 ('VBER') from 4 February to 27 May 2019.

The public consultation targeted both citizens and stakeholders in order to gather views on the functioning of the current VBER and the accompanying Guidelines on Vertical Restraints ('VGL'). The questionnaire was published in English, French and German. Participants could reply in any of the 24 official languages of the EU.

The public consultation was also promoted through Twitter and the DG Competition website.

The Commission received 164 contributions to the public consultation submitted through the online questionnaire. It also received 13 position papers submitted in the context of the public consultation, which largely echoed the issues raised in the contributions to the public consultation.

The statistics computed in this summary are based only on contributions to the public consultation submitted through the online questionnaire. The input has been analysed using a data analysis tool,<sup>1</sup> complemented by manual analysis.

Upon request of some respondents, the Commission amended their respective contributions according to the instructions received. Due to a technical failure of the uploading option provided in the online questionnaire, the Commission also had to upload manually the attachments that participants had declared to be missing from their reply. This was the main reason for the delay with which the contributions to the public consultation were published on the Better Regulation Portal.

The contributions received cannot be regarded as the official position of the Commission and its services and thus do not bind the Commission. The summary of the contributions is preliminary and does not prejudge the findings of the Staff Working Document to be published at the end of the evaluation phase.

### **1. Profile of respondents to the online questionnaire**

Among the 164 respondents, there are 93 business associations, 42 companies/business organisations (including 8 companies engaged in legal or accounting activities), 3 non-governmental organisations (including one consumer association), 4 EU citizens, 3 academic and research

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<sup>1</sup> The tool used is Doris Public Consultation Dashboard, an internal Commission tool for analysing and visualising replies to public consultations. It relies on open-source libraries using machine-learning techniques and allows for the automatic creation of charts for closed questions, the extraction of keywords and named entities from free-text answers as well as the filtering of replies, sentiment analysis and clustering.

institutions, 1 trade union and 18 others (more than half of which are individual lawyers or law firms).<sup>2</sup> The majority of the contributions were submitted in English, German and French.

The majority of the contributions comes from organisations with an international (93) or national scope (59). The distribution of replies across organisation size is relatively homogenous with 55 large (250 or more employees), 40 micro (1 to 9 employees), 38 small (10 to 49 employees) and 27 medium organisations (50 to 249 employees). 4 respondents did not specify their size.

As far as business associations are concerned, 44 out of 93 reported having an international scope. 43 business associations indicated a national scope, 4 a regional scope and 2 a local scope. Table 1 shows the EU countries in which the business associations with national, regional or local scope operate.

<b>Country</b>	<b>Count</b>
Austria	5
Belgium	6
Finland	1
France	10
Germany	10
Italy	5
Netherlands	5
Poland	2
Spain	3
Switzerland	1
United Kingdom	1
<b>Total</b>	<b>49</b>

*Table 1 - Distribution of non-international business associations across EU countries*

Furthermore, 64 business associations stated that their members are both suppliers and buyers of products and/or services, while 7 business associations have members who are only buyers and another 7 business associations have members who are only suppliers.<sup>3</sup>

As far as companies/business organisations are concerned, the majority of the respondents are large in size and have an international scope. In fact, out of 42 companies/business organisations, 33 are large (250 or more employees), 6 medium (50 to 249 employees), 2 small (10 to 49 employees) and 1 micro (1 to 9 employees). Moreover, 35 have an international scope and 6 a national scope.

The companies/business organisations who responded to the public consultation cover several sectors of the European economy. Table 2 provides an overview of the distribution of the companies/business organisations across the 2-digit NACE Rev.2 code.<sup>4</sup>

<sup>2</sup> It should be noted that some respondents mistakenly classified themselves incorrectly. The Commission corrected these mistakes for the purposes of this summary and established the statistics on the basis of the corrected dataset.

<sup>3</sup> It should be noted that 15 business associations did either not declare anything in reply to this question or responded that the question was not applicable to them.

<sup>4</sup> See <https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF/dd5443f5-b886-40e4-920d-9df03590ff91?version=1.0>. For the purposes of this statistical overview, the Commission made some manual adjustments to the NACE code identified by respondents (e.g., in cases where the respondents'

	NACE	Count
	10 Manufacture of food products	1
	11 Manufacture of beverages	4
	14 Manufacture of wearing apparel	1
	15 Manufacture of leather and related products	2
	20 Manufacture of chemicals and chemical products	6
	22 Manufacture of rubber and plastic products	1
	26 Manufacture of computer, electronic and optical products	1
	32 Other manufacturing	2
	<b>SubTotal Manufacturers<sup>5</sup></b>	<b>18</b>
	46 Wholesale trade, except of motor vehicles and motorcycles	3
	47 Retail trade, except of motor vehicles and motorcycles	8
	<b>SubTotal Retailers</b>	<b>11</b>
	51 Air transport	1
	61 Telecommunications	1
	69 Legal and accounting activities	8
	70 Activities of head offices; management consultancy activities	1
	73 Advertising and market research	1
	77 Rental and leasing activities	1
	<b>SubTotal Others</b>	<b>13</b>
	<b>TOTAL</b>	<b>42</b>

*Table 2 - Distribution of companies/business organisations across the 2-digit NACE Rev.2 code.*

Among the companies/business organisations who responded to the public consultation, there are companies with significant direct off-line sales as well as companies with significant direct on-line sales, including some that rely on third-party online marketplaces/platforms.

## **2. Contributions to the online questionnaire**

The public consultation aimed at collecting views and evidence from the public and stakeholders on the following five evaluation criteria: effectiveness, efficiency, relevance, coherence and EU added value. The below summary of the contributions to the online questionnaire is therefore structured around these five evaluation criteria.

### ***Effectiveness (Have the objectives been met?)***

In order to evaluate whether the VBER, together with the VGL, have met their objectives, stakeholders were asked to answer three sets of questions.

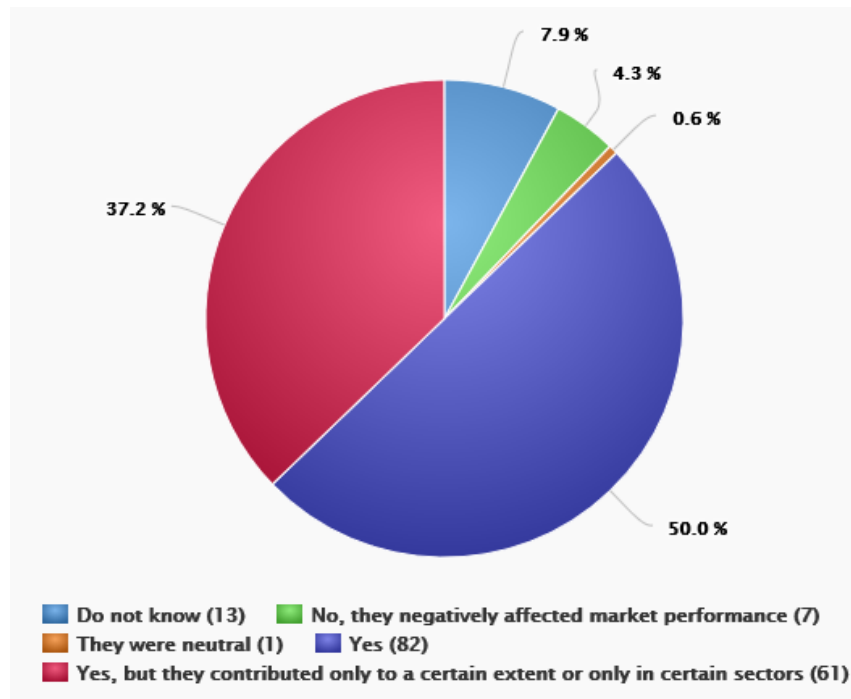
The first question inquired whether stakeholders perceive the VBER and the VGL to have contributed to the **promotion of good market performance in the EU**.

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business description did not match the NACE code identified in the reply, respondents did not reply or did not reply properly).

<sup>5</sup> It should be noted that some of the manufacturers included in this figure are also involved in the distribution of their own products.

*Do you perceive that the VBER and the VGL have contributed to promote good market performance in the EU?*

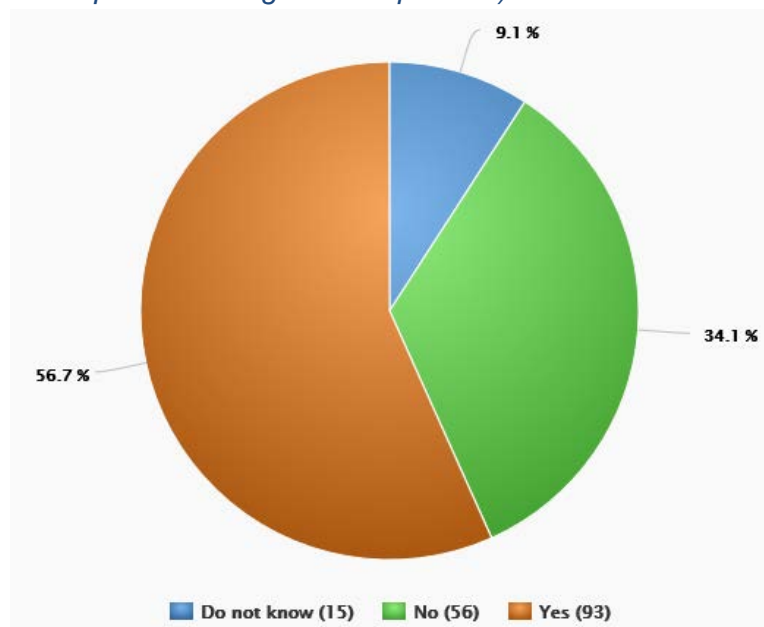


143 respondents (approximately 87%, with no major difference between stakeholder groups) respond positively, even if some of them perceive the contribution to be only partial. Many of these respondents reasoned their view by pointing out that the VBER and VGL contributed to an increased level of legal certainty. The respondents that consider the positive effect to be limited mention as reasons for this, for example, the complexity of the rules and the difficulty for SMEs to apply the rules. As regards particular sectors in which the effects were perceived to be less positive, stakeholders mentioned, for example, the e-commerce sector, travel agencies, franchising and the motor vehicle sector. This was due to the increased importance of online sales and online intermediaries, sector specificities and, as regards the motor vehicle sector, the fact that the VBER has only applied to the sector since 2013.

Out of the 21 respondents (approximately 13%) that do not reply positively, 7 (primarily business associations) state that the VBER and the VGL negatively affected market performance, whereas 13 respondents (across different stakeholder groups) do not know and 1 (a law firm) considers the effect of the VBER and the VGL to be neutral. Some of these respondents mention that certain elements of the existing rules are too restrictive, thus preventing businesses from optimising their distribution policies, or that the rules have had an adverse effect on the development of online markets in Europe.

The second set of questions aimed at assessing the level of legal certainty provided by the current legal framework.

*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)?*



To the question whether stakeholders consider that the VBER and the VGL provide a **sufficient level of legal certainty**, most of the respondents (both replying positively and negatively) explain that the VBER and the VGL are useful as guidance, but need to be revised and/or clarified in relation to certain aspects in order to increase legal certainty, in particular in view of new market developments<sup>6</sup> during the last years. Some respondents (primarily companies and business associations representing the supply side of the vertical chain, but also some legal experts) also mention that the non-binding nature of the VGL has resulted in an inconsistent application of the rules by national competition authorities and national courts, which has overall reduced the level of legal certainty provided by the VBER. Respondents mention, as concrete examples, an inconsistent application of the rules regarding restrictions on online selling (e.g., the use of online platforms) as well as of the rules regarding retail price maintenance.

Stakeholders were also asked to estimate the **level of legal certainty provided by the VBER and the VGL for specific areas of the rules by providing a qualitative estimate for each area**, ranging between 1 and 3 (where 1 corresponded to a very low, 2 to a slightly low and 3 to an appropriate level of legal certainty). The number of responses for each specific area varied considerably.

A large number of respondents do not reply or state that the question is not applicable to them or that they do not know. Considering only the replies providing a figure between 1 and 3, there is also a significant variation between the replies for each area of the VBER and/or the VGL. However, for almost all areas tested, only a minority of respondents indicate a very low level of legal certainty

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<sup>6</sup> The respondents provided more detailed information about these market developments in reply to the question asking them to list candidate areas for a possible revision, together with the major trends motivating the need for such a revision (see below).

(marked 1), with less than 20 respondents per area choosing this option. Moreover, there were no areas for which this was the most chosen option.

For the majority of the areas tested, the number of respondents (across all stakeholder groups) that consider that there is an appropriate level of legal certainty (marked 3) is considerably higher than the number of respondents that estimate a slightly or very low level of legal certainty (marked 1 or 2). This includes areas such as the definition of vertical agreements, agreements of minor importance or subcontracting agreements; the market share threshold for both supplier and buyer; the hardcore restrictions regarding cross-supplies and the sourcing of spare parts; most of the excluded restrictions; as well as the guidance in the VGL regarding exclusive distribution, exclusive customer allocation, exclusive supply, upfront access payments, category management agreements and tying.

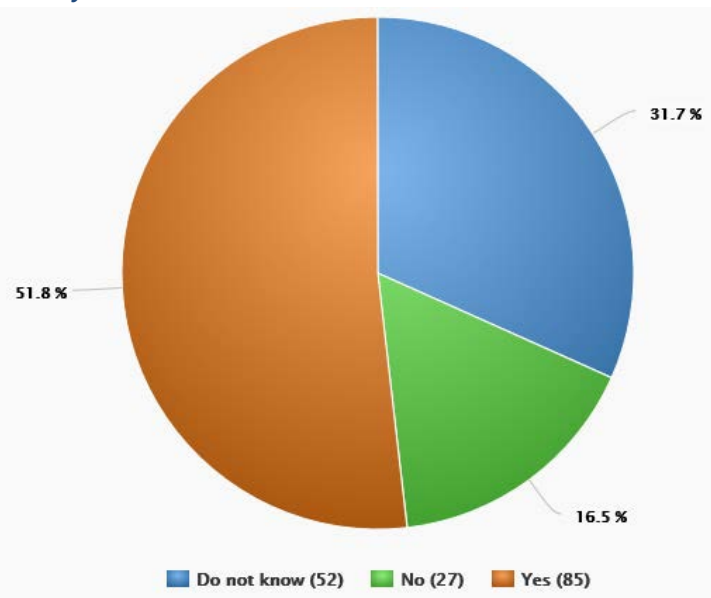
For other areas, a majority of respondents (across all stakeholder groups) consider that there is a slightly low or very low level of legal certainty (marked 1 or 2). These areas include the conditions for non-reciprocal vertical agreements between competitors to benefit from the VBER; the hardcore restrictions regarding resale price maintenance, territorial/customer restrictions, online sales restrictions and restrictions of active/passive sales in selective distribution; as well as the guidance in the VGL regarding selective distribution and resale price restrictions.

Finally, for a small number of areas, the replies indicating a slightly low or very low level of legal certainty (marked 1 or 2) are comparable in terms of number to the replies indicating an appropriate level of legal certainty (marked 3). These areas include the conditions for the withdrawal of the VBER, as well as the guidance in the VGL on agency agreements, individual cases of hardcore restrictions falling outside the scope of Article 101(1) TFEU or fulfilling the conditions of Article 101(3) TFEU, single branding and franchising.

Stakeholders were also asked to explain the reasons for low ratings and in particular to specify whether the lack of legal certainty stems from (i) the definition of the particular area in the VBER or the related description in the VGL, (ii) their application in practice or (iii) the overall structure of the VBER and/or the VGL. Respondents mainly explain in more detail which provisions in particular they consider unclear or in need of revision. In addition, respondents point to several instances of unclear wording and the complexity of parts of the VBER and the VGL. Some respondents also argue for the clarification of certain legal concepts and principles, as well as for more detailed examples and clearer, updated guidance, notably to reflect new market developments and relevant case law of the last years. Some respondents also point to the difficulty in applying the rules in practice, notably the market share thresholds.

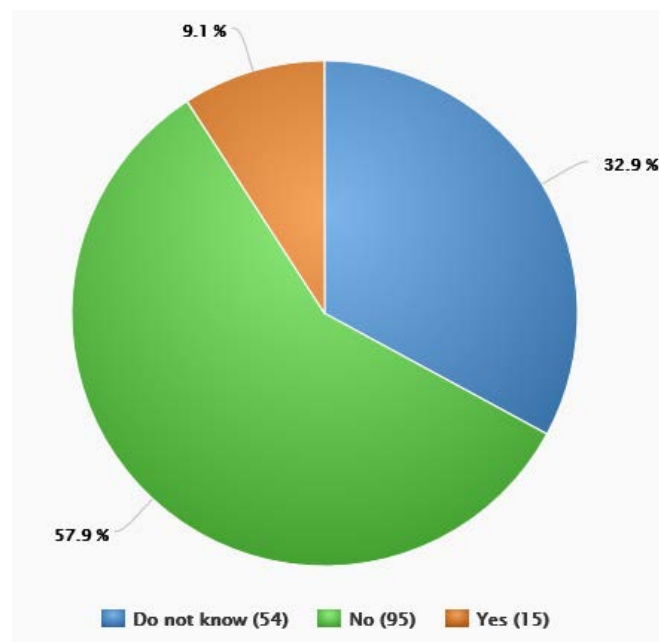
Regarding the question whether stakeholders consider that there are **other areas for which the VBER and/or the VGL provide insufficient legal certainty**, particular areas specified by respondents (other than those already mentioned) include new ways of distribution over the Internet, the treatment of “most favoured nation” or “price parity” clauses, restrictions on the purchasing of keywords for the purposes of online advertising and vertical restrictions imposed by intermediaries.

*Are there other areas for which you consider that the VBER and/or the VGL provide insufficient legal certainty?*



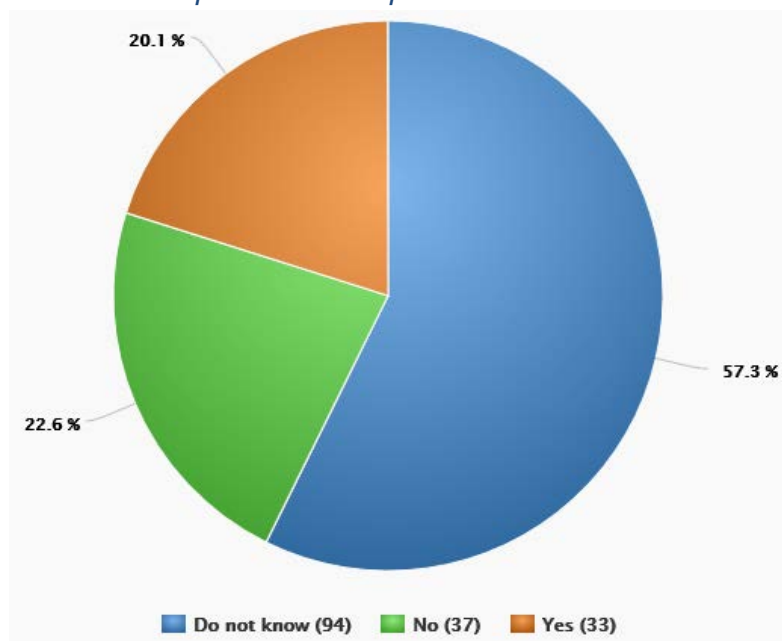
The second set of questions aimed at verifying whether the conditions currently defined in the VBER and the VGL (e.g., market share thresholds, hardcore restrictions and excluded restrictions) meet the objective of capturing the agreements for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) TFEU, or whether these conditions lead to false positives (e.g., exempting an agreement that should not be exempted) and false negatives (e.g. not exempting an agreement that should be exempted).

*Leaving aside the appropriateness of the scope of the current list of hardcore restrictions (Article 4 VBER) and excluded restrictions (Article 5 VBER), 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?*



Regarding the **conditions set out in Articles 2 and 3 of the VBER**, which vertical agreements have to meet to benefit from the block exemption, among the 15 respondents (primarily business associations and legal experts) that consider these conditions to lead to the exemption of agreements that should not benefit from the block exemption, 10 respondents link the false positives to the market share threshold of the supplier and 5 to the market share threshold of the buyer. For 7 out of these 15 respondents, also the condition regarding non-reciprocal vertical agreements between competitors leads to undue exemptions. 1 respondent also links false positives to the condition regarding vertical agreements entered into between an association of undertakings and its members.

*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?*

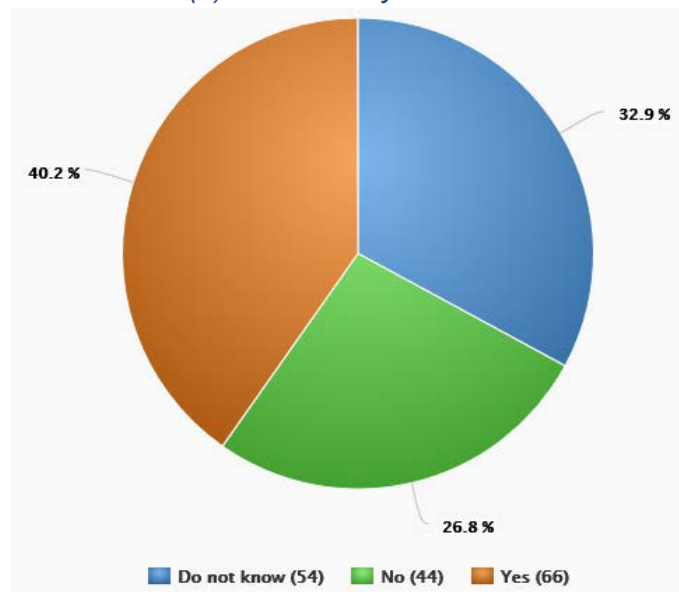


Concerning the **current scope of the exemption**, the 33 respondents<sup>7</sup> that indicate that some agreements that are currently not covered by the exemption should benefit from it, mention, for example, agreements entered into by companies with a market share between 30% and 40% and agreements containing clauses imposing resale price maintenance due to the efficiencies they can generate according to some stakeholders.

<sup>7</sup> Primarily business associations and legal experts, but also some companies and other types of stakeholders.

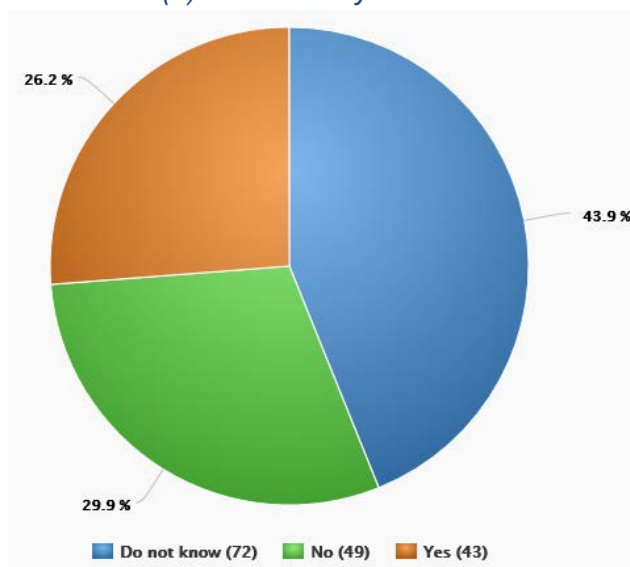


*Are there any types of vertical restrictions that the VBER considers as hardcore (Article 4 VBER), but for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty?*



As regards the **list of hardcore restrictions in Article 4 of the VBER**, out of the 66 respondents<sup>8</sup> that consider that it leads to false negatives because it contains one or more type(s) of vertical restrictions for which it can be assumed with sufficient certainty that they generate efficiencies, 43 refer to online sales restrictions, 41 to resale price maintenance, 36 to territorial or customer restrictions, 31 to restrictions of active or passive sales, 20 to restrictions of cross-supplies and 10 to agreements preventing or restricting the sourcing of spare parts.

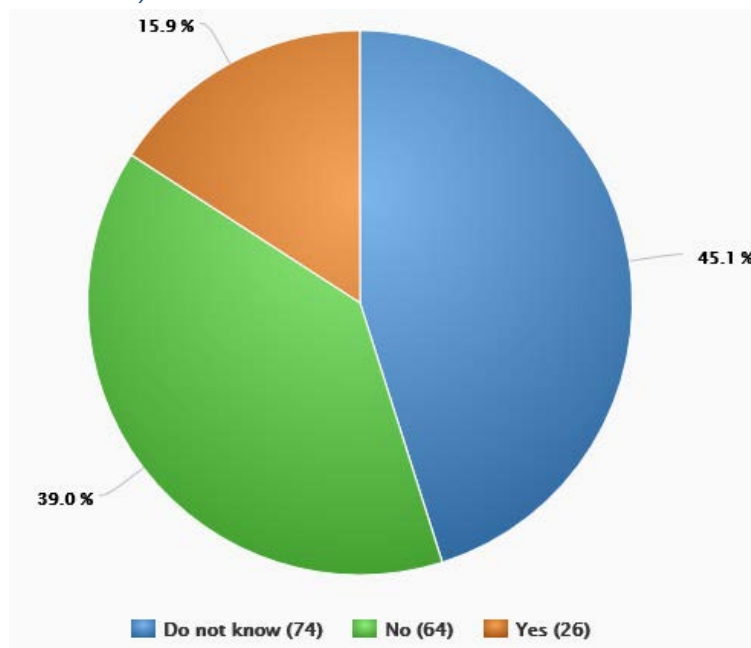
*Does the list of excluded vertical restrictions (Article 5 VBER) exclude types of vertical restrictions for which it can be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) of the Treaty?*



<sup>8</sup> Legal experts replied mostly positively to this question, whereas there was no discernible trend in the responses of other stakeholder groups.

As regards the **list of excluded vertical restrictions in Article 5 of the VBER**, 43 respondents (with no major difference between stakeholder groups) consider that the current list can lead to false negatives because it excludes certain types of restrictions that can generate efficiencies such as non-compete obligations with indefinite duration or exceeding 5 years (for 36 of the 43 respondents), post term non-compete obligations (for 25 of the 43 respondents) and restrictions to sell brands of particular competing suppliers in a selective distribution system (for 13 of the 43 respondents).

*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)?*



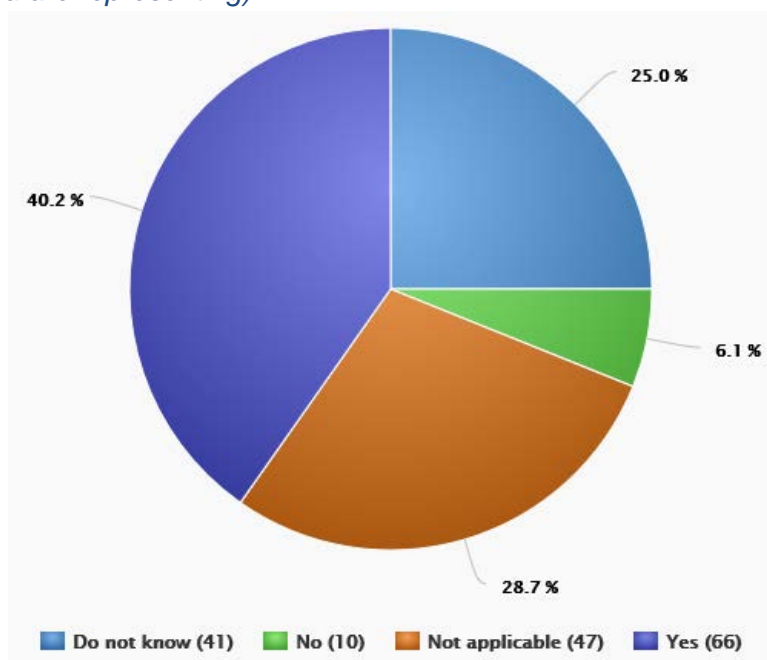
According to some of the 26 respondents (primarily business associations) that consider that there are **other types of vertical restrictions** for which it cannot be assumed with sufficient certainty that they generate efficiencies in line with Article 101(3) TFEU, online market place bans, “most favoured nation” clauses and retail channelling (as an indirect form of resale price maintenance) should, for example, be considered as hardcore restrictions.

***Efficiency (Were the costs involved proportionate to the benefits?)***

In order to evaluate whether the VBER and the VGL have generated costs proportionate to the benefits they bring, stakeholders were asked a number of questions.

As regards **the costs generated by the assessment of the applicability of the VBER and the VGL to vertical agreements**, 66 respondents (primarily companies and some business associations) indicate that the assessment of the application of the VBER and VGL generates costs.

*Does the assessment of whether the VBER, together with the VGL, is applicable to certain vertical agreements generate costs for you (or, in the case of a business association, for the members you are representing)?*



Some of the 41 respondents (35 being business associations) that do not know if the assessment of the application of the VBER and VGL generates costs indicate that they do not have information on the costs incurred by their members.

Stakeholders were also asked to provide the Commission with a **qualitative and a quantitative estimate of the costs linked to the assessment of the applicability of the VBER and the VGL**. Concerning the qualitative estimate, some respondents describe the nature of the costs they incur. Most replies refer to the fees for external consultants (lawyers and economists), as well as to costs for internal legal advice and the time spent by their commercial teams to negotiate and review contractual documents.

The majority of respondents indicate that they are not able to provide a quantitative estimate of the costs. In this respect, some companies explain that it is not possible for them to identify these costs among all the compliance and legal costs they incur. Some business associations indicate that they do not have an insight into the costs incurred by their members in this respect. However, a few respondents provide quantitative cost estimates. Two large companies indicate that the assessment costs can amount to respectively 0,5% and 20% of their turnover. In terms of value, one small company states that the assessment costs range between 50 and 100 euros per company per year, while one large company replies that the costs amount to several thousand euros.

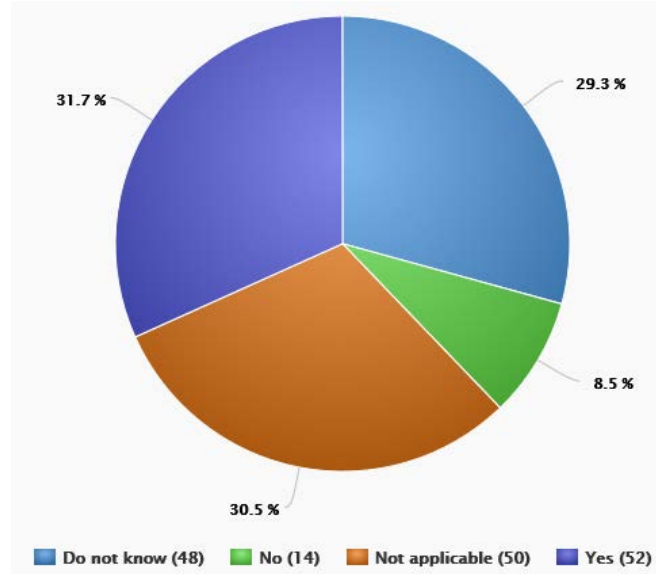
To the question dealing with the **proportionality of the costs and benefits generated by the VBER and the VGL**, 52 respondents<sup>9</sup> indicate that the costs generated by the assessment of the applicability of the VBER are proportionate to the benefits it brings. They consider that the benefits

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<sup>9</sup> Primarily business associations and companies, since legal experts and other stakeholders mostly indicated that they did not know or that the question was not applicable to them.

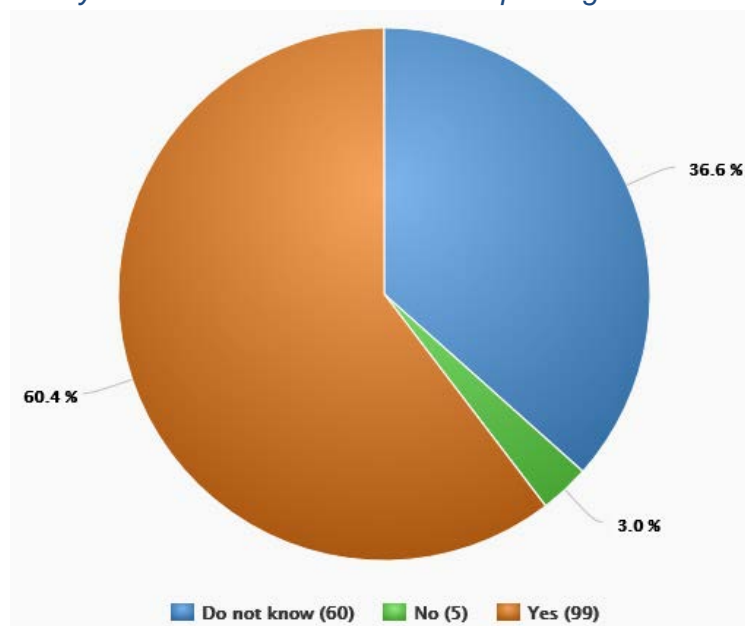
of the safe harbour resulting from the application of the VBER outweigh the costs incurred due to the assessment it requires. However, they all acknowledge that it is not possible to give a quantitative estimate of the related costs.

*Does the assessment of whether the VBER, together with the VGL, is applicable to certain vertical agreements generate costs proportionate to the benefits they bring for you (or, in the case of a business association, for the members you are representing)?*



Some of the 14 respondents (with no major difference between stakeholder groups) who indicate that the costs incurred are not outweighed by the benefits consider that the costs to obtain advice on the applicability of the VBER (mainly legal fees) are high and that they are not always compensated in terms of legal certainty.

*Would the costs of ensuring compliance of your vertical agreements (or, in the case of a business association, the vertical agreements of the members you are representing) with Article 101 of the Treaty increase if the VBER were not prolonged?*



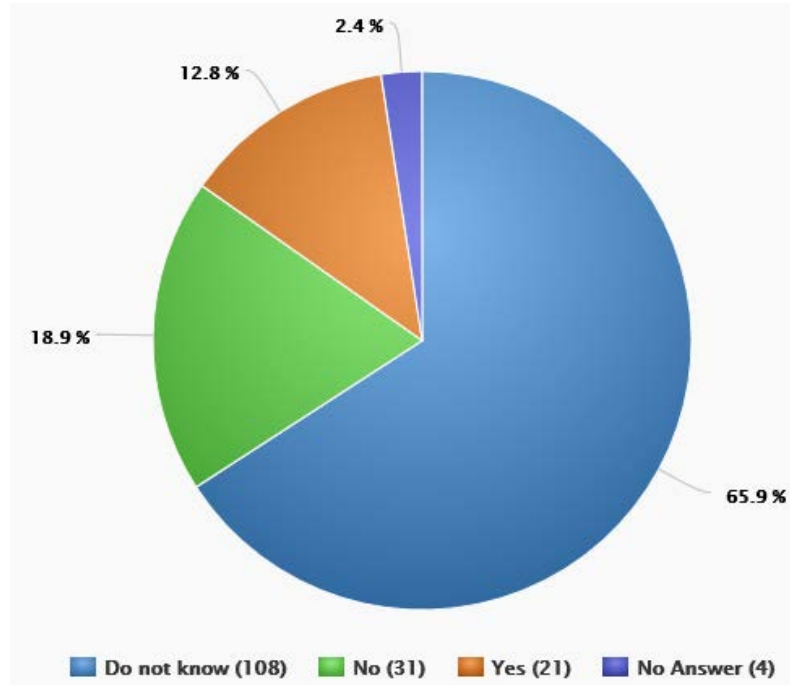
**If the VBER were not prolonged**, 99 respondents (with no major difference between stakeholder groups) consider that the costs linked to ensuring compliance of vertical agreements with Article 101 TFEU would increase and that the legal certainty provided by the VBER would decrease or even disappear. Some respondents also indicate that the divergences between national authorities and courts when applying Article 101 TFEU to vertical agreements are likely to increase. They also note that litigation related costs would increase.

Besides, respondents mention that business organisations in all sectors would have to spend more time and resources (notably fees for lawyers and economists) to systematically self-assess the compliance of their vertical agreements with Article 101 TFEU. In this regard, some law firms state that a withdrawal of the VBER would increase the time spent to assess vertical restrictions and that legal fees would raise accordingly. Several respondents also stress that SMEs would be especially affected by any such cost increase since they do not have the human and financial resources needed to perform such a complex self-assessment.

Some respondents (with no major difference between stakeholder groups) also point out that the withdrawal of the VBER could have a “chilling effect”, as companies could be deterred from applying innovative solutions or develop new business models whose compatibility with Article 101 TFEU would have to be fully assessed in each individual case (instead of being block exempted).

One respondent estimates that the increase in costs due to the non-prolongation of the VBER would at least amount to a factor of 10.

*Have the costs generated by the application of the VBER and the VGL increased as compared to the previous legislative framework (Reg. 2790/1999 and related Guidelines)?*



Regarding the **costs generated by the application of the VBER and the VGL compared to those incurred under Regulation 2790/1999 and the related guidelines**, some respondents indicate that the costs have decreased because the VBER and the VGL are clearer than the previous Regulation. In contrast, 21 respondents (primarily companies and business associations representing the supply

side of the vertical chain, but also some legal experts) indicate that the costs have increased compared to those incurred under the previous Regulation. According to them, the increase would result from market developments such as growing e-commerce and online sales, and the diverging interpretation of the current rules by national authorities and courts. None of the respondents provides a quantitative estimate of the increase or decrease of the costs generated by the application of the VBER and the VGL as compared to the previous Regulation.

### ***Relevance (Is EU action still necessary?)***

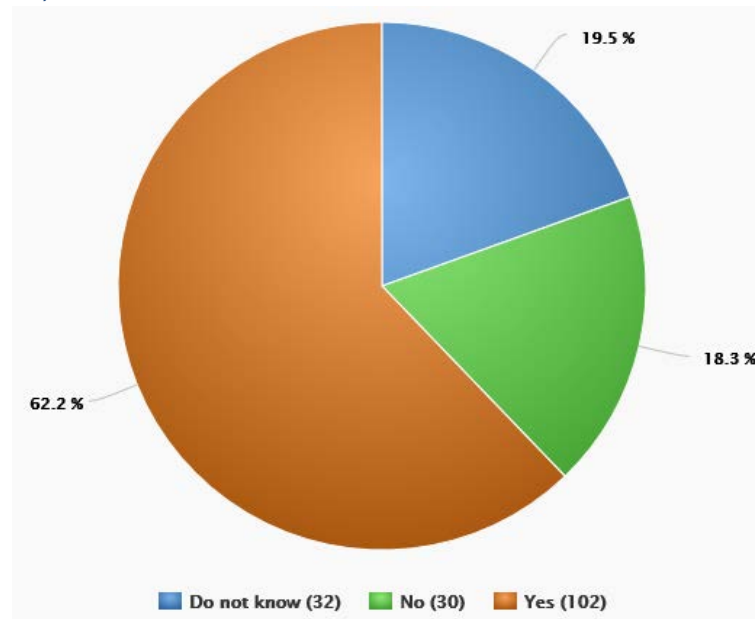
In order to evaluate whether the VBER and the VGL are still up to date in light of new market developments or other changes, stakeholders were asked several questions.

142 out of 164 respondents (approximately 87%) expect effects of some type **in case the VBER were to be prolonged and the VGL maintained without any change**. 6 respondents (approximately 4%) do not expect any effects, arguing that both the current level of legal certainty as well as the current uncertainties would remain unchanged in such a scenario. 16 respondents (approximately 10%) do not know. There is no major difference between stakeholder groups in these replies.

Out of the 142 respondents that expect some effects, 80 (approximately 49%) expect only positive effects, 62 respondents (approximately 38%) expect only negative effects and 8 respondents (approximately 5%) expect positive as well as negative effects. 29 of the respondents who believe that they would experience negative effects if the VBER were to be prolonged and the VGL maintained without any changes point out that the current framework is not fit for new developments and that clarifications and adaptation of the rules are vital in face of the increasing digitisation of the economy, in particular regarding online platforms and online sales. The respondents that expect positive effects mainly explain that the prolongation of the legal framework would be positive, in that this option is preferable to no prolongation at all (i.e., a scenario in which the VBER would expire and the VGL would be withdrawn). 40 of them consider the prolonging of the VBER necessary to provide legal certainty. In this regard, 15 respondents are concerned about losing the benefit of commercial agency agreements being expressly excluded from Article 101(1) TFEU. 41 respondents also advise to update the VBER by taking into account recent market developments.

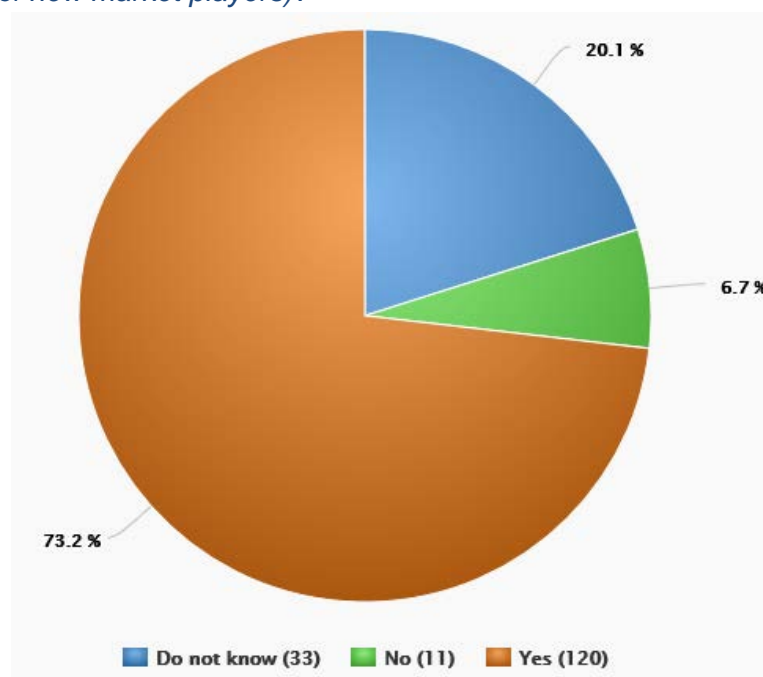
To the question regarding possible effects **in case the VBER were not to be prolonged and the VGL were to be withdrawn**, out of 164 respondents, 135 (approximately 82%) expect only negative effects, 5 respondents (approximately 3%) expect only positive effects, 1 respondent (approximately 1%) expects positive and negative effects, 1 respondent (approximately 1%) expects no effect and 22 (approximately 13%) do not know. 86 respondents argue that not prolonging the VBER and withdrawing the VGL would lead to a severe loss of legal certainty in the assessment of vertical agreements. 35 respondents also point out that this would lead to higher compliance costs and legal fees, with 21 seeing SMEs being particularly put at a disadvantage, as they do not have the financial resources to obtain extensive economic and legal advice. 12 respondents also mention concerns regarding a possible decrease in harmonisation among Member States, as there could be an increase in differing interpretations by the national competition authorities and national courts. Finally, 16 see the risk that not prolonging the current framework would discourage them from entering into distribution agreements and reduce the incentives for businesses to invest, thus slowing down innovation.

*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)?*



To the question whether there is a **need for a revision of the VBER in light of major market trends and/or changes**, among the 30 respondents (including business associations, companies and legal experts) who answer negatively, 18 consider that the VBER is sufficient and flexible enough, but see the need to update the VGL. On the other hand, 10 of the respondents who answer negatively see also no reason to update the VGL and consider the current legal framework to be sufficient.

*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)?*



As to the **need for a revision of the VGL in light of major market trends and/or changes**, only 11 respondents (primarily business associations) answer negatively, stating that the current rules are sufficient. Among the respondents who answer positively, the underlying reasons provided (also as regards the VBER) are overall consistent with what they answered to the following question, which asked them to list candidate areas for a possible revision, together with the major trends motivating the need for such a revision.

93 out of 164 respondents (approximately 57%) replied to the question asking them to **list candidate areas for a possible revision, together with the major trends motivating the need for such a revision**. The respondents (across all stakeholder groups) identify a large variety of areas of both the VBER and the VGL as requiring a revision. Different stakeholder groups mention different areas with varying degrees of importance and not all stakeholder groups have the same view as to what the revision should look like in practice.

Many respondents point to the need for a revision of the guidance concerning online sales restrictions (especially in the context of the distinction between passive and active sales). The major trends/changes motivating the need for a revision in this regard are the increasing importance of online sales, including sales through online marketplaces and online platforms, as well as the increasing importance of online advertising.

Many respondents also mention the hardcore restrictions relating to selective distribution as well as the guidance of the VGL on this topic as areas that need to be revised. The major trends/changes motivating the need for a revision in this regard are the increasing prevalence of selective distribution in the EU across a variety of sectors.

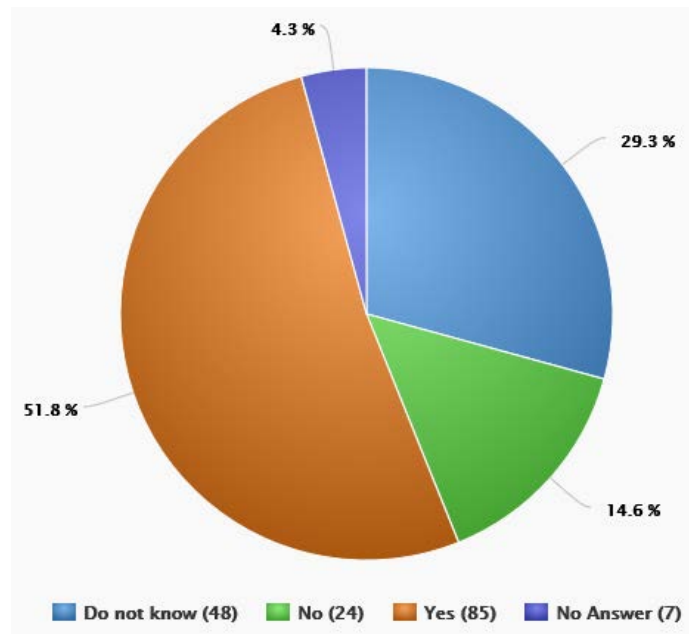
Another area identified by the respondents is resale price maintenance, which is considered a hardcore restriction under the current rules, and the related guidance in the VGL. In this regard, respondents referred to the increasing use of price monitoring software and price algorithms, free-riding issues, as well as potential efficiencies stemming from resale price maintenance and the latest economic theories on this topic.

Other areas in need of a revision mentioned by respondents include the list of hardcore restrictions, the excluded restrictions (especially as regards non-compete obligations), the guidance related to agency agreements, the rules applying to vertical agreements entered into between competing undertakings, the market share thresholds (in particular their application to the relevant markets) and the guidance on franchising (notably as regards the transfer of know-how). The major trends/changes motivating the need for a revision in this regard are the increased market concentration, the dual role of manufacturers as distributor and competing seller, the increased vertical integration of suppliers and the incoherent application of the current rules across Member States (e.g., regarding “most favoured nation” or “price parity” clauses).

Many respondents also referred to the need to reflect the recent case law (e.g., the judgment of the Court of Justice in *Coty*) as well as the conclusions of the Commission’s e-commerce sector inquiry.



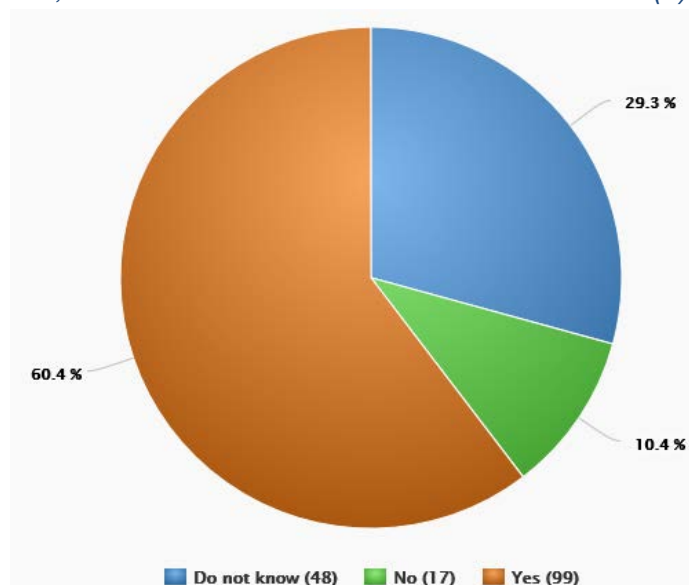
*Is there any area for which the VBER and/or the VGL currently do not provide any guidance while it would be desirable?*



To the question whether there are **areas for which the VBER and/or the VGL currently do not provide any guidance while this would be desirable**, of the 85 respondents (primarily legal experts and companies) who reply affirmatively, some indicate that it would be desirable for the VBER and/or the VGL to provide more guidance on several aspects related to online sales. Additional areas mentioned include "most favoured nation" clauses, online search advertising restrictions, the use of price comparison websites, vertical exchanges of information between competitors, territorial supply constraints and the practice of retail channelling.

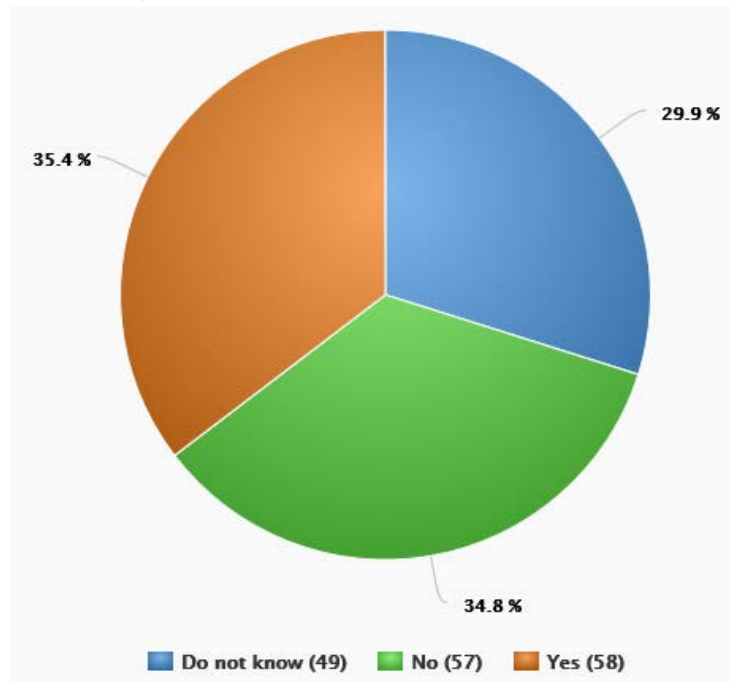
**Coherence (Does the policy complement other actions or are there contradictions?)**

*Based on your experience, are the VBER and the VGL coherent with other instruments that provide guidance on the interpretation of Article 101 of the Treaty (e.g., other Block Exemption Regulations, the Horizontal Guidelines and the Article 101(3) Guidelines)?*



To the question whether the **VBER and the VGL are coherent with other instruments that provide guidance on the interpretation of Article 101 TFEU**, the respondents that answer negatively mainly point to inconsistencies with the Technology Transfer Block Exemption Regulation, the Horizontal Guidelines and the Motor Vehicle Block Exemption Regulation.

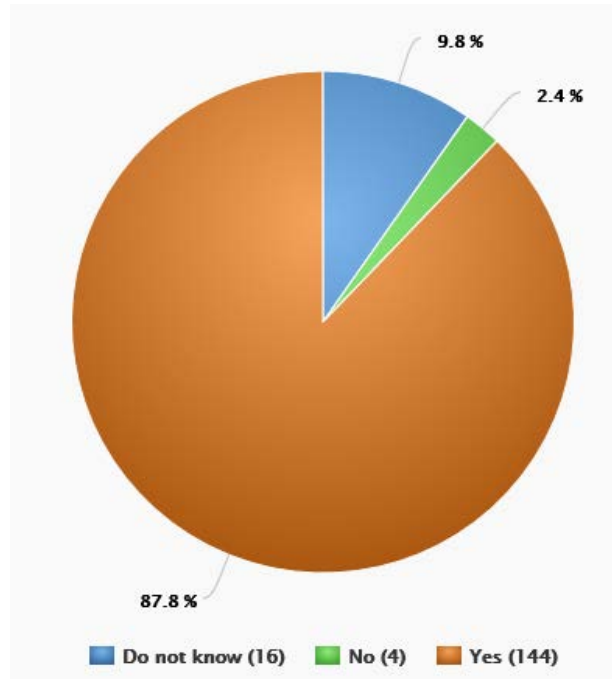
*Based on your experience, do the VBER and the VGL contradict other existing and/or upcoming legislation and/or policies at EU or national level?*



To the question whether the **VBER and the VGL contradict other existing and/or upcoming legislation and/or policies at EU or national level**, the 58 respondents that reply positively express concerns mostly related to divergence in the application of the EU competition rules by national competition authorities and courts. Respondents are concerned about the different interpretation and standards of enforcement when it comes to “most favoured nation” clauses, dual pricing, resale price maintenance and the criteria to assess the compatibility of online platform bans (as set out in the judgment of the Court of Justice in *Coty*). 9 respondents highlight possible inconsistencies with Regulation (EU) 2018/302 on geo-blocking and 7 respondents report contradictions at national level, with 6 respondents referring to several provisions of the French Commercial Code (e.g., Art. L 330-1 *Code de Commerce*, which limits exclusive purchasing agreements to a maximum of 10 years). 3 respondents also express the view that the current provisions of the VBER and the VGL would be curtailing their fundamental rights to property and freedom of profession. Furthermore, the franchise sector considers the definition of know-how in Article 1 of the VBER to be inconsistent with the definition of know-how under Directive (EU) 2016/943.

**EU Added Value (Did EU action provide clear added value?)**

*Do the VBER and the VGL add value in the assessment of the compatibility of vertical agreements with Article 101 of the Treaty compared to, in their absence, a self-assessment by undertakings based on other instruments that provide guidance on the interpretation of Article 101 of the Treaty (e.g., the Article 101 (3) Guidelines, the enforcement practice of the Commission and national competition authorities, as well as relevant case-law at EU and national level)?*



To the question whether the **VBER and the VGL add value**, among the 144 respondents that reply positively, 79 consider that the VBER and the VGL contribute to legal certainty, in that they provide a harmonised approach to assess vertical agreements throughout the EU. 30 also point out that self-assessing compliance with Article 101 TFEU in the absence of the VBER and the VGL would be more costly and administratively burdensome. 20 respondents who consider the VBER and the VGL to be important tools state that they facilitate the consistent application of Article 101 TFEU across Member States.