

# Art. 1 - Definitions - Regulation 1218-2010

## Article 1

### Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) 'specialisation agreement' means a unilateral specialisation agreement, a reciprocal specialisation agreement or a joint production agreement;
- (b) 'unilateral specialisation agreement' means an agreement between two parties which are active on the same product market by virtue of which one party agrees to fully or partly cease production of certain products or to refrain from producing those products and to purchase them from the other party, who agrees to produce and supply those products;
- (c) 'reciprocal specialisation agreement' means an agreement between two or more parties which are active on the same product market, by virtue of which two or more parties on a reciprocal basis agree to fully or partly cease or refrain from producing certain but different products and to purchase these products from the other parties, who agree to produce and supply them;
- (d) 'joint production agreement' means an agreement by virtue of which two or more parties agree to produce certain products jointly;
- (e) 'agreement' means an agreement, a decision by an association of undertakings or a concerted practice;
- (f) 'product' means a good or a service, including both intermediary goods or services and final goods or services, with the exception of distribution and rental services;
- (g) 'production' means the manufacture of goods or the preparation of services and includes production by way of subcontracting;
- (h) 'preparation of services' means activities upstream of the provision of services to customers;
- (i) 'relevant market' means the relevant product and geographic market to which the specialisation products belong, and, in addition, where the specialisation products are intermediary products which one or more of the parties fully or partly use captively for the production of downstream products, the relevant product and geographic market to which the downstream products belong;
- (j) 'specialisation product' means a product which is produced under a specialisation agreement;
- (k) 'downstream product' means a product for which a specialisation product is used by one or more of the parties as an input and which is sold by those parties on the market;
- (l) 'competing undertaking' means an actual or potential competitor;
- (m) 'actual competitor' means an undertaking that is active on the same relevant market;
- (nn) 'potential competitor' means an undertaking that, in the absence of the specialisation agreement, would, on realistic grounds and not just as a mere theoretical possibility, in case of a small but permanent increase in relative prices be likely to undertake, within not more than 3 years, the necessary additional investments or other necessary switching costs to enter the relevant market;
- (o) 'exclusive supply obligation' means an obligation not to supply a competing undertaking other than a party to the agreement with the specialisation product;
- (p) 'exclusive purchase obligation' means an obligation to purchase the specialisation product only from a party to the agreement;
- (q) 'joint', in the context of distribution, means that the parties:
  - (i) carry out the distribution of the products by way of a joint team, organisation or undertaking; or
  - (ii) appoint a third party distributor on an exclusive or non-exclusive basis, provided that the third party is not a competing undertaking;
- (r) 'distribution' means distribution, including the sale of goods and the provision of services.

2. For the purposes of this Regulation, the terms 'undertaking' and 'party' shall include their respective connected undertakings. EN 18.12.2010 Official Journal of the European Union L 335/45

'Connected undertakings' means:

- (a) undertakings in which a party to the specialisation agreement, directly or indirectly:
  - (i) has the power to exercise more than half the voting rights;
  - (ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking; or
  - (iii) has the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over a party to the specialisation agreement, the rights or powers listed in point (a);
- (c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers listed in point (a);
- (d) undertakings in which a party to the specialisation agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers listed in point (a);
- (e) undertakings in which the rights or the powers listed in point (a) are jointly held by:
  - (i) parties to the specialisation agreement or their respective connected undertakings referred to in points (a) to (d); or
  - (ii) one or more of the parties to the specialisation agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.



#### Quelle und Stand des Gesetzes

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