# The Autorité publishes its notice on the provision of informal guidance to companies with questions on the compatibility of their projects with a sustainability objective with competition rules

Published on May 27, 2024

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## Background

Consistent with its commitment to sustainability, the *Autorité* wants to support undertakings that wish to pursue projects in the area of sustainability. To that end and after having submitted a draft version to public consultation, the *Autorité* is today publishing a notice providing a framework for the provision of informal guidance to companies with questions on the compatibility of their projects with competition rules.

Sustainability is a key priority for the *Autorité* and part of its 2023-2024 roadmap.

The *Autorité* seeks to take resolute action against anticompetitive practices that are the most harmful in terms of sustainability, while also supporting undertakings that wish to take steps to better achieve a sustainability objective.

Today, **the *Autorité* is committed to an "open door" policy** to encourage undertakings, professional bodies and non-governmental organisations that wish to develop projects with a sustainability objective – but for which the analysis in terms of competition law presents a particular difficulty – to contact the *Autorité*.

In order to better support undertakings in their efforts, the *Autorité* offers a flexible framework in which to submit a request for guidance.

As part of its approach, the *Autorité* prepared and submitted for public consultation a draft notice on informal guidance in the area of sustainability.

Based on the feedback received from around a dozen respondents (undertakings, associations of undertakings, lawyers, economists and academics), the draft notice has been enriched and amended in order to best meet the expectations of all stakeholders.

### What approach does the notice propose?

The scope of the notice is not limited to "sustainability agreements" within the meaning of the European Commission's new Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements, but also includes all competition-related issues, with the exception of merger control and State aid.

First, the notice recalls the legal texts on the basis of which undertakings can self-assess the competitive risk of their projects. In such respect, the *Autorité* underlines that requests for informal guidance from the *Autorité* may only be made after undertakings have conducted a self-assessment, without finding the answers to their questions.

Second, the notice outlines the conditions under which undertakings may submit a request to the General Rapporteur, in terms of the nature of the project and the supporting information to be provided. Practical information on how to contact the *Autorité* is also provided.

Then, the notice explains how and according to which steps the request will be processed by the General Rapporteur and the factors on which the assessment may be based.

Lastly, the notice specifies the content and scope of the informal guidance letter provided by the General Rapporteur with regard to the status of the project and its possible implementation and, where applicable, in the event of any

subsequent proceedings before the Board of the *Autorité*.

### How has the feedback gathered from the public consultation been taken into account?

The notice takes into account many of the concerns and expectations expressed by the respondents.

As regards the conditions under which undertakings may submit a request for informal guidance, the notice specifies that both associations of undertakings and individual undertakings are eligible to submit a request. In substantive terms, the conditions relating to the type of competition law issue raised by the project at stake have also been eased, for greater flexibility. In practical terms, the notice now indicates that requests may be submitted in person, at the premises of the *Autorité*.

As regards the processing of requests, the notice now provides that the General Rapporteur will inform the requesters, within one month, whether or not they intend to provide informal guidance, and will indicate the timeframe, where applicable, within which they will provide an informal guidance letter, which cannot be more than four months. Undertakings will thereby benefit from greater security and predictability.

As regards the content of the informal guidance letter, the notice provides that the letter may not only state whether the project appears to be compatible or incompatible with competition rules, but also specify any conditions subject to which the project would appear to be compatible with the rules. Undertakings can therefore benefit, depending on the circumstances, from more precise guidance on how to bring their projects into compliance with competition law.

**Notice on informal guidance from the Autorité in the area of sustainability**

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