This chapter examines the relationship between Article 101(1) and Article 101(3). It looks at the central question of which agreements, decisions and concerted practices have as their object or effect the prevention, restriction or distortion of competition for the purposes of Article 101(1) and at the issue of which agreements are held to infringe Article 101(1) but meet the criteria for exemption from the prohibition set out in Article 101(3). The chapter looks at the way in which the interpretation of ‘object or effect the prevention, restriction or distortion of competition’ has changed since the early days of EEC competition law and at the problems of identifying which agreements are restrictive by object and which restrictive by effect. It examines the recent and controversial case law on this matter and the difficulties which remain including the doctrine of ancillary restraints. It then focuses on the analysis of the effect of agreements which are not restrictive by object, including the concept of appreciability and the de minimis notice. The chapter then considers the matter of which restrictive agreements may nevertheless escape the prohibition in Article 101(1) because they meet the criteria in Article
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101(3) in that they improve the production or distribution of goods or the promotion of technical or economic progress, how this criterion is distinguished from the agreement not having restrictive effects that bring it within Article 101(1) in the first place, and whether the Article 101(3) criteria can encompass socio-political or public policy matters. The chapter considers the application of the Article 101(3) criteria, the shifting of the burden of proof between Article 101(1) and 101(3), and the existence and importance of block exemptions.

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