

Alert | Antitrust Litigation & Competition Regulation



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European Commission Publishes Revised EU Competition Rules for Technology Transfer Agreements

On Sept. 11, 2025, the European Commission published a draft for consultation of the revised Technology Transfer Block Exemption Regulation (TTBER)¹ and updated Technology Transfer Guidelines (Guidelines). This revision follows an evaluation of the current TTBER, which has been in force since May 1, 2014, and is set to expire on April 30, 2026.²

The aim of this revision is to adapt the rules to recent market developments and case law of the Court of Justice of the European Union. It also seeks to provide additional legal certainty for companies wishing to enter into technology transfer agreements.

Through this consultation, the European Commission invites all interested parties to submit their views on the proposed changes to the TTBER and the Guidelines. Interested parties can provide their views on the proposed changes until Oct. 23, 2025.

¹ Communication from the Commission – Approval of the content of a draft for a Commission Regulation on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements and a draft for Commission Guidelines on the application of Article 101 of the Treaty to technology transfer agreements.

² Commission Regulation (EU) No 316/2014 of March 21, 2014, on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements.

Background

In the European Union, Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits companies from entering into agreements that restrict competition.

The TTBER is a block exemption regulation the European Commission issued that exempts certain categories of technology transfer agreements that restrict competition from the general prohibition on anti-competitive agreements under Article 101(1) TFEU, with the aim to facilitate disseminating technology, strengthening the incentives for research and development, and promoting innovation. Technology transfer agreements allow one party to grant another party the right to use specific technology rights. Typically, these agreements take the form of a license for intellectual property, such as copyright (for example, on software codes), design rights, patents, or certain know-how. This enables the licensee to use these intellectual property rights in the production of their goods or services.

The main purpose of the TTBER and the Guidelines is to encourage research and development in technology, to make the dissemination of technological innovation easier, and to generate product market competition. For this goal, the TTBER exempts technology transfer agreements that meet the specific conditions of this exemption from the general prohibition of anti-competitive agreements set out in Article 101 TFEU and thus provides for a safe haven. The revised Guidelines offer additional clarifications on how the new TTBER should be applied.

Important Changes in the Draft of the Revised TTBER and Revised Guidelines

The draft of the revised TTBER and Guidelines suggests that the European Commission does not intend to make significant changes to the regulation. Nevertheless, the drafts of the revised TTBER and Guidelines introduce – among other things – updated rules regarding TTBER market share thresholds, technology pools, and data licenses.

Market Share Thresholds and Calculation: The revised TTBER still exempts technology transfer agreements between competing undertakings where the combined market share of the parties on each market does not exceed 20%, and agreements between non-competitors where the individual market share of the parties does not exceed 30%. It, however, aims to provide greater clarity on the calculation and application of market share thresholds for technology markets. Previously, there was uncertainty about how these thresholds should be applied in practice. The new draft aims to address and clarify these issues.

In cases where the market shares of the parties exceed the TTBER thresholds during the agreement's term, the block exemption under the current TTBER would continue to apply for two years. The EU proposes to amend the provisions on the expiry of the TTBER exemption and to extend the grace period for the exemption from two to three years. This is intended to enhance legal certainty and predictability for businesses.

Technology Pools: In addition, the EU has amended the Guidelines regarding technology pools. A technology pool is an arrangement in which multiple holders of technology rights jointly license their intellectual property rights, typically through multilateral agreements. In principle, the TTBER does not cover such agreements, as it only applies to bilateral agreements. Nonetheless, the TTBER may apply to technology pools, which is referred to in the Guidelines as the “soft safe harbor.” While the new draft TTBER, like the current TTBER, does not include specific provisions for technology pools, the EU has expanded the guidelines to provide more detailed guidance on such collaborations. This aims to offer greater legal certainty for businesses and to enhance compliance with Article 101 TFEU. In this context,

the European Commission proposes to revise the definition of “soft safe harbor” in the guidelines. The emphasis is placed on transparency, ensuring the essentiality of the pooled technologies, and preventing double royalties (so called “double-dipping”).

Licensing Negotiation Groups: In addition, the new TT Guidelines provide guidance on the competitive assessment of Licensing Negotiation Groups (LNGs), which are potential licensees that jointly negotiate licensing terms with the licensor. The European Commission proposes adding a “soft safe harbor” for LNGs to these Guidelines. LNGs that do not involve restrictions by object and that meet certain conditions are generally not considered to restrict competition within the meaning of Article 101(1) TTBER or will fulfil the requirements of the exception in Article 101(3) TTBER.

Data Licensing: The draft revised Guidelines now also include rules to license specific types of data. The European Commission explicitly states that it would apply the TTBER and the Guidelines principles to data licenses for production purposes, provided that the licensed data forms part of a database protected by copyright or by the *sui generis* right as set out in the Database Directive.³ The reason for this is, among other things, that creating databases protected by copyright or by the *sui generis* right may require significant investments, and licensing them generally has a pro-competitive effect.

The TTBER would now have definitions of active and passive sales, which are the same as in the Vertical Block Exemption Regulation. This would mean, among other things, that in public procurements, a cross-border bid submitted in response to a tender would be deemed a passive sale.

Conclusion

The proposed revision of the TTBER and Guidelines is intended to provide businesses with clarity regarding the competition law rules for technology transfer agreements. The draft published suggests that the European Commission does not intend to introduce major changes to the current regime, but rather to address and clarify particular open questions under the current TTBER. With the consultation, the European Commission aims to collect feedback until Oct. 23, 2025, from interested parties on the proposed amendments to address the issues identified during the evaluation phase.

It remains to be seen what insights the European Commission will gain from this consultation following the publication. For the time being, it does not seem very likely that the changes to the future TTBER and Guidelines will differ significantly from the amendments currently proposed. This might become clear in early 2026 when the Final TTBER and Guidelines will be published prior to the expiry of the current TTBER.

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³ Directive 96/9/EC of the European Parliament and of the Council of March 11, 1996, on the legal protection of databases.

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