



## EU Review of the Technology Transfer Block Exemption Regulation

The Technology Transfer Block Exemption Regulation (TTBER) 316/2014 and the associated Guidelines (2014/C 89/03) have underpinned many technical IP licence agreements since they were introduced in 2014, building on many years' experience of predecessor legislation dating back to 1985 with the first TTBER (2349/84) coming into force.

For background, Article 101(1) of the Treaty on the functioning of the European Union (the Treaty) prohibits agreements between undertakings that restrict competition unless they contribute to improving the production or distribution of goods or services or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefits, in accordance with Article 101(3) of the Treaty. The TTBER and its associated Guidelines help provide business certainty by identifying when technology transfer agreements will not breach Article 101 restrictions (because the agreement is deemed not to restrict competition and therefore Article 101(1) will not apply), or because the agreement is deemed to provide objective efficiencies that are passed on to consumers and so meets the conditions of Article 101(3) of the Treaty. The TTBER and Guidelines provide further business certainty by identifying provisions in agreements that will or may raise Article 101 issues.

The current version of the TTBER expires on 30 April 2026. The European Commission has been conducting an evaluation before deciding whether to revise it, prolong it, or allow it to expire. All responses are published on the [evaluation homepage](#). The evaluation started with a call for evidence published in November 2022, eliciting 12 responses though more by way of opinion than evidence. A public consultation followed in April 2023, and 22 parties responded. The EU published a summary of the responses in October 2023.

The IP Federation filed a response which stated that the IP Federation remains broadly in favour of the TTBER and Guidelines as they stand, because they provide businesses with legal certainty when entering licensing arrangements. However, the IP Federation suggested that certain aspects, particularly the Market Share test, could usefully be reviewed, while urging caution before any changes are seriously considered or made to the Regulation which would undermine established business practice.

The IP Federation response essentially reflected the consensus view of the other responding IP organisations (IP Europe, Fair Standards Alliance (FSA), LES (Germany and Italy, in separate submissions), AIGE (FIDE Italy), BRAK (German Federal Bar), BDI (Federal Association of German Industry), ACEA (European Automobile Manufacturers' Association), VDA (German Car Industry Association), ACT / The App Association, Senior Corporate Silver Spoon (Hungary), and the Romanian Chamber of Patent Attorneys). The Commission also received input from six companies, those being Sisvel, Nokia, Ericsson, Qualcomm, Avanci, and Volkswagen. There was also a response

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from the Austrian Federal Ministry of Labour and Economy (BMAW) and from two private individuals.

The final stage of the consultation is a stakeholder workshop in December 2023 which, at the time of writing, has not yet happened.

The introduction to the Commission's published summary of the consultation feedback expressly states at the outset that the summary is intended to be purely factual and not a reflection of any official position. One may assume, however, that it is intended to be a working document from which conclusions can be drawn, and it is notable that the results are presented primarily by reference to the percentage of responders supporting a position. This may lend some credibility to the suspicion that views expressed in response to consultations may benefit from sheer weight of repetitive individual submissions.

While the consensus view was broadly supportive of the TTBER, there were several areas in which some responses suggested revisions. These included: extending coverage to further categories of rights, such as rights in databases or in raw data; raising market share thresholds for TTBER protection, and provisions for collective licensing negotiation.

The consultation sought views on the changes introduced in 2014 on a soft law safe harbour for technology pools, and on the exclusions from the block exemption of (a) exclusive grant-back clauses, and (b) termination clauses in non-exclusive technology transfer agreements. Although these measures received broad support, there were calls to provide additional clarity and/or to return to the pre-2014 regime.

Some responders also suggested revising the Guidelines on technology pools and licensing of Standard Essential Patents with a view to providing increased certainty. Some suggested that there may be an inconsistency between the TTBER and Guidelines, and the Commission's recent proposal for a Regulation on Standard Essential Patents (COM(2023)232).

While there was no clear consensus over any of these possible areas for change, they identify the potentially contentious areas to watch for development.

Some responses to the TTBER are notable for their absence. In particular, there were no life sciences responders. Without such input, there is plainly a risk that significant issues for a very important sector may be overlooked.

The TTBER continues to have effect in the UK by virtue of Regulation 10 of the Competition (Amendment etc.) (EU Exit) Regulations 2019, made under the European Union (Withdrawal) Act 2018 and amending section 10 of the Competition Act 1988. However, the Competition and Markets Authority has already announced that it will consult on the future of all block exemptions before their respective expiry, meaning the UK consultation on technology transfer block exemptions should start soon. The CMA consultation may prove to be a test-bed for issues in the TTBER revision. That carries risks and benefits for the UK, but potentially the UK revision may influence the EU revision process.

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