

EU Adopts Revised Technology Licensing Rules

Skadden

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Bill Batchelor

Partner / Brussels
32.2.639.0312
bill.batchelor@skadden.com

Antoni Terra

Partner / Brussels
32.2.639.8563
antoni.terra@skadden.com

Aleksandar Leshev

Associate / Brussels
32.2.639.2130
aleksandar.leshev@skadden.com

Vikram J. Pandit

Associate / Brussels
32.2.639.2140
vikram.pandit@skadden.com

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One Manhattan West
New York, NY 10001
212.735.3000

Avenue Louise 480
1050 Brussels
32.2.639.0300

Executive Summary

- **What's new:** The EU has adopted a revised set of rules governing technology licensing agreements, clarifying existing provisions and introducing antitrust guidance for data licensing and groups seeking to jointly negotiate terms for technology implementers (licensing negotiation groups, or LNGs).
- **Why it matters:** This update takes effect 1 May 2026 and modernises current rules, marking the first time that the European Commission (EC) has published guidance on LNGs. Additional clarifications ensure safe harbours apply to technology pools that do not restrict competition.
- **What to do next:** Parties to technology licensing agreements should assess how they can ensure antitrust compliance with the latest changes to safe harbour conditions and familiarise themselves with the published data licensing categories and market share thresholds.

Updated Regulation

In the EU, the technology transfer block exemption regulation No 316/2014 of 21 March 2014 (TTBER)¹ exempts certain technology transfer agreements from the prohibition against anticompetitive agreements set out in Article 101 of the Treaty on the Functioning of the European Union (TFEU) (the equivalent of Section 1 of the Sherman Act). The TTBER exempts technology transfer agreements that meet its market share thresholds and provisions for permitted types of restrictions.

The TTBER is accompanied by technology transfer guidelines (Guidelines)² that provide guidance on a range of IP licensing arrangements, beyond the scope of straightforward license agreements. This includes the application of EU competition law to technology pools for standard essential patent licensing agreements (SEPs) for communications technology.

On 1 May 2026, a revised TTBER and Guidelines will enter into force following a four-year review, including a public consultation. The update seeks to address recent market developments, especially in relation to data licensing and licensing negotiation groups (LNGs), and to clarify market share thresholds and technology pools.

New Guidance on LNGs

The revised Guidelines address the competitive assessment of joint negotiation of IP licenses, marking the first time that the EC has published guidance on LNGs — agreements between technology implementers to negotiate jointly terms of technology licenses. The regulatory guidance describes the possible pro-competitive and anticompetitive effects of LNGs (Section 4.5), explaining how LNGs can facilitate technology licensing by reducing transaction costs,³ promoting more informed negotiations⁴ and helping prevent first-mover disadvantage, *i.e.*, where implementers are unwilling to negotiate

¹ Commission Regulation (EU) No 316/2014 of 21 March 2014 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Technology Transfer Agreements.

² Guidelines on the Application of Article 101 of the Treaty on the Functioning of the European Union to Technology Transfer Agreements 2014/C 89/03.

³ For instance, by reducing the number of individual negotiations between technology holders and implementers.

⁴ For instance, by pooling the expertise of implementers, *e.g.*, concerning the validity and value of technology rights.

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a technology transfer agreement before their competitors have done so. However, LNGs can also create excessive bargaining power for participating implementers;⁵ facilitate the exchange of commercially sensitive information, coordination⁶ and collusion between competing technology implementers; or foreclose competing implementers in downstream product markets.

Following the public consultation, the EC has not adopted the soft safe harbour for LNGs proposed in the draft, which consisted of qualitative conditions under which the parties would not be exposed to competition law risks. Because LNGs are relatively new, the EC cited that under limited enforcement experience, a safe harbour might leave potential competition concerns unaddressed. According to the EC, there was also a risk of overenforcement if overly prescriptive conditions might deter LNGs.

However, the EC included the following measures (already proposed in the draft revised Guidelines) to reduce the risk of European competition law infringements:

- i. Transparency of the LNG operation and rules.
- ii. Open and voluntary participation for both technology holders and licensee groups.
- iii. Limited scope to the joint negotiation of technology licence terms.
- iv. Exchanges of information limited to what is strictly necessary and proportionate.
- v. No restrictions on the technology holders' ability to enter into agreements with third parties.

While LNGs have been litigated in the US,⁷ limited decisional practice in this area has emerged within the EU. In 2024, the German Bundeskartellamt (BKartA) reviewed the German Automotive Licensing Negotiation Group.⁸ This was a joint negotiation group between BMW, Mercedes-Benz, Thyssenkrupp and VW for SEP mobile communication standards technology. The BKartA concluded the LNG was lawful under certain conditions: (i) if limited to general mobile communication standards such as 4G/LTE, 5G and 6G that are not specific to the automotive sector; (ii) if open to new participants, including automotive

parts suppliers; (iii) if voluntary (so that patent owners and pools can choose whether to negotiate with the group, as opposed to with individual technology users or implementers, but are under no obligation to do so); and (iv) if safeguards are in place to avoid information exchange among group members beyond what is reasonably necessary to implement the group's legitimate objectives. In July 2025, the EC adopted an informal guidance letter regarding the same LNG, which also found the LNG lawful under similar conditions.⁹

Technology Pools

The revised Guidelines (Section 4.4) affirm that technology pools — arrangements whereby companies assemble a package of technology,¹⁰ which is then licensed to contributors to the pool and/or third parties — can produce pro-competitive effects, in particular by reducing transaction costs. Pools can allow for one-stop licensing and facilitate implementation of pro-competitive standards. Conversely, the revised Guidelines also indicate that pools may restrict competition, for example, by pooling substitute technologies that should otherwise compete or establishing a *de facto* industry standard to foreclose alternative technologies.

The prior Guidelines provided a soft antitrust safe harbour for the operation of technology pools, particularly in relation to: (i) pooling complementary rather than competing technologies; (ii) non-tying of nonessential technology; and (iii) fair, reasonable and nondiscriminatory (FRAND) terms. The EC has now clarified the safe harbour conditions to require the pool to disclose to potential and existing licensees all individual rights included and the methodology used to assess their essentiality, as a means of capturing only pro-competitive pools. To be exempt according to the revised Guidelines, pools must avoid having licensees pay more than once for the same technology rights (“double dipping”), and licenses granted by the pool itself (not only by the individual right holders) must be licensed out on FRAND terms.

⁵ This would enable implementers to force technology holders to accept subcompetitive licensing terms (below FRAND in the case of SEPs), which may disincentivise innovation by technology holders.

⁶ For instance, by increasing commonality of costs between competing technology implementers.

⁷ See, for example, *Cascades Computer Innovation v. Rpx Corp.*, No. 16-15782 (9th Cir. 2017) (alleging that a defensive patent aggregator conspired with mobile phone manufacturers to drive down patent licensing fees, albeit dismissed on IP grounds).

⁸ BKartA press release “[BKA, BMW, Mercedes, Thyssenkrupp and VW Can Negotiate Jointly for the Acquisition of Certain Technology Licenses](#)” (10 June 2024).

⁹ See the EC informal [Guidance Letter of 9 July 2025 in Case AT.40979 – Guidance – Automotive LNG](#), paragraph 30. The EC's conditions are: (i) the LNG and its negotiation groups negotiate licences for standards that are not automotive-specific and in respect of which the combined market share of the LNG members does not exceed 15% of the total demand for the SEPs or standards concerned; (ii) the LNG and its negotiation groups are open to other interested undertakings in the automotive sector, both car manufacturers and component suppliers; (iii) negotiations with the LNG and its negotiation groups are voluntary for SEP holders (individual SEP holders or SEP pools), meaning that SEP holders are free to enter into a negotiation and to terminate it at any time; and (iv) exchanges of information between members are limited to what is objectively necessary, and no commercially sensitive information is shared between members of negotiation groups and, more generally, between the members of the LNG.

¹⁰ Technologies in the pool often support, in whole or in part, a *de facto* or *de jure* industry standard; paragraphs 267-268 of the revised Guidelines.

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Data Licensing

Data licensing agreements have become more common and are typically considered pro-competitive because they facilitate dissemination of data to help increase innovation. The revised Guidelines confirm that data licensing agreements can be exempted under the TTBER only where the licensed data qualifies as a technology right as defined in TTBER, such as know-how, patents, utility models, design rights and software copyrights. However, regarding other types of data and data rights, a new section of the Guidelines (Section 3.2.1.3) specifies:

- The EC will apply the TTBER principles to licensing of data that resembles technology rights covered by the TTBER, such as databases protected by copyright; otherwise regulators will undertake a case-by-case assessment.
- In most cases, exchange of information in database licensing does not restrict competition by object. If that exchange is not objectively necessary to implement a data licensing agreement and proportionate to it (*i.e.*, an “ancillary restraint”), or if the exchange of commercially sensitive information is the main object of the agreement, regulators will assess the exchange under the Horizontal Guidelines.¹¹
- Data-sharing agreements mandated by the EU Data Act¹² are generally lawful, unless parties use the agreements to disguise price fixing, customer allocation or any other agreement aimed at restricting competition.

¹¹ [Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Co-operation Agreements](#).

¹² [Regulation \(EU\) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on Harmonised Rules on Fair Access to and Use of Data and Amending Regulation \(EU\) 2017/2394 and Directive \(EU\) 2020/1828 \(Data Act\)](#).

Market Share Thresholds

The TTBER applies when the parties to the technology transfer agreement hold market shares that do not exceed specified thresholds — combined market share of 20% for agreements between competitors and individual market shares of 30% for agreements between noncompetitors. To facilitate application to technology markets, the revised TTBER adds two main clarifications:¹³

- Technologies yet to generate sales of contract products have a market share equal to zero and fall within the threshold (recital 13).
- The grace period prolonging the application of the TTBER where parties’ market shares increase above the relevant thresholds during the life of the agreement, *e.g.*, as a result of the launch of new technologies, is extended from two to three years (Article 8(e)).

Outlook

The EU’s adopted rules reflect the strategic importance of data in the current economy. Parties to technology licensing agreements should assess how they can ensure antitrust compliance with the latest changes to safe harbour conditions and familiarise themselves with the published data licensing categories and market share thresholds.

¹³ Market share calculation methodology has also been clarified in Article 8(d) of the revised TTBER and Section 3.3.2 of the revised Guidelines.