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Europe's New Tech-Licensing Rules: Evolution, Not Revolution

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On May 1, the European Union's revised Technology Transfer Block Exemption Regulation (TTBER) and accompanying Technology Transfer Guidelines came into force. The new rules replace a framework that had been in place since 2014 – an eternity in technology markets. Four years of review and public consultation by the European Commission have produced something that is less a bonfire of the old rules than a careful spring cleaning. The 2026 reform does not rewrite the underlying competition-law logic. Rather, it updates the legal scaffolding that applies it.

In Brussels jargon, technology transfer agreements are those by which a licensor authorizes a licensee to use certain technology rights to produce goods or services. Most such deals are benign, simply spreading technology and spurring research. The TTBER accordingly grants a "block exemption" from the prohibition on competition-restrictive agreements in Article 101(1) of the Treaty on the Functioning of the European Union (TFEU), on the assumption that qualifying agreements meet the efficiency criteria of Article 101(3). Yet, this is no carte blanche. Licensing agreements that fail to satisfy specified conditions, or that contain "hardcore" restrictions, fall outside the exemption – exposing their parties to the risk of severe quasi-criminal fines and civil damages.

The new Technology Transfer Guidelines flesh out how the TTBER should be interpreted and how agreements falling outside it should be assessed. The main changes fall into four areas:

- **Data licensing:** Data encompassed by in-scope rights fall within the TTBER, while Data Act-mandated sharing receives Article 101 comfort.
- **Market share thresholds:** Nascent technologies attributed zero share, and the grace period for threshold breaches increases from two to three years.
- **Technology pools:** Tighter disclosure duties, a new anti-double-dipping rule and an explicit fair, reasonable and nondiscriminatory (FRAND) obligation on pool-granted licenses are imposed.
- **Licensing negotiation groups:** In first-ever EU guidance, a line is drawn between pro-competitive collective bargaining and buyer cartels, though no formal safe harbor is offered.

Data: the elephant in the (server) room

The TTBER covers the licensing or assignment of know-how, patents, utility models, design rights, topographies of semiconductor products, supplementary protection certificates, plant breeder's certificates and software copyrights. Data licensing agreements, however, were conspicuously absent from the 2014 rules – even as they became ubiquitous in practice.

In the public consultation, stakeholders clamored for guidance while simultaneously warning against a blanket extension of the TTBER to all data licensing – a reflection of the sheer diversity of data types in play. The Commission has threaded the needle. Under the new guidelines (Section 3.3.2), data that qualifies as an existing technology right – production know-how, for instance – falls squarely within the TTBER. Databases protected by copyright or the database sui generis right, being the closest analogues to covered technology rights, will be assessed by analogy with the TTBER's principles. All other data licensing must be analyzed case by case.

Two further clarifications are worth noting. Information exchanged in the context of database licensing will often not restrict competition "by object" within the meaning of Article 101 of the TFEU. However, exchanges that go beyond what is objectively necessary and proportionate will be scrutinized under the Commission's Guidelines for Horizontal Co-operation Agreements. And data-sharing agreements mandated by Chapter II of the Data Act will generally be treated as compliant with Article 101 – unless they serve as a fig leaf for hardcore restrictions such as price-fixing or customer allocation.

Market shares: less guesswork, more grace

The TTBER's safe harbor depends on the parties not exceeding certain market-share thresholds. For competitors, the combined share must stay below 20% on any relevant technology or product market; for noncompetitors, each party's share must remain below 30%. That's simple enough in theory – but in practice, calculating shares in technology markets can be devilishly difficult.

Stakeholders told the Commission as much during the consultation, prompting three targeted fixes. First, the TTBER (recital 13) now confirms that technologies which have not yet generated sales of contract products hold a market share of "zero" – a welcome reduction in uncertainty for early-stage and nascent technologies. Second, the TTBER (Article 8(d)) and Technology Transfer Guidelines (Section 3.3.2) provide further methodological guidance on how to calculate technology market shares in the first place. Third, and perhaps most practically significant, the "grace period" during which the block exemption continues to apply after shares breach the thresholds has been extended from two to three years (Article 8(e)). That extra year offers a useful buffer where market shares fluctuate on the back of new technology launches.

Technology pools: tightening the soft safe harbor

Technology pools – arrangements in which two or more parties assemble a package of technology rights for licensing to contributors and third parties alike – sit outside the TTBER itself. But the Technology Transfer Guidelines have long offered a steer for assessment, including a "soft safe harbour" for pools meeting certain conditions. In the consultation, stakeholders broadly endorsed the existing guidance but grumbled that some conditions were too vague.

The revised guidelines (Section 4.4) respond with three sharpened requirements. Pools must now effectively disclose to licensees both the individual rights included and the methodology used to assess their essentiality – though there is no obligation to evaluate every single patent in the bundle. A new "double-dipping" prohibition ensures licensees are not charged twice for the same technology (once under a bilateral license with an individual right holder and again under the pool license). And the existing FRAND condition has been tightened to make explicit that it applies to licenses granted by the pool itself, closing what was seen as an awkward gap in the prior wording.

Licensing negotiation groups: new kids on the block

Licensing negotiation groups (LNGs) – arrangements whereby technology implementers band together to negotiate license terms collectively – are the genuinely novel element of the 2026 package. The 2014 guidelines said nothing about them, for the simple reason that none were known to exist at the time. (The Commission issued its first informal guidance letter on the subject only in July 2025, in relation to the Automotive Licensing Negotiation Group).

The new guidelines (Section 4.5) now provide a framework for assessing these creatures. On the pro-competitive side, LNGs can reduce transaction costs and produce more balanced, better-informed negotiations. On the anticompetitive side, they risk exercising excessive purchasing power to drive royalties below competitive levels, facilitating downstream coordination among participating implementers or foreclosing third-party implementers.

Crucially, the Commission draws a line between genuine LNGs and buyer cartels. Groups that operate transparently, disclose their membership and confine themselves to negotiating license terms will generally not be found to restrict competition "by object." The guidance identifies specific risk-reduction measures that LNGs can adopt – relating to market power, scope of activity and information barriers – to stay on the right side of Article 101.

Notably, the Commission chose not to offer a formal safe harbor for LNGs. Its reasoning is candid: With so little enforcement experience, prescriptive conditions risked either failing to capture genuine concerns (under-enforcement) or deterring pro-competitive arrangements (over-enforcement). The substance of what might have been safe-harbor conditions has instead been folded into the risk-reduction guidance – a pragmatic hedge.

The bottom line

The 2026 package, then, is a measured refinement rather than a rethink. The core architecture – block-exemption conditions, hardcore restrictions, individual assessment principles – remains intact. What has changed is the scaffolding surrounding it, updated to reflect a world of data licensing, fluctuating technology markets and collective negotiation that the 2014 drafters could not fully have foreseen. Companies with technology licensing agreements touching the EU market would do well to review them against the full updated framework. The consequences for getting it wrong have not become any less severe.

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