

[The Licensing Journal, Technology Transfer Block Exemption Review - What Do Tech and Life Sciences Companies Need to Know?, \(Mar. 1, 2025\)](#)

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Technology Licensing

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The European Commission is taking its regular look at the competition rules and guidance applicable to technology licensing agreements, in advance of the expiry next year of the Technology Transfer Block Exemption Regulation (TTBER) and related Guidelines. This is a key opportunity for entities involved in licensing negotiations to ensure that the Commission is appropriately informed about issues that are of concern in this area.

Following initial evidence gathering, the Commission has launched a formal consultation, giving companies and advisors involved in licensing a chance to have their say in advance of a 25 April 2025 deadline.

Four issues are highlighted in the Call for Evidence:

1. Whether to update the TTBER to cover licensing of data
2. Problems arising from technology market share thresholds
3. Possible ineffective nature of rules relating to patent pools
4. Whether to provide guidance on LNGs (Licensing Negotiation Groups)

The questionnaire itself covers a number of further issues, including:

5. Know-how
6. Licensing for the purpose of further R&D and the interaction with the R&D Block Exemption
7. Consideration for exclusive grant-backs
8. Field of Use restrictions
9. Settlement agreements

The first topic on data licensing issues appears likely to be of wide interest to companies involved in licensing in both the tech and life sciences sectors.

Many licensing collaborations now require access to, and/or may generate, valuable data. IP rights in databases and data itself are not currently covered by the TTBER or the related guidance. An earlier review by the Commission noted AI and the Internet of Things as key fields where data is important. AI is of course used across sectors – for example, an AI diagnostic tool will generate data of utility for life sciences companies. The EC's preference will likely be to ensure that both parties to a licensing collaboration have appropriate access to any data generated, in the same way as is already the case for IP covering improvements to licensed technology. A separate question on grant-backs seeks input on whether the current rules on remuneration for a licence back of IP are sufficiently clear.

The third and fourth topics are likely to be of interest to those involved in the licensing of Standard Essential Patents (SEPs). A 'soft' safe harbour for technology pools was introduced in the last review of the TTBER and Guidelines, providing those involved in pools with some comfort that the pool would fall outside the prohibition

on anti-competitive agreements, where the pool is established and operated in line with the guidelines. Following feedback, the EC suggests that the current rules “may not be fully effective”. Specific questions are raised about transparency, inclusion of substitute technologies, and double-dipping. Depending on the range of responses, this could lead to greater scrutiny of technology pools in the future.

A related topic is whether the new Guidelines should cover the use of licensing negotiation groups. Greater use of these groups has been posited by some involved in SEP licensing, including the European Commission Expert Group in a 2021 report. However, as such groupings would typically involve competitors working together, there are obvious potential competition concerns around information exchange and other coordination. This is a controversial area, which is likely to generate both support and opposition.

Life sciences companies will additionally wish to contribute their experience to a number of other topics, for example, the questions on settlement agreements where the EC intends to update its guidance following judgments in cases such as *Generics (UK)*, *Lundbeck* and *Servier*. The questionnaire provides an opportunity to comment on the clarity of the guidance to date and its consistency with the case law, as well as a more general call for views on any other points. Life sciences companies might for example wish to comment on the relative paucity of guidance on post-expiry royalties or on territory-specific entry dates, particularly in a settlement context.

The 2013-14 review of the previous block exemption demonstrated that the Commission was willing to take on feedback. In that round of comments, the Commission significantly shifted its position on the acceptability of terminate on challenge provisions, where entered into in the context of exclusive licensing, following feedback from the biotech industry for whom such provisions are essential.

Companies frequently use the TTBER and Guidelines to back up their positions when negotiating IP licences. Taking the opportunity to contribute to the dialogue by responding to the Call for Views will help to ensure that the Commission has all the relevant information for preparing the 2026 TTBER and Guidelines.

Views can be submitted at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14478-EU-competition-rules-on-technology-transfer-agreements-revision-en>