

# TTBER Consultation questionnaire

Fields marked with \* are mandatory.

## Introduction

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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.

Technology transfer agreements are agreements by which one party authorises another to use certain technology rights (for example, patents, design rights, software copyrights and know-how) for the production of goods or services. In many cases, such agreements either do not restrict competition, that is, they fall outside the scope of Article 101(1) of the Treaty, or, where they fall within Article 101(1), they create objective efficiencies that are passed on to consumers and meet the conditions of Article 101(3) of the Treaty. However, technology transfer agreements, or certain clauses in such agreements, can also have negative effects on competition. In particular, they may facilitate collusion, restrict the ability of competitors to enter the market or to expand, or harm inter- or intra-technology competition, for example by reducing the incentives to innovate.

Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty, by means of a regulation, to certain categories of technology transfer agreements. The Commission used this empowerment to adopt [Commission Regulation \(EU\) No 316/2014 on the application of Article 101\(3\) of the Treaty to technology transfer agreements](#) ("TTBER").

The Commission also provided guidance on the assessment of technology transfer agreements in the related [Commission Communication - Guidelines on the application of Article 101 of the Treaty to technology transfer agreements](#) ("TTGL").

## Purpose of the evaluation

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The purpose of this evaluation is to gather evidence on the functioning of the TTBER to enable the Commission to take an informed decision on whether to allow that Regulation to expire, prolong its duration or revise it to take account of market developments that have occurred since its adoption in 2014. The Commission will also evaluate the TTGL.

More information on the evaluation can be found in the Call for Evidence, published on the "Have Your Say" platform on 25 November 2022 and available [here](#).

# Structure of the public consultation and how to respond to it

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As part of the evaluation, the Commission will seek the views of all interested parties on the effectiveness, efficiency, relevance, coherence and EU added value of the TTBER and TTGL on the basis of this online questionnaire. The results of this consultation will serve as input for the evaluation.

The consultation is open for 12 weeks, and replies can be provided in all 24 official EU languages. This questionnaire contains both high-level and detailed technical questions. The questions are available in English, French and German and are grouped under the following evaluation criteria:

- **Effectiveness:** The Commission will evaluate whether the TTBER and TTGL have been effective in (i) exempting agreements for which it can be assumed with sufficient certainty that they satisfy the conditions of Article 101(3) of the Treaty; (ii) providing legal certainty, and (iii) providing a common framework for national competition authorities and national courts to ensure consistency in the application of Article 101 of the Treaty.
- **Efficiency:** The Commission will evaluate whether any costs created by the TTBER and TTGL for undertakings wishing to assess their agreements under Article 101 of the Treaty are proportionate in view of the benefits that the TTBER and TTGL have created for that assessment;
- **Relevance:** The Commission will evaluate whether the TTBER and TTGL are still relevant, taking into account market developments that have occurred since the adoption of the TTBER and TTGL in 2014;
- **Coherence:** The Commission will evaluate whether the TTBER and TTGL are coherent with other Union legislation, notably in the fields of intellectual property and competition; and
- **EU added value:** The Commission will evaluate whether the TTBER and TTGL, being an intervention at EU level, add value for the assessment of technology transfer agreements under Article 101 of the Treaty.

The information collected will provide part of the evidence that the Commission will use in order to decide whether to allow the TTBER, together with the TTGL, to expire, prolong its duration or revise it to take account of market developments that have occurred since 2014.

Nothing in this questionnaire may be interpreted as stating an official position of the Commission.

You are invited to provide your feedback through this online questionnaire. Please explain your replies and, where possible, illustrate them with concrete examples. At the end of the questionnaire, we also invite you to upload any documents and/or data that you consider useful to accompany your replies.

If you encounter problems with completing this questionnaire or if you require assistance, please contact [COMP-TTBER-REVIEW@ec.europa.eu](mailto:COMP-TTBER-REVIEW@ec.europa.eu).

## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority

- Trade union
- Other

\* First name

Associazione Italiana Giuristi Europei

\* Surname

AIGE

\* Email (this won't be published)

info@aige.it

\* Organisation name

*255 character(s) maximum*

AIGE is an association affiliated with FIDE that includes jurists who wish to deepen and contribute to the knowledge and development of EU law. Since 1958 it promotes knowledge of EU law and develops international relations with similar associations.

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

\* Country of origin

Please add your country of origin, or that of your organisation.

*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

- Afghanistan
- Åland Islands
- Djibouti
- Dominica
- Libya
- Liechtenstein
- Saint Martin
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden

- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Türkiye
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena  
Ascension and  
Tristan da Cunha
- Saint Kitts and  
Nevis
- Saint Lucia
- United States  
Minor Outlying  
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and  
Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

**Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

## 1. Information about you and the TTBER

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Please note that this questionnaire uses the following defined terms, which have the same meaning as in the TTBER:

**Technology rights** mean know-how and the following rights, or a combination thereof, including applications for or applications for registration of those rights: (i) patents, (ii) utility models, (iii) design rights, (iv) topographies of semiconductor products, (v) supplementary protection certificates for medicinal products or other products for which such supplementary protection certificates may be obtained, (vi) plant breeder's certificates, and (vii) software copyrights.

**Technology transfer agreements** mean agreements by which one party authorises another to use certain technology rights (see previous definition) for the production of goods or services.

**Intellectual property rights** include industrial property rights, in particular patents and trademarks, copyright and neighbouring rights.

In view of these definitions, please answer the questions set out below, if applicable

1.1. Please specify the technology right(s) to which your knowledge of and/or experience with the TTBER primarily relates (multiple answers possible):

- Patents
- Utility models
- Design rights
- Topographies of semiconductor products
- Supplementary protection certificates for medicinal products or other products for which such protection certificates may be granted



- Plant breeder's certificates
- Software copyrights
- Know-how
- Other

1.2. Please identify the sector(s) to which your knowledge of and/or experience with the TTBER primarily relates by specifying the 2 digit NACE code referring to the level of "division" that applies to your business (see for reference pages 61 – 90 of [Eurostat's statistical classification of economic activities in the European Community](#)).

1.3. Please specify the goods and/or services to which your knowledge of and/or experience with the TTBER primarily relates.

1.4. Please specify whether you are primarily a licensor or a licensee of technology rights / whether your organisation primarily represents licensor(s) or licensees.

- Licensor(s)/organisation representing primarily licensors
- Licensee(s)/organisation representing primarily licensees
- Active as a licensor and a licensee to an equal extent/organisation representing both licensors and licensees to an equal extent
- None of the above

1.8. Please provide a general description of the impact of the TTBER and/or the TTGL on your/your organisation's business activities.

## 2. Effectiveness

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2.1. In your view, has the TTBER been effective in exempting **only** those **technology transfer agreements** (see definitions under 1 above) for which it can be assumed with sufficient certainty that they satisfy the conditions for an exemption under Article 101(3) of the Treaty?

*at most 1 choice(s)*

- Yes

- No
- Do not know

2.2. Are there **licence agreements of intellectual property rights** or other technology rights (see definitions under 1 above), which are **not** covered by TTBER but that in your view satisfy the conditions for exemption under Article 101 (3) of the Treaty?

*at most 1 choice(s)*

- Yes
- No
- Do not know

2.2.1. Please explain your answer.

The TTBER excludes certain types of intellectual property rights from its scope of application, such as sui generis database rights, merchandise agreements, and non-software copyright, along with any related intellectual property rights used in the production of goods or services. The reasoning for including these licenses aligns with other technology transfer agreements, as they enable licensees to offer services or products to consumers. In practice, the TTBER (rectius, the TTGL) is commonly used as a reference when evaluating licenses for various intellectual property rights, including those not covered by it. Furthermore, licenses frequently involve a mixture of intellectual property rights, making it challenging to determine the primary subject of the agreement. Our recommendation is to extend the application of the TTBER to all licenses for the production of goods or services, except for online content distribution licenses and broadcasting licenses, which raise distinct issues and should be addressed separately. Article 1(1)(b) of the TTBER should be amended accordingly.

2.3. In your view, has the TTBER been effective in providing legal certainty when assessing technology transfer agreements and/or certain clauses included in such agreements under Article 101 of the Treaty; in other words: are the rules clear and comprehensible, allowing you to understand and predict the legal consequences?

*at most 1 choice(s)*

- Yes
- No
- Do not know

2.3.1. Please explain your answer, noting that the table under question 2.5. gives you the opportunity to give feedback on particular provisions of the TTBER.

2.4. In your view, have the TTGL been effective in providing legal certainty when assessing technology transfer agreements and/or certain clauses included in such

agreements under Article 101 of the Treaty; in other words: are the rules clear and comprehensible, allowing you to understand and predict the legal consequences?

*at most 1 choice(s)*

- Yes
- No
- Do not know

2.4.1. Please explain your answer, noting that the table under question 2.5. gives you the opportunity to give feedback on particular sections of the TTGL.

2.5. Please indicate the level of legal certainty provided by the TTBER and the TTGL for each of the following areas using the following number coding: 1 (very low legal certainty), 2 (slightly low legal certainty), 3 (appropriate level of legal certainty). If you do not know or if the question is not applicable to your organisation, please select “DK/NA”.

No.	Areas/Provisions	Relevant provisions of the TTBER	Relevant paragraphs of the TTGL	Respondent's estimate of level of legal certainty
1	Definitions	Art. 1(1)	<i>various</i>	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
2	The list of intellectual property rights covered by the block exemption (scope)	Art. 1(1)(b)	44-45	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
3	Application of the TTBER (or its principles) to licensing of other types of IP rights	Art. 2(3)	47-50	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

4	Concept of transfer	Art. 1(1)(c)	51-53	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
5	Production of contract products	Art. 1(1)(g)	58-66	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
6	Market definition	Art. 1(1)(j-m)	19-26	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
7	<b>Distinction between competitors and non-competitors</b>			

7.1	Definition of blocking position	-	29	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
7.2	Actual and potential competition in the product market	Art. 1(1)(n)(ii)	30-34	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
7.3	Actual and potential competition in the technology market	Art. 1(1)(n)(i)	35-36	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
7.4	Guidance on drastic innovations and competition after the agreement	Art. 4(3)	37-39	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

8	Relationship with other Block Exemption Regulations	Art. 9	69-78	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
9	Market share thresholds	Art. 3, Art. 8	79-92	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
10	<b>Hardcore restrictions</b>			
10.1	General Principles	Art. 4(1)	94-96	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

10.2	Price restrictions between competitors	Art. 4(1)(a)	99-102	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
10.3	Output limitations between competitors	Art. 4(1)(b)	103-104	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
10.4	Market and customer allocation between competitors	Art. 4(1)(c)	105-114	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
10.5	Restrictions on the ability to carry out R&D and use of licensed technology between competitors	Art. 4(1)(d)	115-116	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA



10.6	Price restrictions between non-competitors	Art. 4(2)(a)	118	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
10.7	Restrictions on passive sales between non-competitors	Art. 4(2)(b-c)	119-127	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
11	<b>Excluded restrictions</b>			
11.1	Exclusive grant backs	Art. 5(1)(a)	129-132	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

11.2	Non-challenge and termination clauses	Art. 5(1)b)	133-140	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
11.3	Limitation on licensee's use or development of own technology (for non-competitors)	Art. 5(2)	141-143	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
12	Conditions for the withdrawal and disapplication of the block exemption	Art. 6, Art. 7	144-155	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
13	<b>Application of Article 101(1) and 101(3) outside the scope of the TTBER</b>			

13.1	Safe harbour if there are sufficient independently controlled technologies	-	157-158	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
13.2	Relevant factors	-	159-168	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
13.3	Negative and positive effects of restrictive licence agreements	-	169-180	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14	Obligations in licence agreements that generally do not restrict competition	-	183	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

14.1	Royalty obligations	-	184-188	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.2	Exclusive and sole licences	-	190-196	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.3	Sales restrictions	-	197-203	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.4	Output restrictions	-	204-207	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

14.5	Field of use restrictions	-	208-215	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.6	Captive use restrictions	-	216-220	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.7	Tying and bundling	-	221-225	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.8	Non-compete obligations	-	226-233	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

14.9	Settlement agreements	-	234-243	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA
14.10	Technology pools	-	244-273	<i>at most 1 choice(s)</i> <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> DK/NA

2.5.1. If you have rated legal certainty as “very low” (1) or “slightly low” (2) for one or more areas/provisions, please explain the reasons for your rating. Please also explain whether the lack of legal certainty results from (i) specific provisions in the TTBER or specific guidance in the TTGL or (ii) the overall structure of the TTBER and/or TTGL.

Article 4(2)(b)(i) of the TTBER allows the licensor to restrict the licensees’ passive sales into an exclusive territory or to an exclusive customer group reserved for the licensor. Paragraph 121 of the TTGL explain that for a territory or customer group to be reserved for the licensor, the latter does not actually have to be producing with the licensed technology in the territory or for the customer group in question: a territory or customer group can also be reserved by the licensor for later exploitation. Moreover, in such cases, the TTGL also allow restrictions of active sales. Pursuant to the current version of the TTBER and TTGL, this restriction can be imposed for an indefinite period of time. We submit that in cases where the licensor reserves a territory or customer group for future exploitation, such exemption can prevent the spread of a particular product or technology in that territory or customer group, limiting consumers’ welfare. In cases where the licensor does not actually produce with the licensed technology in the territory or for the customer group in question, we recommend that the TTBER – or the TTGL – should include a time limit to this restriction (e.g., a maximum period of two years). In this way, if the licensor does not actually start producing within a reasonable timeframe, licensees could overcome this shortcoming by making their products available to consumers. This should apply for both passive and active sales.

2.6. Are there other areas for which you consider that the TTBER and/or the TTGL do not provide sufficient legal certainty? Please explain the reasons for your reply.

2.7. The TTBER and TTGL were last revised in 2014. In your view, which of the following changes made in the TTBER and the TTGL compared to the previous version of the block exemption regulation and guidelines have been effective in (i) exempting agreements for which it can be assumed with sufficient certainty that they satisfy the conditions for an exemption under Article 101(3) of the Treaty and /or (ii) providing legal certainty?

Please answer by completing the last column of the table below, answering with (Y) if you think the change was effective, (N) if you think the change was not effective, and (DK) if you do not know.

Changes made in the TTBER and TTGL	Answer
Creation of a soft law safe harbour for technology pools in Section 4.4 of the TTGL (paras 261-265)	<p style="text-align: right;"><i>at most 1 choice(s)</i></p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Do not know</p>

<p>The exclusion from the block exemption of obligations on the licensee to assign to the licensor or to grant to the licensor an exclusive licence of the licensee's own improvements to the licensed technology (Art. 5(1)(a) of the TTBER)</p>	<p><i>at most 1 choice(s)</i></p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Do not know</p>
<p>The exclusion from the block exemption of clauses which give the licensor the right to terminate a non-exclusive technology transfer agreement in the event that the licensee challenges the licensor's IP rights (Art. 5 (1)(b) of the TTBER).</p>	<p><i>at most 1 choice(s)</i></p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Do not know</p>

**2.7.1. If you considered that one or more of the mentioned changes was not effective, please explain the reasons for your reply.**

Creation of a soft law safe harbour for technology pools in Section 4.4 of the TTGL (paras 261-265):

2.7. Yes

2.7.1. Although the inclusion of technology pools in the TTGL enhanced legal certainty, it would have been more effective to include them in the TTBER. In view of the importance of multilateral licensing agreements, the fact that the TTBER is limited to bilateral agreements hinders its usefulness. However, we understand that the Commission cannot legislate by block exemption in respect of multilateral technology transfer agreements, as Article 1(1) of the enabling regulation, Council Regulation 19/65/EEC of March 2, 1965 on application of Article 83(3) of the Treaty to certain categories of agreements and concerted practices (OJ 1965 36/533), empowers the Commission to apply Article 101(3) TFEU by regulation to bilateral technology transfers.

The exclusion from the block exemption of obligations on the licensee to assign to the licensor or to grant to the licensor an exclusive license of the licensee's own improvements to the licensed technology (Art. 5(1)(a) of the TTBER):

2.7. No

2.7.1. We consider that the distinction between severable and non-severable improvements should be reinstated. A licensor with low market share may need to license its technology, at least for a start-up period, without fearing losing its exclusiveness due to improvements made by the licensee. A balance should be struck between the need to incentivize innovation by licensees and the need for licensors to protect their technology. In many Member states, licensors of innovative licenses meeting the TTBER's market share thresholds are normally smaller undertakings than their licensees. In such cases, prohibiting exclusive grant-backs or the assignment of non-severable improvements can hinder innovation and licensing out. This phenomenon may prevent smaller players from entering the market, encouraging innovators to sell their technologies to major players capable of perfecting it before licensing. Since this kind of grant-back should be considered not to fall within the scope of Article 101 TFEU, in order to provide greater legal certainty, the new TTBER and TTGL should make clear that an exclusive grant-back or assignment together with the parallel grant to the licensee for the life of the license should fall within the scope of the block exemption and that non-severable improvements cannot be exploited by the licensee without the licensor's permission.



2.8. In your view, have the TTBER and TTGL achieved their objective of providing a common framework for national competition authorities and national courts to ensure consistency in the application of Article 101 of the Treaty?

*at most 1 choice(s)*

- Yes
- No
- Do not know

2.8.1. Please explain your answer.

### 3. Efficiency

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3.1. Do you consider that the TTBER and TTGL have created benefits for the assessment of technology transfer agreements under Article 101 of the Treaty, as compared to a situation in which such agreements would need to be assessed without the TTBER and TTGL?

*at most 1 choice(s)*

- Yes
- No
- Do not know

3.1.1. Please explain your answer

3.2. Do you consider that the TTBER and the TTGL have created costs for the assessment of technology transfer agreements under Article 101 of the Treaty (for example, fees paid to external consultants (lawyers and economists) and/or the cost of internal legal advice and time spent by commercial teams to negotiate and review contractual documents), as compared to a situation in which such agreements would need to be assessed without the TTBER and TTGL?

*at most 1 choice(s)*

- Yes
- No
- Do not know

3.2.1. Please explain your answer

3.2.3.1. Please explain your answer

3.3. Would the costs of ensuring compliance of your technology transfer agreements with Article 101 of the Treaty increase if the TTBER and the TTGL were not to be prolonged?

*at most 1 choice(s)*

- Yes
- No
- Do not know

3.3.1. Please explain your answer. If relevant, please estimate such cost increase, both in terms of value (in EUR) and as a percentage of your annual turnover (based on your best estimates) and briefly explain the methodology of calculation.

## 4. Relevance

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4.1. In your view, are the TTBER and TTGL still relevant for the assessment of technology transfer agreements under Article 101 of the Treaty, taking into account notably any market developments that have occurred since these instruments were adopted in 2014, either generally or in a particular industry?

*at most 1 choice(s)*

- Yes
- No
- Do not know

4.1.1. Please explain your answer.

## 5. Coherence

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5.1. Are the TTBER and TTGL coherent with other Commission instruments that provide guidance on the interpretation of Article 101 of the Treaty, for example, the Research and Development Block Exemption Regulation (Regulation (EU) No 1217

/2010), the Specialisation Block Exemption Regulation (Regulation (EU) No 1218 /2010), the Commission Guidelines on Horizontal Agreements, the Vertical Agreements Block Exemption Regulation (Regulation (EU) No 2022/720) and the Commission Guidelines on Vertical Agreements?

*at most 1 choice(s)*

- Yes
- No
- Do not know

5.2. Are the TTBER and TTGL coherent with other existing or upcoming EU legislation and policies relating to the fields of intellectual property and competition law, for example the Commission's proposed initiative relating to Standard Essential Patents?

*at most 1 choice(s)*

- Yes
- No
- Do not know

5.2.1. Please explain your answer.

Considering the interplay between Competition and Intellectual Property (IP), especially in relation to Standard Essential Patents (SEPs), the internal consistency among the TTBER and TTGL and Commission's Proposal on SEPs (Proposal) is extremely relevant.

For instance, the SEPs Regulation in the Explanatory Memorandum has explained its complementarity which is both the standardisation strategy and Horizontal Guideline.

In addition, the statement in the TTBER under review underlines that "There is no inherent link between technology pools and standards, but the technologies in the pool often support, in whole or in part, a de facto or de jure industry standard. Different technology pools may support competing standards" (TTBER, rec. 235), thereby considering the treatment of standards and the treatment of standardisation agreements in the old Horizontal Guidelines.

The SEPs Regulation and the new Horizontal Guidelines both stress the positive economic impact of standardisation agreements. In fact, standards thus generally increase competition and lower output and sales costs, benefiting economies as a whole.

Moreover, the Commission has recently updated its standardisation strategy, which aims to strengthen the EU's global competitiveness, enable a resilient, green, and digital economy, and enshrine democratic values in technology applications while preserving the high-quality output of European standards.

On this background it is important to analyse the aforementioned interconnection dynamics between these policy areas, achieving consistency among all the new provisions and policies of these sources of law and granting exhaustive preservation of dynamic competition and innovation.

In particular, in relation to the LNGs issue, with the SEPs Proposal potentially introducing many different requirements for SEP licensing in Europe, it would be reasonable to wait and see which will be the future potential framework in the field before granting any regulation on LNGs.

5.3. Are the TTBER and TTGL coherent with other instruments (for example multilateral agreements and soft law) adopted at international level (other than in the EU) relating to the fields of intellectual property and competition law, such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)?

*at most 1 choice(s)*

- Yes
- No
- Do not know

5.3.1. Please explain your answer.

5.4. Do you consider that the provisions of the TTBER and the guidance provided by the TTGL are coherent in themselves and/or with each other?

*at most 1 choice(s)*

- Yes
- No
- Do not know

5.4.1. Please explain your answer.

## 6. EU added value

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6.1. Have the adoption of the TTBER and TTGL at EU level added value compared with what could have been achieved by national regulations and/or guidelines?

*at most 1 choice(s)*

- Yes
- No
- Do not know

6.1.1. Please explain your answer

We consider that the adoption of a regulation (and TTGL) at EU level clearly added value against the risk of fragmentation that would have resulted from the proliferation of national laws. An EU regulation added value by enhancing legal certainty, as it created a level-playing field for undertakings of all Member states. This has also facilitated the free movement of goods, services and capitals within the internal market.

## 7. Other

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### 7.1. Do you wish to make any additional comments regarding the evaluation of the TTBER and TTGL?

In general, we acknowledge the positive impact of patent pools as an already experienced pro-competitive driver of innovation, especially in the SEPs realm, so long as certain conditions-such as transparency- are implemented. By bringing together patents on complementary technologies from different entities within a specific industry domain, patent pools can redress certain market failures in patent licensing and anti-competitive practices, particularly with reference to the risk of royalty stacking and alleviating the challenges posed by patent thickets. Moreover, patent pools enhance licensing efficiency. With a one-stop licensing approach for multiple patents, the licensing process is simplified, legal disputes over overlapping patents are minimized, administrative complexities and transaction costs are reduced, making it easier for companies to obtain the necessary technologies and incorporate them into their offerings. Another positive impact of patent pools is their role in promoting standardization. Patent pools ensure that all industry players have access to foundational technologies required for implementing the standard. This widespread adoption and compatibility among products not only benefit consumers but also stimulate innovation. Overall, patent pools, if managed with a view to avoid potential anticompetitive behaviours, play a pivotal role in encouraging competition, driving innovation, and providing a transparent licensing environment for patented technologies. We would like to highlight the differentiation between Patent Pools and the LNGs. First, while patent pools are constituted of owners of a patent covering complementary technologies, LNGs members are competitors in the market. Second, while the function of patent pools is to combine and give access to complementary technologies, enhancing the overall efficiency of the licensing process, LNGs aim at negotiating purchasing prices and other licensing conditions, with the purpose of overcoming the supposed negotiation asymmetries in the bargaining power of licensors and licensees. Third, while patent pools operate under the safe harbour provisions set out in the EC Horizontal Guidelines and the TTGL, LNGs' compliance with antitrust law is still an issue that has to be clarified and further developed. A significant concern is the potential for LNGs to become buyers' cartels, along with the risk of collective "hold-out" due to the combined market power of licensees. A major issue is the possibility of unlawful price fixing within an LNG. Since an LNG comprises actual competitors, they could coordinate to lower the cost of standardized inputs used in their products. This could facilitate collective price-fixing of SEP licensing fees, as potential licensees might collectively set fees instead of negotiating independently. LNGs engaging in the fixing of a price ceiling for SEP license fees may eliminate competition between licensees for these licenses, and amount to restrictions "by object". Also, the extensive sharing of highly sensitive and confidential market information during SEP licensing negotiations could lead to horizontal coordination. LNGs may also interfere with the FRAND conditions, disrupting the free-market pricing mechanism for FRAND licensing. LNGs may also frustrate the Huawei/ZTE licensing framework by delaying and complicating licensing discussions, making it harder for SEP owners to seek injunctions for infringements. Moreover, LNGs run the risk of abusing market dominance and monopsony power, lowering legitimate free-market FRAND licensing fee ranges to sub-competitive levels. The lack of supporting evidence for efficiency arguments raises scepticism about their validity and practical implications. As for the possible efficiencies underlying LNGs, in fact, there is still no proof of a significant imbalance between the entities in question. On these grounds, asymmetry should not be presumed but assessed on a case-by-case basis. A virtuous model for governing phenomena emerging in fast-moving markets starts from a case-by-case approach. A critical mass of decisions by enforcers is the backstage of better regulation. The enforcement is still undeveloped over the LNGs issue and policymakers would better avoid regulating without an adequate number of precedents.

This approach will also help to better acknowledge the grade and nature of all the possible risks related to LNGs, as highlighted above.

In conclusion, a premature regulation of LNGs could lead to reduced returns on investment in standardization and discourage further technology development, potentially stifling dynamic competition and

innovation, entraining the risk of disrupting well-functioning markets based on open standards and ultimately making the European Union less attractive for investment in innovation and business.

7.2. If you wish to submit documents (e.g. data, research paper, position paper) that you consider to be relevant for the evaluation of the TTBER and TTGL, please upload them below. Please make sure that you upload only non-confidential versions. If the uploaded documents support your replies to any of the previous questions, please indicate the numbers of those questions.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## **Contact**

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