

New Rules for Licensing and Other Technology Transfer Agreements in the European Union

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On 28 March 2014, following a process of public consultations started in February 2013, the European Commission published the revised Commission Regulation (EU) No. 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (referred to as “the technology transfer block exemption Regulation”). The new rules entered into force on 1 May 2014, replacing the previous Regulation (EC) No. 772/2004 which expired on 30 April 2014.

The new Regulation will apply not only to new technology transfer agreements signed after 1 May 2014 but also to existing agreements concluded under the previous regime as from 30 April 2015. The Regulation creates opportunities, in accordance with Article 101(3) of the Treaty to prevent the challenge of licensing arrangements pursuant to Article 101(1) of the Treaty (the prohibition of agreements which prevent or distort competition).

As with the old Regulation, the new Regulation envisages exemption on condition that the combined market share of the parties does not exceed 20 %, where the undertakings party to the agreement are competing undertakings, or 30 %, where they are competing undertakings. In accordance with the new Regulation, the base for the calculation of the market share of the licensor has been clarified: it will be based only the data concerning the sales of the combined products of the licensor and its licensees within the respective geographic market.

As mentioned above, in accordance with Article 10 of the new Regulation, its provisions will apply to agreements signed after its entry into force (1 May 2014), as well as agreements already in force on 30 April 2014. If existing agreements satisfied the conditions for exemption provided for in the previous Regulation but do not satisfy the conditions for exemption provided for in the new Regulation, a transitional period is envisaged until 30 April 2015, during which the prohibition laid down in Article 101(1) of the Treaty will not apply. In other words, the parties to licensing agreements in force on 30 April 2014 are given one year to make sure that their agreements satisfy the new conditions, facing the risk for their agreements, after 30 April 2015, to be declared anti-competitive by the competent authorities.