



Council of the European Union
General Secretariat

Brussels, 02 December 2024

**Interinstitutional files:
2023/0129 (COD)**

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INFORMATION

From:	Presidency
To:	Working Party on Intellectual Property (Patents)
N° Cion doc.:	8901/23 + ADD 1-5
Subject:	Proposal for a Regulation on Compulsory Licensing for crisis management and amending Regulation (EC) 816/2006 – Presentation by the Presidency

Delegations will find attached a PowerPoint presentation on the above-mentioned proposal, concerning the Examination of the European Parliament's position, as presented by the Presidency and used as basis for discussions at the meeting of the Working Party on Intellectual Property on 2 December 2024.

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INTELLECTUAL PROPERTY WORKING PARTY

2 DECEMBER 2024



Regulation on compulsory licensing

Examination of the European Parliament's position

I. First batch of thematic blocks to be examined

- Additional measures, and in particular the issue of disclosing trade secrets (sections 1 and 12);
- EU CL as a last resort instrument (section 2), with special regard to the EP's amendment that prescribes a four-week deadline to reach a voluntary agreement;
- Scope (section 3);
- Content, review and termination of the EU CL (sections 9 and 13);
- Remuneration of the rights-holders (section 10);
- Fines and periodic penalty payments (section 14);
- Amendments to Regulation 816/2006 (section 17).

Additional measures, and in particular the issue of disclosing trade secrets (sections 1 and 12)



- EP: new Article 13a – additional measures, trade secrets
- Safeguards: Article 13a(2)-(3) and Article 10(1)(cb)-(cd)
- Remuneration of the rights-holder: Article 13a(4) and Article 9(3)(da)
- Consultation with the advisory body: Article 13a(5)
- Implementing acts: Article 13a(6) – clarification is needed
- Possible sharing of trade secrets with third parties: Article 10(1)(cb)
- Possibility to impose fines and periodic penalty payment on the rights-holder (Articles 15, 16)

EU CL as a last resort instrument (section 2)



- EP: four-week deadline for the rights-holder and licensee to reach a prior voluntary agreement (Articles 1 and 4(1))

Scope (section 3)

- Crisis instruments – Chips Act, Regulation on security of gas supply
- Defence-related products
- Trade secrets

Content, review and termination of the EU CL (sections 9 and 13)



- Both Council&EP: identification of all rights and rights-holders
- Council: update of the list of rights and rights-holders covered by the EU CL with retroactive effect (Article 14(1))

Remuneration of the rights-holders (section 10)

- Removal of 4% of the total gross revenue as maximum remuneration payable to the rights-holder
- EP: - basis of the remuneration: total gross revenue;
 - list of criteria;
 - timeframe to receive remuneration

Fines and periodic penalty payments (section 14)

- Inclusion of rights-holder
- Fines: maximum sum vs. 6% cap
- Periodic penalty payments: maximum sum vs 5% cap

Amendments to Regulation 816/2006 (section 17)

- Rows 227a-w (AMs not related to Art. 18a): tbc
- EP: Article 18a: - patents only;
 - content of the application;
 - conditions for the grant of the EU CL.

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II. Second batch of thematic blocks (1/2)

- Definitions (section 4)
- Structural changes and substantive issues regarding Articles 4, 5, 6, 7 (sections 5-8)
 - Streamlined conditions for the granting (Art. 4, rows 70a-d)
 - Quantitative aspects of the manufacturing of crisis-relevant products
 - „*Precisely defined territory of the Union*” (EP Art. 5(1)(e))
 - Liability and warranties regarding the manufactured products (Art. 5(1)(fa))
 - Involvement in the advisory body and ad hoc advisory body (Art. 6)
 - Notice (Art. 7)
 - Right to be heard

II. Second batch of thematic blocks (2/2)



- Customs control (section 11)
- Review of the fines or periodic penalty payments by the CJEU (section 16)
- Implementing acts (section 18)
- Evaluation and start of application of the Regulation (section 19)



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