Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2023/0129 (COD)

Brussels, 30 April 2025

WK 5551/2025 INIT

LIMITE

PI

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

INFORMATION

From: To:	Presidency Delegations
N° prev. doc.:	11273/1/24 REV 1, 16058/24, WK 1024/2025, WK 1663/2025, WK 2614/2025, WK 3176/2025, WK 4653/2025
Subject:	Proposal for a Regulation on compulsory licensing for crisis management and amending Regulation (EC) 816/2006 – Trade secrets

In view of the Intellectual Property Working Party on 8 May 2025, delegations are invited to consider the attached drafting proposal on the matter of trade secrets.

Proposed Compulsory licensing Regulation: possible compromise solution on trade secrets

PUBLIC

Article 2 – Scope

Retain the Council's addition in Articles 2(2), 2(3) and in Recital 13:

2. This Regulation is without prejudice to the rules laid down by other Union legal acts regulating copyright and related rights, including Directive 2001/29, Directive 2009/24**,** and the sui generis rights granted by Directive 96/9/EC on the legal protection of databases **and without prejudice to Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure**.

3. **This Regulation does not impose any obligation to disclose trade secrets.**

Recital 13

(13) It should be clarified that this Regulation is without prejudice to Union law on copyright and related rights, including Directives 96/9[1], 2009/24[2] ~~Directives~~**,** 2001/29/EC[3], 2004/48/EC[4] and (EU) 2019/790[5] of the European Parliament and of the Council, which establish specific rules and procedures that should remain unaffected. **It should also be clarified that this Regulation is without prejudice to Directive (EU) 2016/943 of the European Parliament and the Council[6]. In addition, no provision of this Regulation should be interpreted as imposing any obligation to disclose undisclosed know-how, business information or technological information protected by trade secrets as defined by Directive (EU) 2016/943.**

Article 13- Conduct of the rights-holder and licensee

Departure point: Council mandate, references to good faith and additional measures as per initial COM proposal have been removed from the text. Reference to the possibility of voluntary sharing of further information by the rightsholder and the applicable safeguards reflected in new paras 2-3.

Article 13

~~Relations between~~**Conduct of the** rights-holder and licensee

1. **When exercising the rights or performing the obligations under this Regulation,** ~~The relations between~~ the rights-holder and the licensee ~~who has been granted a~~**shall refrain from any actions or omissions that could undermine the** Union compulsory ~~license shall act and cooperate with each other in good faith when performing rights and obligations under this Regulation~~**licensing process**.

2. Without prejudice to Article 2(3), the rights-holder may, on a voluntary basis, provide the licensee with further information and know-how relating to the use of invention protected by intellectual property rights, in respect of which a Union compulsory licence has been granted.

3. Where information and know-how are shared in accordance with paragraph 2, the licensee shall implement all appropriate measures that the rights-holder identifies as necessary to preserve the confidentiality of trade secrets. The licensee shall provide the Commission and the rights-holder with all the necessary information on the implementation of these measures. In case of failure by the licensee to implement these measures, the Commission may impose fines or periodic penalties on the licensee in accordance with Articles 15 and 16.

Recital 32

Departure point: Council mandate, the additions are based on elements from recital 32a of the EP mandate, which have been adapted to the current compromise proposal (voluntary sharing of information, plus safeguards to be implemented by the licensee)

(32) **During the procedure for granting a Union compulsory licence and after such licence has been granted the rights-holder and licensee should refrain from actions and omissions that could jeopardize the efficiency of the Union compulsory licensing process. Where applicable, the rights-holder and the licensee should also provide the Commission and the advisory body with the information about the known intellectual property rights, including rights owned by third parties, covering the crisis-relevant products. Information to be provided in** ~~The~~ relation **to the Union compulsory licence and its granting process should include, in particular, information on the changes to the status of the relevant intellectual property rights, any pending infringement or invalidity actions in relation to them, as well as the associated voluntary licensing agreements. On request from the rights-holder, licensee or on its own initiative, the Commission should have the possibility to arrange meetings or other exchanges** between the rights-holder and the licensee ~~should be governed by the principle of good faith. The rights-holder and licensee should work towards the success~~**on matters relevant for the fulfilment of the objective** of the Union compulsory licence ~~and collaborate, where necessary, to ensure that the Union compulsory licence effectively and efficiently fulfils its objective~~. The Commission ~~may act as an enabler in achieving the good faith cooperation between~~**should also have the possibility to share crisis-relevant information with** the rights-holder and the licensee, ~~taking into account interests of all parties. In that respect, the Commission should also be entitled to take additional measures in line with Union law to ensure that the compulsory licence meets its objective and ensure that necessary~~**including new information on available manufacturing capacities of** crisis-relevant ~~goods can be made available in~~**products in the territory of** the Union. ~~Such additional measures may include requesting further~~ Information ~~which is deemed indispensable to achieve the objective of the compulsory licence. These measures~~**shared during such meetings or exchanges** should ~~always include adequate safeguards to ensure the protection of the legitimate interests of all parties.~~**remain confidential.** ***The rights-holder should also have the possibility, on a voluntary basis, to share with the licensee further information and know-how relating to the use of invention protected by intellectual property rights, in respect of which a Union compulsory licence has been granted. This information may include the transfer of necessary technology, expertise, data, samples. Where the rightsholder voluntarily provides such information, the licensee should set up an appropriate and secure framework that would ensure the preservation of the confidentiality of trade secrets, in particular vis-à-vis third parties. This should include all appropriate measures identified by the rights-holder, such as contractual, technical and organisational measures, which may consist of model contractual terms, confidentiality agreements, strict access protocols, technical standards and the application of codes of conduct. The licensee should inform the rightsholder and the Commission on the implementation of these measures. Use, acquisition or disclosure of trade secrets in breach of the agreement of the rights-holder should be considered to be unlawful within the meaning of Directive (EU) 2016/943.***