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COMMISSION REGULATION (EU) 2026/877

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on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation No 19/65/EEC of the Council of 2 March 1965 on application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices ([1]), and in particular Article 1 thereof,

Having published a draft of this Regulation,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 101(3) of the Treaty by regulation to certain categories of technology transfer agreements and corresponding concerted practices to which only two undertakings are party which fall within Article 101(1) of the Treaty.

(2) Pursuant to Regulation No 19/65/EEC, the Commission has, in particular, adopted Commission Regulation (EU) No 316/2014 ([2]). Regulation (EU) No 316/2014 defines categories of technology transfer agreements which the Commission regarded as normally satisfying the conditions laid down in Article 101(3) of the Treaty. In view of the overall positive experience with the application of Regulation (EU) No 316/2014, which expires on 30 April 2026, and the results of the evaluation of that Regulation, it is appropriate to adopt a new block exemption regulation.

(3) This Regulation should ensure the effective protection of competition and provide adequate legal security for undertakings. The pursuit of those objectives should take account of the need to simplify administrative supervision and the legislative framework to the greatest extent possible.

(4) Technology transfer agreements concern the licensing of technology rights. Such agreements will usually improve economic efficiency and be pro-competitive as they can reduce duplication of research and development, incentivise initial research and development, promote innovation, facilitate the dissemination of technology and generate product market competition.

(5) The likelihood that such efficiency-enhancing and pro-competitive effects will outweigh any anti-competitive effects resulting from restrictions contained in technology transfer agreements depends on the degree of market power of the undertakings concerned and, therefore, on the extent to which those undertakings face competition from undertakings owning substitute technologies or undertakings producing substitute products.

(6) This Regulation should only apply to technology transfer agreements between a licensor and a licensee. It should cover such agreements even if the agreement contains conditions relating to more than one level of trade, for instance requiring the licensee to set up a particular distribution system and specifying the obligations the licensee must or may impose on resellers of the products produced under the licence. However, such conditions

([1]) OJ 36, 6.3.1965, p. 533/65, ELI: http://data.europa.eu/eli/reg/1965/19/oj.
([2]) Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (OJ L 93, 28.3.2014, p. 17, ELI: http://data.europa.eu/eli/reg/2014/316/oj).

and obligations should comply with the competition rules applicable to supply and distribution agreements, as set out in Commission Regulation (EU) 2022/720 ([3]) and explained in the Commission Guidelines on Vertical Restraints ([4]). Supply and distribution agreements concluded between a licensee and buyers of its contract products should not be exempted by this Regulation.

(7) This Regulation should only apply to agreements where the licensor permits the licensee and/or one or more of its sub-contractors to exploit the licensed technology rights, possibly after further research and development by the licensee and/or its sub-contractors, for the purpose of producing goods or services. It should not apply to licensing in the context of research and development agreements that are covered by Commission Regulation (EU) 2023/1066 ([5]) or to licensing in the context of specialisation agreements that are covered by Commission Regulation (EU) 2023/1067 ([6]). It should also not apply to agreements whose primary purpose is the mere resale or distribution of software, whether through physical or digital channels, as such agreements do not concern the licensing of technology for the purpose of production but are more akin to distribution agreements.

(8) This Regulation should not apply to agreements to set up technology pools, that is to say, agreements for the pooling of technologies with the purpose of licensing them to the contributors to the pool or to third parties, or to agreements whereby the pooled technologies are licensed out to those third parties. Nor should it apply to arrangements whereby potential licensees of technology agree to negotiate the terms of technology transfer agreements jointly (licensing negotiation groups).

(9) For the application of Article 101(3) of the Treaty by regulation, it is not necessary to define those technology transfer agreements that are capable of falling within Article 101(1) of the Treaty. In the individual assessment of agreements pursuant to Article 101(1), account has to be taken of several factors, and in particular the structure and the dynamics of the relevant technology and product markets.

(10) The benefit of the block exemption established by this Regulation should be limited to those agreements which can be assumed with sufficient certainty to satisfy the conditions of Article 101(3) of the Treaty. In order to attain the benefits and objectives of technology transfer, this Regulation should not only cover the transfer of technology as such but also other provisions contained in technology transfer agreements if, and to the extent that, those provisions are directly related to the production or sale of the contract products.

(11) For technology transfer agreements between competitors it can be presumed that, where the combined share of the relevant markets held by the parties does not exceed 20 % and the agreements do not contain certain severely anti-competitive restrictions, they generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits.

(12) For technology transfer agreements between non-competitors it can be presumed that, where the individual share of the relevant markets held by each of the parties does not exceed 30 % and the agreements do not contain certain severely anti-competitive restrictions, they generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits.

(13) For the application of this Regulation, market shares on relevant technology markets should be calculated on the basis of the presence of the licensed technology rights on the relevant product and geographic markets where the contract products are sold, namely on the basis of the sales of contract products produced by the licensor and its licensees combined. Therefore, for the application of this Regulation, technologies that have not yet generated sales of contract products should be considered to hold a market share equal to zero.

([3]) Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 134, 11.5.2022, p. 4, ELI: http://data.europa.eu/eli/reg/2022/720/oj).

([4]) Communication from the Commission – Commission Notice: Guidelines on vertical restraints (OJ C 248, 30.6.2022, p. 1).

([5]) Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements (OJ L 143, 2.6.2023, p. 9, ELI: http://data.europa.eu/eli/reg/2023/1066/oj).

([6]) Commission Regulation (EU) 2023/1067 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements (OJ L 143, 2.6.2023, p. 20, ELI: http://data.europa.eu/eli/reg/2023/1067/oj).

(14) The provisions of this Regulation relating to the application of market share thresholds should not affect the calculation of market shares for the assessment of agreements that do not fall within the block exemption provided for by this Regulation. The application of this Regulation is without prejudice to the application of Article 102 of the Treaty.

(15) If the applicable market share threshold is exceeded on one or more product or technology markets, the block exemption should not apply to the agreement for the relevant markets concerned.

(16) There can be no presumption that, above those market share thresholds, technology transfer agreements fall within the scope of Article 101(1) of the Treaty. For instance, exclusive licensing agreements between non-competing undertakings often fall outside the scope of Article 101(1). There can also be no presumption that, above those market share thresholds, technology transfer agreements falling within the scope of Article 101(1) will not satisfy the conditions of the exception laid down in Article 101(3). However, it can also not be presumed that they will usually give rise to objective advantages of such a character and size as to compensate for the disadvantages which they create for competition.

(17) This Regulation should not exempt technology transfer agreements containing restrictions which are not indispensable to the improvement of production or distribution. In particular, technology transfer agreements containing certain severely anti-competitive restrictions, such as the fixing of prices charged to third parties, should be excluded from the benefit of the block exemption established by this Regulation, irrespective of the market shares of the undertakings concerned. Where an agreement contains such hardcore restrictions, the whole agreement should be excluded from the benefit of the block exemption.

(18) In order to protect incentives to innovate and the appropriate application of intellectual property rights, certain restrictions should be excluded from the benefit of the block exemption. In particular certain grant back obligations and non-challenge clauses should be excluded. Where such restrictions are included in a technology transfer agreement, only the restriction in question should be excluded from the benefit of the block exemption.

(19) The market share thresholds, the non-exemption of technology transfer agreements containing severely anti-competitive restrictions and the excluded restrictions provided for in this Regulation will normally ensure that the agreements to which the block exemption applies do not enable the participating undertakings to eliminate competition in respect of a substantial part of the products in question.

(20) This Regulation should indicate typical situations in which it may be considered appropriate to withdraw the benefit of the exemption established by this Regulation, pursuant to Article 29 of Council Regulation (EC) No 1/2003 ([7]).

(21) In order to strengthen supervision of parallel networks of technology transfer agreements which have similar restrictive effects and which cover more than 50 % of a given market, the Commission may by regulation declare this Regulation inapplicable to technology transfer agreements containing specific restrictions relating to the market concerned, thereby restoring the full application of Article 101 of the Treaty to such agreements,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) ‘agreement’ means an agreement, a decision of an association of undertakings or a concerted practice;

([7]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1, ELI: http://data.europa.eu/eli/reg/2003/1/oj).

(b) ‘technology rights’ means 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;

(c) ‘technology transfer agreement’ means:

(i) a technology rights licensing agreement entered into between two undertakings for the purpose of the production of contract products by the licensee and/or its sub-contractor(s),

(ii) an assignment of technology rights between two undertakings for the purpose of the production of contract products where part of the risk associated with the exploitation of the technology remains with the assignor;

(d) ‘reciprocal agreement’ means a technology transfer agreement where two undertakings grant each other, in the same or separate contracts, a technology rights licence, and where those licences concern competing technologies or can be used for the production of competing products;

(e) ‘non-reciprocal agreement’ means a technology transfer agreement where one undertaking grants another undertaking a technology rights licence, or where two undertakings grant each other such a licence but where those licences do not concern competing technologies and cannot be used for the production of competing products;

(f) ‘product’ means goods or services, including both intermediate goods and services and final goods and services;

(g) ‘contract product’ means a product produced, directly or indirectly, on the basis of the licensed technology rights;

(h) ‘intellectual property rights’ includes industrial property rights, in particular patents and trade marks, copyright and neighbouring rights;

(i) ‘know-how’ means a package of practical information resulting from experience and testing, which is:

(i) secret, that is to say, not generally known or easily accessible,

(ii) substantial, that is to say, significant and useful for the production of the contract products, and

(iii) identified, that is to say, described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;

(j) ‘relevant product market’ means the market for the contract products and their substitutes, that is to say all those products which are regarded as interchangeable or substitutable by the buyer, by reason of the products’ characteristics, their prices and their intended use;

(k) ‘relevant technology market’ means the market for the licensed technology rights and their substitutes, that is to say all those technology rights which are regarded as interchangeable or substitutable by the licensee, by reason of the technology rights’ characteristics, the royalties payable in respect of those rights and their intended use;

(l) ‘relevant geographic market’ means the area in which the undertakings concerned are involved in the supply of and demand for products or the licensing of technology rights, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas;

(m) ‘relevant market’ means the combination of the relevant product or technology market with the relevant geographic market;

(n) ‘competing undertakings’ means undertakings which compete on the relevant market, that is to say:

(i) competing undertakings on the relevant market where the technology rights are licensed, that is to say, undertakings which license out competing technology rights (actual competitors on the relevant market);

(ii) competing undertakings on the relevant market where the contract products are sold, that is to say, undertakings which, in the absence of the technology transfer agreement, would both be active on the relevant market(s) on which the contract products are sold (actual competitors on the relevant market) or which, in the absence of the technology transfer agreement, would, on realistic grounds and not just as a mere theroretical possibility, be likely to undertake the necessary additional investments or to incur other necessary costs to enter the relevant market(s) within a timeframe that is sufficiently short to impose competitive pressure on undertakings that are already active on the relevant market (potential competitors on the relevant market);

(o) ‘selective distribution system’ means a distribution system where the licensor undertakes to license the production of the contract products, either directly or indirectly, only to licensees selected on the basis of specified criteria and where those licensees undertake not to sell the contract products to unauthorised distributors within the territory reserved by the licensor to operate that system;

(p) ‘exclusive licence’ means a licence under which the licensor itself is not permitted to produce on the basis of the licensed technology rights and is not permitted to license the licensed technology rights to third parties, in general or for a particular use or in a particular territory;

(q) ‘exclusive territory’ means a given territory within which only one undertaking is allowed to produce the contract products, but where it is nevertheless possible to allow another licensee to produce the contract products within that territory only for a particular customer where the second licence was granted in order to create an alternative source of supply for that customer;

(r) ‘exclusive customer group’ means a group of customers to which only one party to the technology transfer agreement is allowed to actively sell the contract products produced with the licensed technology;

(s) ‘active sales’ means actively targeting customers by visits, letters, emails, calls or other means of direct communication or through targeted advertising and promotion, offline or online, for instance by means of print or digital media, including online media, price comparison services or advertising on search engines targeting customers in particular territories or customer groups, operating a website with a top-level domain corresponding to particular territories, or offering on a website languages that are commonly used in particular territories, where such languages are different from the ones commonly used in the territory in which the buyer is established;

(t) ‘passive sales’ means sales made in response to unsolicited requests from individual customers, including delivery of goods or services to the customer, without the sale having been initiated by actively targeting the particular customer, customer group or territory, and including sales resulting from participating in public procurement or responding to private invitations to tender.

2. For the purposes of this Regulation, the terms ‘undertaking’, ‘licensor’ and ‘licensee’ shall include their respective connected undertakings.

‘Connected undertakings’ means:

(a) undertakings in which a party to the technology transfer agreement, directly or indirectly, has one or more of the following rights or powers:

(i) has the power to exercise more than half the voting rights,

(ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking,

(iii) has the right to manage the undertaking’s affairs;

(b) undertakings which directly or indirectly have, over a party to the technology transfer agreement, one or more of the rights or powers listed in point (a);

(c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, one or more of the rights or powers listed in point (a);

(d) undertakings in which a party to the technology transfer agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have one or more of the rights or powers listed in point (a);

(e) undertakings in which one or more of the rights or the powers listed in point (a) are jointly held by:

(i) parties to the technology transfer agreement or their respective connected undertakings referred to in points (a) to (d), or

(ii) one or more of the parties to the technology transfer agreement or one or more of their connected undertakings referred to in points (a) to (d) and one or more third parties.

Article 2

Exemption

1. Pursuant to Article 101(3) of the Treaty and subject to the provisions of this Regulation, Article 101(1) of the Treaty shall not apply to technology transfer agreements.

2. The exemption provided for in paragraph 1 shall apply to the extent that technology transfer agreements contain restrictions of competition falling within the scope of Article 101(1) of the Treaty. The exemption shall apply for as long as the licensed technology rights have not expired, lapsed or been declared invalid or, in the case of know-how, for as long as the know-how remains secret. However, where know-how becomes publicly known as a result of action by the licensee, the exemption shall apply for the duration of the agreement.

3. The exemption provided for in paragraph 1 shall also apply to provisions in technology transfer agreements that relate to the purchase of products by the licensee or relate to the licensing or assignment of other intellectual property rights or know-how to the licensee if, and to the extent that, those provisions are directly related to the production or sale of the contract products.

Article 3

Market share thresholds

1. Where the undertakings party to the agreement are competing undertakings, the exemption provided for in Article 2 shall apply on condition that the combined market share of the parties does not exceed 20 % on any relevant market.

2. Where the undertakings party to the agreement are not competing undertakings, the exemption provided for in Article 2 shall apply on condition that the market share of each of the parties does not exceed 30 % on any relevant market.

Article 4

Hardcore restrictions

1. Where the undertakings party to the agreement are competing undertakings, the exemption provided for in Article 2 shall not apply to agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object any of the following:

(a) the restriction of a party's ability to determine its prices when selling products to third parties;

(b) the limitation of output, except limitations on the output of contract products imposed on the licensee in a non-reciprocal agreement or imposed on only one of the licensees in a reciprocal agreement;

(c) the allocation of markets or customers except:

(i) the obligation on the licensor and/or the licensee, in a non-reciprocal agreement, not to produce with the licensed technology rights within the exclusive territory reserved for the other party and/or not to sell the contract products actively and/or passively into the exclusive territory or to the exclusive customer group reserved for the other party,

(ii) the restriction, in a non-reciprocal agreement, of active sales of the contract products by the licensee into the exclusive territory or to the exclusive customer group allocated by the licensor to another licensee provided the latter was not a competing undertaking of the licensor at the time of the conclusion of its own licence,

(iii) the obligation on the licensee to produce the contract products only for its own use, provided that, where the licensee incorporates the contract products into its own products, it is not restricted from selling the contract products actively and passively as spare parts for its own products,

(iv) the obligation on the licensee, in a non-reciprocal agreement, to produce the contract products only for a particular customer, where the licence was granted in order to create an alternative source of supply for that customer;

(d) the restriction of the licensee's ability to exploit its own technology rights or the restriction of the ability of any of the parties to the agreement to carry out research and development, unless such latter restriction is indispensable to prevent the disclosure of the licensed know-how to third parties.

2. Where the undertakings party to the agreement are not competing undertakings, the exemption provided for in Article 2 shall not apply to agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object any of the following:

(a) the restriction of a party's ability to determine its prices when selling products to third parties, without prejudice to the possibility of imposing a maximum sale price or recommending a sale price, provided that it does not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;

(b) the restriction of the territory into which, or of the customers to whom, the licensee may passively sell the contract products, except:

(i) the restriction of passive sales into an exclusive territory or to an exclusive customer group reserved for the licensor,

(ii) the obligation to produce the contract products only for its own use, provided that, where the licensee incorporates the contract products into its own products, it is not restricted from selling the contract products actively and passively as spare parts for its own products,

(iii) the obligation to produce the contract products only for a particular customer, where the licence was granted in order to create an alternative source of supply for that customer,

(iv) the restriction of sales to end users by a licensee operating at the wholesale level of trade,

(v) the restriction of sales to unauthorised distributors located in a territory where the licensor operates a selective distribution system for the contract products;

(c) the restriction of active or passive sales to end users by a licensee which is a member of a selective distribution system and which operates at the retail level, without prejudice to the possibility of prohibiting a member of the system from operating out of an unauthorised place of establishment.

3. Where the undertakings party to the agreement are not competing undertakings at the time of the conclusion of the agreement but become competing undertakings afterwards, paragraph 2 and not paragraph 1 shall apply for the full life of the agreement unless the agreement is subsequently amended in any material respect. Such an amendment includes the conclusion of a new technology transfer agreement between the parties concerning competing technology rights.

Article 5

Excluded restrictions

1. The exemption provided for in Article 2 shall not apply to any of the following obligations contained in technology transfer agreements:

(a) any direct or indirect obligation on the licensee to grant an exclusive licence or to assign rights, in whole or in part, to the licensor or to a third party designated by the licensor in respect of its own improvements to, or its own new applications of, the licensed technology;

(b) any direct or indirect obligation on a party not to challenge the validity of intellectual property rights which the other party holds in the Union, without prejudice to the possibility, in the case of an exclusive licence, of providing for termination of the technology transfer agreement in the event that the licensee challenges the validity of any of the licensed technology rights.

2. Where the undertakings party to the agreement are not competing undertakings, the exemption provided for in Article 2 shall not apply to any direct or indirect obligation limiting the licensee's ability to exploit its own technology rights or limiting the ability of any of the parties to the agreement to carry out research and development, unless such latter restriction is indispensable to prevent the disclosure of the licensed know-how to third parties.

Article 6

Withdrawal in individual cases

1. The Commission may withdraw the benefit of this Regulation, pursuant to Article 29(1) of Regulation (EC) No 1/2003, where it finds in any particular case that a technology transfer agreement to which the exemption provided for in Article 2 of this Regulation applies nevertheless has effects which are incompatible with Article 101(3) of the Treaty, and in particular where:

(a) access of third parties' technologies to the market is restricted, for instance by the cumulative effect of parallel networks of similar restrictive agreements prohibiting licensees from using third parties' technologies;

(b) access of potential licensees to the market is restricted, for instance by the cumulative effect of parallel networks of similar restrictive agreements prohibiting licensors from licensing to other licensees or because the only technology owner licensing out relevant technology rights concludes an exclusive licence with a licensee that is already active on the product market on the basis of substitutable technology rights.

2. Where, in any particular case, a technology transfer agreement to which the exemption provided for in Article 2 of this Regulation applies has effects which are incompatible with Article 101(3) of the Treaty in the territory of a Member State, or in a part thereof, which has all the characteristics of a distinct geographic market, the competition authority of that Member State may withdraw the benefit of this Regulation, pursuant to Article 29(2) of Regulation (EC) No 1/2003, in respect of that territory, under the same circumstances as those set out in paragraph 1 of this Article.

Article 7

Disapplication of this Regulation

1. Pursuant to Article 1a of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar technology transfer agreements cover more than 50 % of a relevant market, this Regulation shall not apply to technology transfer agreements containing specific restrictions relating to that market.

2. A regulation pursuant to paragraph 1 shall not become applicable earlier than six months following its adoption.

Article 8

Application of the market share thresholds

For the purposes of applying the market share thresholds laid down in Article 3 the following rules shall apply:

(a) the market share shall be calculated on the basis of market sales value; if market sales value data are not available, estimates based on other reliable market information, including market sales volumes, may be used to establish the market share of the undertaking concerned;

(b) the market share shall be calculated on the basis of data relating to the preceding calendar year; if the preceding calendar year is not representative of the parties' position in the relevant market(s), the market share shall be calculated as an average of the parties' market shares for the 3 preceding calendar years;

(c) the market share held by the undertakings referred to Article 1(2), second subparagraph, point (e), shall be apportioned equally to each undertaking having the rights or the powers listed in Article 1(2), second subparagraph, point (a);

(d) the market share of a party active on a relevant technology market shall be calculated on the basis of the presence of that party's technology rights on the relevant market(s) (namely the product market(s) and geographic market(s)) where the contract products are sold, that is, on the basis of the combined sales of that party and its licensees of products incorporating that party's licensed technology rights;

(e) if the market share referred to in Article 3(1) or (2) is initially not more than 20 % or 30 % respectively, but subsequently rises above those levels, the exemption provided for in Article 2 shall continue to apply for a period of three consecutive calendar years following the year in which the 20 % threshold or 30 % threshold was first exceeded.

Article 9

Relationship with other block exemption regulations

This Regulation shall not apply to licensing arrangements in research and development agreements which fall within the scope of Regulation (EU) 2023/1066 or in specialisation agreements which fall within the scope of Regulation (EU) 2023/1067.

Article 10

Transitional period

The prohibition laid down in Article 101(1) of the Treaty shall not apply from 1 May 2026 until 30 April 2027 to agreements already in force on 30 April 2026 which do not satisfy the conditions for exemption provided for in this Regulation but which, on 30 April 2026, satisfied the conditions for exemption provided for in Regulation (EU) No 316/2014.

Article 11

Period of validity

This Regulation shall enter into force on 1 May 2026.

It shall expire on 30 April 2038.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 April 2026.

For the Commission
The President
Ursula VON DER LEYEN