

## Czech Republic

### Legal basis

The principal legal basis for compulsory licences is the Act on Inventions and Rationalisation Proposals No. 527/1990 Coll., as amended (Czech Patent Act, hereinafter PA). Compulsory licences are governed by Section 20 PA. The proceedings are governed by Section 22 of the Decree No. 550/1990 Coll., on the procedure in matters of inventions and industrial designs as amended.

To implement Art. 12 Biotech Directive as well as EU Regulation 816/2006, Section 9 of the Act No. 206/2000 Coll., on the protection of biotechnological inventions and Section 21 of the Act No. 408/2000 Coll., on the protection of plant varieties, as amended, apply respectively.

### Grounds for applying for a licence

The grounds for granting compulsory licence are:

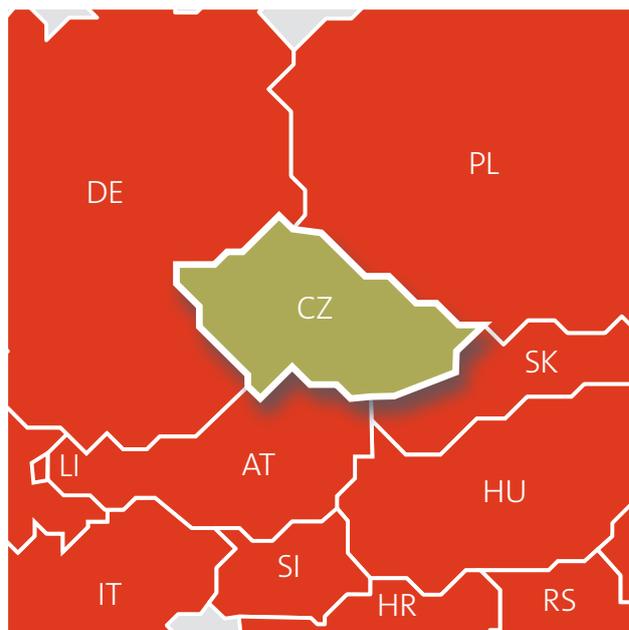
- the patentee does not use the invention or uses it insufficiently without due reasons and did not accept a reasonable offer to conclude a licence agreement within a reasonable term. Importation of a patented product also qualifies as use of the invention;
- such compulsory licence cannot be granted before four years from patent application filing date or three years from the grant, whichever term expires later; or
- threat to important public interest.

With regard to biotechnological inventions, a compulsory licence may be granted if:

- a breeder cannot obtain or exploit a plant or animal variety right without infringing a prior patent; and
- the breeding certificate holder unsuccessfully requested the patentee to conclude a licence; and
- if the plant or animal variety constitutes significant technical progress of considerable economic interest compared with the invention.

### General procedure

The Industrial Property Office of the Czech Republic (hereinafter the Office) is the authority competent to grant a compulsory licence upon application by a third party. The Office conducts administrative proceedings under the Czech Code of Administrative Procedure.



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The application for a compulsory licence is submitted in writing to the Office and the applicant must substantiate the grounds and demonstrate fulfilment of the above-mentioned criteria. The Office will invite the patentee to respond to the compulsory licence application.

The Office examines whether the compulsory licence application complies with the conditions set out in Section 20 PA. The terms, scope and duration of the compulsory licence are determined with respect to the circumstances of the case.

In reaching their decision, the Office applies the general principles of administrative decision-making under the Czech Code of Administrative Procedure as well as general legal principles, in particular protection of legitimate interests, proportionality and public interest.

A compulsory licence can be granted primarily to supply the domestic market. The grant of a compulsory licence does not affect the right of the patentee for payment of licence fees. If the parties cannot agree, the amount of the licence fees shall be determined by the Prague City Court. The compulsory licence shall be recorded in the patent register.

### Appeal/review

The decision on grant or rejection of the compulsory licence may be appealed within one month to the President of the Office. The appellate decision may be subject to administrative review relating to all factual and legal aspects

before the Prague City Court. The judgment of the Prague City Court may be challenged in a cassation complaint with the Czech Supreme Administrative Court.

## Statistics and jurisprudence

Compulsory licence procedures are rare in the Czech Republic. One request was filed for a compulsory licence in 2000 by Czech company EXIMPO, a.s. against Philips Electronics, N.V. The application was rejected, because the patentee proved that it sufficiently works the invention through licensees in the Czech Republic.

In addition, the Office held that refusal to conclude a licence agreement under conditions less favourable for the licensor than standard terms offered to other licensees did not constitute unreasonable refusal to conclude an offer to conclude a licence.

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