# Latvia

## Legal basis

The legal basis for compulsory licencing is set out in Art. 54 of the Patent Law of 2007, amended most recently as of 1 January 2016 (hereinafter PL).

With respect to plant varieties, the basis is set out in Art. 32 of the Plant Varieties Protection Law. The Plant Varieties Protection Law notes that it is intended to implement the Biotech Directive.

## Grounds for applying for a licence

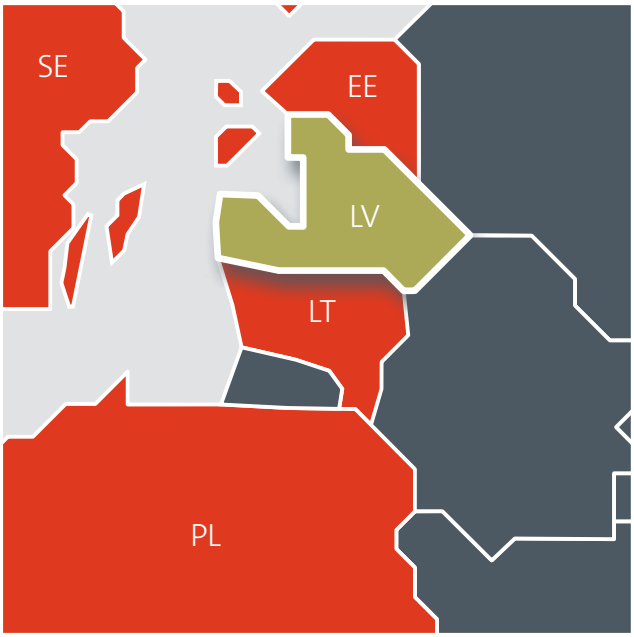
Pursuant to Art. 54(1) PL, any person may apply for a compulsory licence if a patented invention has not been used in Latvia or has been used to an insufficient degree within four years from the date of application or three years from the date on which the grant of a patent was published. Pursuant to Art. 16(1) PL, importation of a patented product qualifies as use of that invention. The licence will be refused if the patent proprietor proves to the court that there are reasonable grounds why the invention has not been used or has been used to an insufficient degree.

Art. 54(2) of the Patent Law stipulates the requirements with respect to biotechnological inventions. If a patent proprietor of a biotech invention is unable to exploit the invention without infringing prior rights to a plant variety, the patent proprietor may apply for a compulsory licence for the use of such plant variety and must pay the owner compensation as stipulated by the court. If such a compulsory licence is granted, the owner of a plant variety has the right to qualify for a counter-licence with reasonable conditions for the use of the protected invention. See also Arts. 28, 32 and 32(1), Plant Varieties Protection Law.

Art. 54(3) PL lays down further conditions that must be satisfied to receive a compulsory licence under Art. 54(1) and (2), namely:

(1) The patented invention or an invention acquired by means of a patented method is of vital importance for the welfare, defence or economic interests of the people of Latvia;

(2) An invention that has significant economic value may not be implemented without the use of another patented invention.




Moreover, Art. 54(4) PL states that a court may grant a compulsory licence if the applicant has tried, but failed, to obtain such a licence from the patentee within a reasonable time and under acceptable commercial conditions.

## General procedure

Although ordinarily the Riga City Vidzeme District Court has exclusive jurisdiction in industrial property cases, including patent-related cases (Art. 65 PL), a party requesting the grant of a compulsory licence shall petition the Administrative Court following the general rules on territorial jurisdiction (Art. 54(1) PL).

If there is a state of national emergency, the Cabinet of Ministers may grant a compulsory licence (Art. 54(5) PL).

In the case of plant varieties, the compulsory licence is granted by the State Plant Protection Service (*Valsts augu aizsardzības dienests*), based upon a decision of the court.

According to Art. 54(6) PL, when examining the circumstances of the case for the granting of a compulsory licence pursuant to Art. 54(3)(1) PL, the court shall take into account the following:

- The use and term of the patent shall be limited considering the purpose for which the compulsory licence has been granted;

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- A compulsory licence is comparable to a simple licence;
- A compulsory licence may not be assigned to any third party, unless it is assigned along with an undertaking (or some part thereof) that is directly related to the use of the patent;
- A compulsory licence shall be granted for use in the internal market of Latvia.

Under Art. 54(7) PL, the court must consider additional considerations when granting a compulsory licence pursuant to Art. 54(2) PL. These are:

- The proprietor of the earlier patent may request a counter-licence on reasonable conditions for the use of the later invention;
- The licence to the earlier patent shall not be assigned unless it is assigned together with the later patent.

Pursuant to Art. 54(8) PL a court may rule on termination of a compulsory licence if the conditions as stipulated in Art. 54(1) or 54(3)(1) PL cease to exist and are unlikely to recur.

Finally, the holder of a compulsory licence is obliged to compensate the patent proprietor with an amount determined by the court considering the economic value of the licence, the extent of use of the invention and other circumstances.

The Administrative Court granting the compulsory licence has the discretion to consider the degree to which the scope and term of the patent should be limited by a compulsory licence (Art. 54(6)(1) PL). Under general principles of administrative procedure, such a decision may be initiated by the court at the motion of one of the parties. It is to be assumed that the patentee would be invited to the proceedings as a third party.

## Appeal/review

Since the decision to grant a compulsory licence is taken by an administrative court of first instance, it may be appealed to the Administrative Court of Appeal. The rulings of the latter, in turn, may be appealed to the Supreme Court of Latvia.



## Statistics and jurisprudence

According to the information provided by the Latvian Patent Office (www.lrpv.gov.lv/en), no compulsory licences have been granted or registered in Latvia.