

Romania

Legal basis

The legal basis for compulsory licences in Romania is set out in Arts. 43 to 47 of the Romanian Law No. 64/1991 on patents (hereinafter PL).

PL also implements Art. 12 Biotech Directive. In addition, Law No. 255/1998 regarding the protection of new plant varieties stipulates that the holder of a patent concerning a biotechnological invention may apply for a non-exclusive compulsory licence for the use of a protected variety.

EU Regulation 816/2006 is directly applicable; there are no domestic provisions regarding its application/implementation.

Grounds for applying for a licence

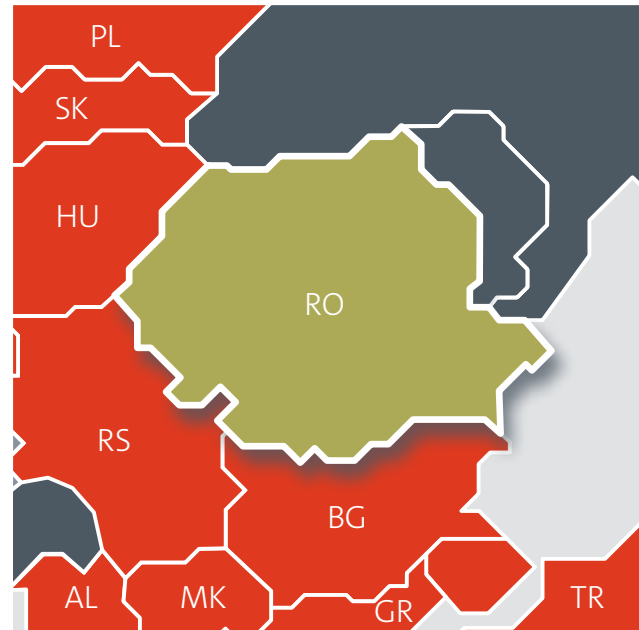
According to Art. 43(1) PL, at the request of any interested person, the Bucharest Tribunal may grant a compulsory licence upon the expiry of a period of four years from the filing date of the patent application or a period of three years after the grant of the patent, whichever term expires later.

However, the law states that a compulsory licence may be requested only if the invention has not been used or has not been sufficiently used on Romanian territory, and the patent owner cannot justify its inaction and no agreement has been reached with him regarding the terms and conditions of the invention (Art. 43(2) PL). The law does not state whether importation also qualifies as use of the patented invention and there is currently no case law in that respect. However, it is likely that the courts will consider importation as use of the invention as a result of Art. 27 TRIPS.

The Bucharest Tribunal shall authorise the compulsory licence if it considers, on the basis of the circumstances, that although the person concerned has made every effort, no agreement has been reached within a reasonable period of time (Art. 43(3) PL).

Art. 43(4) PL stipulates that a compulsory licence may be authorised by the Bucharest Tribunal:

- in national emergency situations;
- in other situations of extreme urgency;
- in situations of public use, for non-commercial purposes.



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The granting of a compulsory licence for one of the abovementioned reasons does not require that the conditions mentioned in Art. 43(2) PL are met. However, the licensee will notify the patent applicant or patent holder of the court's authorisation in the shortest possible time.

In situations of public use for non-commercial purposes, the government or third parties authorised by it shall, when they know or have demonstrable reasons to know whether a valid patent is or will be used by the government or third parties, notify the holder of the patent about its use within a reasonable time.

In cases where a patent cannot be exploited without prejudice to the rights conferred by another patent whose regulatory national filing date is earlier, a compulsory licence for the exploitation of the subsequent patent may be authorised only if the following additional conditions are cumulatively met:

- (a) the invention claimed in the subsequent patent constitutes an important technological advance of substantial economic interest with respect to the invention claimed in the previous patent;
- (b) the holder of the earlier patent is entitled to a reciprocal licence under reasonable conditions for the use of the invention claimed in the subsequent patent;
- (c) authorised use in relation to the previous patent is not transmissible, except in cases where the subsequent patent is also transmitted.

The beneficiary of the compulsory licence may be the government or third parties authorised by it.

Art 43(3) PL stipulates that compulsory licences shall be authorised mainly for the supply of the domestic market and the extent and duration of compulsory licences shall be limited to the purposes for which they were authorised (Art. 43(4) PL).

In the case of inventions in the field of semiconductor technology, the licence will be granted only for non-commercial public purposes or to remedy a practice found to be anti-competitive in judicial or administrative proceedings.

If the holder of a plant variety patent cannot exploit it without prejudice to a previous patent, he may apply for a compulsory licence for the invention protected by this patent.

Where the holder of a patent relating to a biotechnological invention cannot exploit it without prejudice to a prior plant variety patent, it may require a compulsory licence for the exploitation of the patent-protected plant variety.

Where a compulsory licence is authorised to remedy an anti-competitive practice, the provisions of Art. 43(3) and (4), and Art. 44(3) PL are not applicable.

According to Art. 45 PL, the compulsory licence is not transferable except with the part of the enterprise or with the trading fund that benefits from such use.

General procedure

The Bucharest Tribunal is the competent authority to grant a compulsory licence.

The procedure for obtaining a compulsory licence is launched by the submission of an application to the Bucharest Tribunal. Since there are no special provisions stipulated in the PL, the procedure will be carried out in accordance with the ordinary rules of civil procedure. Therefore, the interested party shall submit an application to the Bucharest Tribunal, which will grant the licence after analysing the submitted application according to the criteria set out in the law.

There is neither case law nor special statutory provisions relating to the possibility of obtaining a compulsory licence within a preliminary injunction procedure.

According to Art. 44 PL, compulsory licences are non-exclusive and are granted by the Bucharest Tribunal under specified conditions in terms of their extent and duration, as well as the level of remuneration due to the right holder, determined in relation to the commercial value of the licences granted. The court has discretion as to the terms of the compulsory licence.

According to Art. 46(1) PL, at the reasoned request submitted by the interested party, the Bucharest Tribunal may withdraw the compulsory licence when the circumstances giving rise to it cease to exist, provided that the legitimate interests of the party who acquired it are protected in an appropriate manner. The compulsory licence shall not be withdrawn if the circumstances that were considered upon its granting are likely to occur again (although at that exact moment they had ceased to exist).

The final and irrevocable judgments concerning the grant or the withdrawal of the compulsory licence shall be communicated by the interested party to the State Office for Inventions and Trademarks (OSIM), which shall register it in the National Register of Patent Applications or in the National Register of Patents and shall publish these decisions in the Official Industrial Property Bulletin within one month of the communication.

Appeal/review

The decision may be appealed to the Bucharest Court of Appeal.

Statistics and jurisprudence

There are no cases concerning compulsory licences.