



2023/0133(COD)

27.10.2023

AMENDMENTS

76 - 339

Draft opinion

Dita Charanzová

(PE753.649v02-00)

Standard essential patents and amending Regulation (EU)2017/1001

Proposal for a regulation

(COM(2023)0232 – C9-0147/2023 – 2023/0133(COD))

AM_Com_LegOpinion

Amendment 76
Geoffroy Didier

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, after the entry into force of this Regulation.

Amendment

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents ***in force in a Member State*** that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, after the entry into force of this Regulation.

Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction, nor competence, in respect of patent rights granted by non-EU states.

Amendment 77

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions ***and that is not subject to a royalty-free intellectual property policy***, after the entry into force of this Regulation.

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Or. en

Amendment 78

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, ***after the entry into force of this Regulation.***

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(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder ***or a previous holder of the SEPs in question*** has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy.

Or. en

Amendment 79
Geoffroy Didier

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain use cases of standards,

Amendment

(4) There are well established commercial relationships and licensing practices for certain use cases of standards,

such as the standards for wireless communications, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, ***certain procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied*** to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms ***do not*** give rise to significant difficulties or inefficiencies.

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Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction in respect of patent rights granted by non-EU states. Furthermore, the Regulation is premised on the understanding that there are concerns about SEP licensing generally and in particular about SEP licensing in future IoT industries. However current evidence is inconclusive (see the "Empirical Assessment"). Better Regulation requires that any intervention in markets be evidence based. The Regulation should therefore apply where significant difficulties or inefficiencies are indeed observed but not otherwise. Applying the current regulation retroactively as per point Art 1.2.(b) to standards already adopted before the entry into force of this regulation would create massive legal uncertainty in relation to existing rights, both for SEP owners and implementers who have already concluded contracts granting them the right to use those SEPs.

Amendment 80
Maria Grapini

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, such as the standards for wireless communications, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, ***certain procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not*** be applied to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms ***do not*** give rise to significant difficulties or inefficiencies.

Amendment

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, such as the standards for wireless communications, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, this Regulation ***shall only*** be applied to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms give rise to significant difficulties or inefficiencies.

Or. en

Amendment 81
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, ***such as the standards for wireless communications***, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, certain procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies.

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Or. en

Amendment 82

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing

Amendment

(4) There are well established commercial relationships and licensing

practices for certain use cases of standards, ***such as the standards for wireless communications***, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, ***certain*** procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies.

practices for certain use cases of standards with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, ***the*** procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies ***within the single market***.

Or. en

Amendment 83

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the

Amendment

deleted

Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market failures hindering investment in the Single Market, the roll-out of innovative technologies or the development of nascent technologies and emerging use cases. Therefore, taking into account those criteria, the Commission should determine by a delegated act the standards or parts thereof that have been published before the entry into force of this Regulation and the relevant use cases, for which SEPs can be registered.

Or. en

Amendment 84
Geoffroy Didier

Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market failures hindering investment in the Single Market, the roll-out of innovative technologies or the development of nascent technologies and emerging use cases. Therefore, taking

deleted

into account those criteria, the Commission should determine by a delegated act the standards or parts thereof that have been published before the entry into force of this Regulation and the relevant use cases, for which SEPs can be registered.

Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction in respect of patent rights granted by non-EU states. Furthermore, the Regulation is premised on the understanding that there are concerns about SEP licensing generally and in particular about SEP licensing in future IoT industries. However current evidence is inconclusive (see the "Empirical Assessment"). Better Regulation requires that any intervention in markets be evidence based. The Regulation should therefore apply where significant difficulties or inefficiencies are indeed observed but not otherwise. Applying the current regulation retroactively as per point Art 1.2.(b) to standards already adopted before the entry into force of this regulation would create massive legal uncertainty in relation to existing rights, both for SEP owners and implementers who have already concluded contracts granting them the right to use those SEPs.

Amendment 85

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Recital 5

Text proposed by the Commission

Amendment

(5) *Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market failures hindering investment in the Single Market, the roll-out of* **deleted**

innovative technologies or the development of nascent technologies and emerging use cases. Therefore, taking into account those criteria, the Commission should determine by a delegated act the standards or parts thereof that have been published before the entry into force of this Regulation and the relevant use cases, for which SEPs can be registered.

Or. en

Amendment 86

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market failures hindering investment in the Single Market, the roll-out of innovative technologies or the development of nascent technologies and emerging use cases. Therefore, taking into account those criteria, the Commission should determine by a delegated act the standards or parts thereof *that have been published before the entry into force of this Regulation* and the relevant use cases, for which SEPs can be registered.

Amendment

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market failures hindering investment in the Single Market, the roll-out of innovative technologies or the development of nascent technologies and emerging use cases. Therefore, taking into account those criteria, the Commission should determine by a delegated act the standards or parts thereof and the relevant use cases, for which SEPs can be registered. *However, the inclusion within the scope of this Regulation of standards that have been published before its entry into force should not impact licences that are*

already in force.

Or. en

Amendment 87

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market *failures* hindering investment in the Single Market, the roll-out of innovative technologies or the development of *nascent* technologies and *emerging* use cases. Therefore, taking into account those criteria, the Commission should determine by a delegated act the standards or parts thereof that have been published before the entry into force of this Regulation and the relevant use cases, for which SEPs can be registered.

Amendment

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the licensing of the relevant SEPs severely distort the functioning of the internal market. This is particularly relevant for market *inefficiencies* hindering investment in the Single Market, the roll-out of innovative technologies or the development of technologies and use cases. Therefore, taking into account those criteria, the Commission should determine by a delegated act the standards or parts thereof that have been published before the entry into force of this Regulation and the relevant use cases, for which SEPs can be registered.

Or. en

Amendment 88

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) Because royalty-free and open standards are key in the development of our digital society - including the development of open software - prevent vendor lock-in and other barriers to interoperability, promote choice between vendors and technology solutions, ensure full market competition and innovation, this regulation should apply to such standards, while not discouraging SEP holders to innovate and participate in open standards development.

Or. en

Amendment 89
Geoffroy Didier

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) In view of the global character of SEP licensing, references to aggregate royalty and FRAND determination may refer to global aggregate royalties and global FRAND determinations, or as otherwise agreed by the notifying stakeholders or the parties to the proceedings.

deleted

Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction, nor competence, in respect of patent rights granted by non-EU states.

Amendment 90
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) *In view of the global character of SEP licensing, references to aggregate royalty and FRAND determination may refer to global aggregate royalties and global FRAND determinations, or as otherwise agreed by the notifying stakeholders or the parties to the proceedings.*

deleted

Or. en

Amendment 91

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) In view of the global character of SEP licensing, references to aggregate royalty and FRAND determination may refer to global aggregate royalties and global FRAND determinations, or as otherwise agreed by *the notifying stakeholders or the parties to the proceedings.*

(8) In view of the global character of SEP licensing, references to aggregate royalty and FRAND determination may refer to global aggregate royalties and global FRAND determinations, or as otherwise agreed by parties, *between a SEP holder and an implementer. When referring to aggregate royalty and FRAND determination it is necessary to attend the trade circumstances.*

Or. en

Amendment 92
Geoffroy Didier

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) As there are specific procedures for assessing the validity and the infringement of patents, this Regulation should not affect such procedures.

Amendment

(10) As there are specific procedures for assessing the validity and the infringement of patents, this Regulation should not affect such procedures. ***It is therefore necessary for the proposed FRAND determination procedure to run in parallel with such procedures, except in cases where an SME is involved as a defendant.***

Or. en

Justification

See the justification to Article 56 paragraph 4.

Amendment 93

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The competence centre should set up and administer an electronic register and an electronic database containing detailed information on SEPs in force in one or more Member States, including essentiality check results, opinions, reports, available case-law from jurisdictions across the globe, rules relating to SEPs in third countries, and results of studies specific to SEPs. In order to raise awareness and facilitate SEP licensing for SMEs, the competence centre should offer assistance to SMEs. The setting up and administering a system for essentiality checks and processes for ***aggregate royalty determination*** and FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis, including through the use of new technologies. In

Amendment

(13) The competence centre should set up and administer an electronic register and an electronic database containing detailed information on SEPs in force in one or more Member States, including essentiality check results, opinions, reports, available case-law from jurisdictions across the globe, rules relating to SEPs in third countries, and results of studies specific to SEPs. In order to raise awareness and facilitate SEP licensing for SMEs, the competence centre should offer assistance to SMEs. The setting up and administering a system for essentiality checks and processes for FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis, including through the use of new technologies. In line with this objective,

line with this objective, the competence centre should establish training procedures for evaluators of essentiality and conciliators for providing opinions on aggregate royalty as well as on FRAND determination and should encourage consistency in their practices.

the competence centre should establish training procedures for evaluators of essentiality and conciliators for providing opinions on aggregate royalty as well as on FRAND determination and should encourage consistency in their practices.

The electronic register and the database should serve as primary reference points for users, providing easily accessible information about SEPs free of charge. The information made accessible should not be subject to licensing terms, so that it can be used freely.

Or. en

Amendment 94 Geoffroy Didier

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The competence centre should set up and administer an electronic register and an electronic database containing detailed information on SEPs in force in one or more Member States, including essentiality check results, opinions, reports, available case-law from jurisdictions across the globe, rules relating to SEPs in third countries, and results of studies specific to SEPs. In order to raise awareness and facilitate SEP licensing for SMEs, the competence centre should offer assistance to SMEs. The setting up and administering a system for essentiality checks ***and processes for aggregate royalty determination and*** FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis, including through the use of new technologies. In line with this objective, the competence centre should establish training procedures for evaluators of

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essentiality and conciliators for providing opinions on ***aggregate royalty as well as on*** FRAND determination and should encourage consistency in their practices.

determination and should encourage consistency in their practices.

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 95

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The competence centre should set up and administer an electronic register and an electronic database containing detailed information on SEPs in force in one or more Member States, including essentiality check results, opinions, reports, available case-law from jurisdictions across the globe, rules relating to SEPs in third countries, and results of studies specific to SEPs. In order to raise awareness and facilitate SEP licensing for SMEs, the competence centre should offer assistance to ***SMEs***. The setting up and administering a system for essentiality checks and processes for aggregate royalty determination and FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis, including through the use of new technologies. In line with this objective, the competence centre should establish training procedures for evaluators of essentiality and conciliators for providing opinions on aggregate royalty as well as on FRAND determination and should encourage consistency in their practices.

Amendment

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practices.

Or. en

Amendment 96
Maria Grapini

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) The competence centre should set up and administer an electronic register and an electronic database containing detailed information on SEPs in force in one or more Member States, including essentiality check results, opinions, reports, available case-law from jurisdictions across the globe, rules relating to SEPs in third countries, and results of studies specific to SEPs. In order to raise awareness and facilitate SEP licensing for SMEs, the competence centre should offer assistance to SMEs. The setting up and administering a system for essentiality checks ***and processes for aggregate royalty determination*** and FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis, including through the use of new technologies. In line with this objective, the competence centre should establish training procedures for evaluators of essentiality and conciliators for providing opinions on ***aggregate royalty as well as on*** FRAND determination and should encourage consistency in their practices.

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Or. en

Amendment 97
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer's cost determinations. It also helps SEP holder to plan expected return on investment. The publication of the expected aggregate royalty and the standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, it is necessary to make public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing. **deleted**

Or. en

Amendment 98
Geoffroy Didier

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer's cost determinations. It also helps SEP holder to plan expected return on investment. The publication of the expected aggregate royalty and the **deleted**

standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, it is necessary to make public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing.

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 99

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer's cost determinations. It also helps SEP **holder** to plan expected return on investment. The publication of the expected aggregate royalty and the standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, it is necessary to make public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing.

Amendment

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer's cost determinations. It also helps SEP **holders** to plan expected return on investment **and SEP implementers to estimate the cost of standard integration in their products**. The publication of the expected aggregate royalty and the standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, it is necessary to make public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing.

Or. en

Amendment 100
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

(16) SEP holders should have the opportunity to first inform the competence centre of the publication of the standard or the aggregate royalty which they have agreed upon among themselves. Except for those use cases of standards for which the Commission establishes that there are well established and broadly well-functioning licensing practices of SEPs, the competence centre may assist the parties in the relevant aggregate royalty determination. In this context, if there is no agreement on an aggregate royalty among SEP holders, certain SEP holders may request the competence centre to appoint a conciliator to assist the SEP holders willing to participate in the process in determining an aggregate royalty for the SEPs covering the relevant standard. In this case, the role of the conciliator would be to facilitate the decision-making by the participating SEP holders without making any recommendation for an aggregate royalty. Finally, it is important to ensure that there is a third independent party, an expert, that could recommend an aggregate royalty. Therefore, SEP holders and/or implementers should be able to request the competence centre for an expert opinion on an aggregate royalty. When such a request is made, the competence centre should appoint a panel of conciliators and administer a process in which all interested stakeholders are invited to participate. After receiving information from all of the participants, the panel should provide a non-binding expert opinion for an aggregate royalty. The expert opinion on the aggregate

deleted

royalty should contain a non-confidential analysis of the expected impact of the aggregate royalty on the SEP holders and the stakeholders in the value chain.

Important in this respect would be to consider factors such as, efficiency of SEP licensing, including insights from any customary rules or practices for licensing of intellectual property in the value chain and cross-licensing, and impact on incentives to innovate of SEP holders and different stakeholders in the value chain.

Or. en

Amendment 101
Geoffroy Didier

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

(16) SEP holders should have the opportunity to first inform the competence centre of the publication of the standard or the aggregate royalty which they have agreed upon among themselves. Except for those use cases of standards for which the Commission establishes that there are well established and broadly well-functioning licensing practices of SEPs, the competence centre may assist the parties in the relevant aggregate royalty determination. In this context, if there is no agreement on an aggregate royalty among SEP holders, certain SEP holders may request the competence centre to appoint a conciliator to assist the SEP holders willing to participate in the process in determining an aggregate royalty for the SEPs covering the relevant standard. In this case, the role of the conciliator would be to facilitate the decision-making by the participating SEP holders without making any **deleted**

recommendation for an aggregate royalty. Finally, it is important to ensure that there is a third independent party, an expert, that could recommend an aggregate royalty. Therefore, SEP holders and/or implementers should be able to request the competence centre for an expert opinion on an aggregate royalty. When such a request is made, the competence centre should appoint a panel of conciliators and administer a process in which all interested stakeholders are invited to participate. After receiving information from all of the participants, the panel should provide a non-binding expert opinion for an aggregate royalty. The expert opinion on the aggregate royalty should contain a non-confidential analysis of the expected impact of the aggregate royalty on the SEP holders and the stakeholders in the value chain. Important in this respect would be to consider factors such as, efficiency of SEP licensing, including insights from any customary rules or practices for licensing of intellectual property in the value chain and cross-licensing, and impact on incentives to innovate of SEP holders and different stakeholders in the value chain.

Or. en

Amendment 102 Geoffroy Didier

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) Once a standard has been notified ***or an aggregate royalty is specified, whichever is made first***, the competence centre will open the registration of SEPs by holders of SEPs in force in one or more

Amendment

(18) Once a standard has been notified the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Member States.

Or. en

Amendment 103

Maria Grapini

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) Once a standard has been notified ***or an aggregate royalty is specified, whichever is made first***, the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Amendment

(18) Once a standard has been notified, the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Or. en

Amendment 104

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) Once a standard has been notified ***or an aggregate royalty is specified, whichever is made first***, the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Amendment

(18) Once a standard has been notified, the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Or. en

Amendment 105

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) Once a standard has been notified ***or an aggregate royalty is specified, whichever is made first,*** the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Amendment

(18) Once a standard has been notified the competence centre will open the registration of SEPs by holders of SEPs in force in one or more Member States.

Or. en

Amendment 106
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) ***SEP holders may register after the indicated time limit. However, in that case, SEP holders should not be able to collect royalties and claim damages for the period of delay.***

Amendment

deleted

Or. en

Amendment 107
Geoffroy Didier

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) ***SEP holders may register after the indicated time limit. However, in that case, SEP holders should not be able to collect royalties and claim damages for the period of delay.***

Amendment

deleted

Justification

This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. No case has been made to justify a limitation or barrier to exercising on fundamental rights (e.g. IP rights, or the right to access courts: see Articles 16, 17 47, 52, 53 EU Charter of Fundamental Rights). Compliance with the WTO TRIPS Agreement is also required by the EU along with EU Member States. It also runs counter to Art.13(1) of the Enforcement Directive (2004/48/EC).

Amendment 108

Maria Grapini

Proposal for a regulation

Recital 20

Text proposed by the Commission

Amendment

(20) SEP holders may register after the indicated time limit. However, in that case, SEP holders should not be able to collect royalties and claim damages for the period of delay. **deleted**

Amendment 109

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Recital 20

Text proposed by the Commission

Amendment

(20) SEP holders may register after the indicated time limit. *However, in that case, SEP holders should not be able to collect royalties and claim damages for the period of delay.*

(20) SEP holders may register after the indicated time limit.

Amendment 110
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20 a) SEP holders are obliged to licence under FRAND terms and conditions and shall therefore not discriminate by refusing a licence to a licensee willing to accept the conditions of a FRAND licence, independent from the position of the potential licensee in the respective value chain.

Or. en

Amendment 111
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Recital 23

Text proposed by the Commission

Amendment

(23) A SEP holder may also request the modification of a SEP registration. An interested stakeholder may also request the modification of a SEP registration, if it can demonstrate that the registration is inaccurate based on a definitive decision by a public authority. A SEP can only be removed from the register at the request of the SEP holder, if the patent is expired, was invalidated or found non-essential by a final decision or ruling of a competent court of a Member State or found non-essential under this Regulation.

(23) A SEP holder may also request the modification of a SEP registration. An interested stakeholder may also request the modification of a SEP registration, if it can demonstrate that the registration is inaccurate based on a definitive decision by a public authority. A SEP can only be removed from the register at the request of the SEP holder, if the patent is expired, was invalidated or found non-essential by a final decision or ruling of a competent court of a Member State or found non-essential under this Regulation. ***A record of any modifications to the SEP register should be made publicly available to maintain transparency.***

Or. en

Amendment 112
Geoffroy Didier

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) A SEP holder may also request the modification of a SEP registration. An interested stakeholder may also request the modification of a SEP registration, if it can demonstrate that the registration is inaccurate based on a definitive decision by a public authority. A SEP can only be removed from the register at the request of the SEP holder, if the patent is expired, was invalidated or found non-essential by a final decision or ruling of a competent court of a Member State ***or found non-essential under this Regulation.***

Amendment

(23) A SEP holder may also request the modification of a SEP registration. An interested stakeholder may also request the modification of a SEP registration, if it can demonstrate that the registration is inaccurate based on a definitive decision by a public authority. A SEP can only be removed from the register at the request of the SEP holder, if the patent is expired, was invalidated or found non-essential by a final decision or ruling of a competent court of a Member State.

Or. en

Justification

This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. Removal from the register renders a patent unenforceable (i.e. it removes any value).

Amendment 113
Maria Grapini

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) A SEP holder may also request the modification of a SEP registration. An interested stakeholder may also request the modification of a SEP registration, if it can demonstrate that the registration is inaccurate based on a definitive decision by a public authority. A SEP can only be removed from the register at the request of the SEP holder, if the patent is expired,

Amendment

(23) A SEP holder may also request the modification of a SEP registration. An interested stakeholder may also request the modification of a SEP registration, if it can demonstrate that the registration is inaccurate based on a definitive decision by a public authority. A SEP can only be removed from the register at the request of the SEP holder, if the patent is expired,

was invalidated or found non-essential by a final decision or ruling of a competent court of a Member State *or found non-essential under this Regulation*.

was invalidated or found non-essential by a final decision or ruling of a competent court of a Member State.

Or. en

Amendment 114

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) To further ensure the quality of the register and avoid over-registration, essentiality checks should also be conducted randomly by independent evaluators selected according to objective criteria to be determined by the Commission. Only one SEP from the same patent family should be checked for essentiality.

Amendment

(24) To further ensure the quality of the register and avoid over-registration, essentiality checks should also be conducted randomly *and anonymously* by independent evaluators selected according to objective criteria to be determined by the Commission. Only one SEP from the same patent family should be checked for essentiality.

Or. en

Amendment 115

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) To further ensure the quality of the register and avoid over-registration, essentiality checks should also be conducted randomly by independent evaluators selected according to objective criteria to be determined by the Commission. Only one SEP from the same patent family should be checked for essentiality.

Amendment

(24) To further ensure the quality of the register and avoid over-registration, essentiality checks should also be conducted randomly by independent *and impartial* evaluators selected according to objective criteria to be determined by the Commission. Only one SEP from the same patent family should be checked for essentiality.

Amendment 116
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 25

Text proposed by the Commission

(25) These essentiality checks should be conducted on a sampling from SEP portfolios to ensure that the sample is capable of producing statistically valid results. The results of the sampled essentiality checks should determine the ratio of positively checked SEPs from all the SEPs registered by each SEP holder. ***The essentiality rate should be updated annually.***

Amendment

(25) These essentiality checks should be conducted on a sampling from SEP portfolios to ensure that the sample is capable of producing statistically valid results. The results of the sampled essentiality checks should determine the ratio of positively checked SEPs from all the SEPs registered by each SEP holder.

Amendment 117
Geoffroy Didier

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) SEP holders or implementers may also designate annually up to 100 registered SEPs for essentiality checks. If the pre-selected SEPs are confirmed essential, the SEP holders may use this information in negotiations and as evidence in courts, without prejudicing the right of an implementer to challenge the essentiality of a registered SEP in court. The selected SEPs would have no bearing on the sampling process as the sample should be selected from all registered SEPs of each SEP holder. If a

Amendment

deleted

preselected SEP and a SEP selected for the sample set are the same, only one essentiality check should be done. Essentiality checks should not be repeated on SEPs from the same patent family.

Or. en

Amendment 118

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) SEP holders *or implementers* may also designate annually up to 100 registered SEPs for essentiality checks. If the pre-selected SEPs are confirmed essential, the SEP holders may use this information in negotiations and as evidence in courts, without prejudicing the right of an implementer to challenge the essentiality of a registered SEP in court. The selected SEPs would have no bearing on the sampling process as the sample should be selected from all registered SEPs of each SEP holder. If a preselected SEP and a SEP selected for the sample set are the same, only one essentiality check should be done. Essentiality checks should not be repeated on SEPs from the same patent family.

Amendment

(26) SEP holders may also designate annually up to 100 registered SEPs for essentiality checks. If the pre-selected SEPs are confirmed essential, the SEP holders may use this information in negotiations and as evidence in courts, without prejudicing the right of an implementer to challenge the essentiality of a registered SEP in court. The selected SEPs would have no bearing on the sampling process as the sample should be selected from all registered SEPs of each SEP holder. If a preselected SEP and a SEP selected for the sample set are the same, only one essentiality check should be done. Essentiality checks should not be repeated on SEPs from the same patent family.

Or. en

Amendment 119

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) Any assessment of essentiality of SEPs conducted by an independent entity prior to the entry into force of the Regulation, for example through patent pools, as well as essentiality determinations by judicial authorities should be indicated in the register. Those SEPs should not be re-checked for essentiality after the relevant evidence supporting the information in the register is provided to the competence centre.

Amendment

(27) Any assessment of essentiality of SEPs conducted by an independent entity prior to the entry into force of the Regulation, for example through patent pools, as well as essentiality determinations by judicial authorities should **voluntarily** be indicated in the register. Those SEPs should not be re-checked for essentiality after the relevant evidence supporting the information in the register is provided to the competence centre.

Or. en

Amendment 120

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) It is necessary to ensure that the registration and ensuing obligations provided for in this Regulation are not circumvented by removing a SEP from the register. When an evaluator finds a claimed SEP non-essential, only the SEP holder can request its removal from the register and only after the **annual** sampling process has been completed and the proportion of true SEPs from the sample has been established and published.

Amendment

(30) It is necessary to ensure that the registration and ensuing obligations provided for in this Regulation are not circumvented by removing a SEP from the register. When an evaluator finds a claimed SEP non-essential, only the SEP holder can request its removal from the register and only after the sampling process has been completed and the proportion of true SEPs from the sample has been established and published.

Or. en

Amendment 121

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) The purpose of the FRAND commitment is to facilitate adoption and use of the standard by making SEPs available to implementers on fair **and** reasonable terms and to provide the SEP holder a fair and reasonable return for its innovation. Thus, the ultimate goal of enforcement actions by SEP holders or actions brought by implementers based on a SEP holder's refusal to license should be to conclude a FRAND licence agreement. The main objective of the Regulation in this regard is to facilitate the negotiations and out of court dispute resolution that can benefit both parties. Ensuring access to swift, fair and cost-efficient ways of resolving disputes on FRAND terms and conditions should benefit SEP holders and implementers alike. As such, a properly functioning out-of-court dispute resolution mechanism to determine FRAND terms (FRAND determination) may offer significant benefits for all parties. A party may request a FRAND determination in order to demonstrate that its offer is FRAND or to provide a security, when they engage in good faith.

Amendment

(31) The purpose of the FRAND commitment is to facilitate adoption and use of the standard by making SEPs available to implementers on fair, reasonable **and non-discriminatory** terms and to provide the SEP holder a fair and reasonable return for its innovation. Thus, the ultimate goal of enforcement actions by SEP holders or actions brought by implementers based on a SEP holder's refusal to license should be to conclude a FRAND licence agreement. The main objective of the Regulation in this regard is to facilitate the negotiations and out of court dispute resolution that can benefit both parties. Ensuring access to swift, fair and cost-efficient ways of resolving disputes on FRAND terms and conditions should benefit SEP holders and implementers alike. As such, a properly functioning out-of-court dispute resolution mechanism to determine FRAND terms (FRAND determination) may offer significant benefits for all parties. A party may request a FRAND determination in order to demonstrate that its offer is FRAND or to provide a security, when they engage in good faith.

Or. en

Amendment 122
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) The FRAND determination should simplify and speed up negotiations concerning FRAND terms and reduce

Amendment

(32) The FRAND determination should simplify and speed up negotiations concerning FRAND terms and reduce

costs. The EUIPO should administer the procedure. The competence centre should create a roster of conciliators that satisfy established competence and independence criteria, as well as a repository of non-confidential reports (the confidential version of the reports will be accessible only by the parties and the conciliators). The conciliators should be neutral persons with extensive experience in dispute resolution and substantial understanding of the economics of licensing on FRAND terms and conditions.

costs. The EUIPO should administer the procedure. The competence centre should create a roster of conciliators that satisfy established competence and independence criteria, as well as a repository of non-confidential reports (the confidential version of the reports will be accessible only by the parties and the conciliators). The conciliators should be neutral **and impartial** persons with extensive experience in dispute resolution and substantial understanding of the economics of licensing on FRAND terms and conditions.

Or. en

Amendment 123

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) The FRAND determination would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State. However, the obligation to initiate FRAND determination before the relevant court proceedings should not be required for SEPs covering those use cases of standards for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms.

Amendment

deleted

Or. en

Amendment 124
Geoffroy Didier

Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) The FRAND determination would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State.

However, the obligation to initiate FRAND determination before the relevant court proceedings should not be required for SEPs covering those use cases of standards for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms.

Amendment

(33) The FRAND determination would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State.

Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction in respect of patent rights granted by non-EU states. Furthermore, the Regulation is premised on the understanding that there are concerns about SEP licensing generally and in particular about SEP licensing in future IoT industries. However current evidence is inconclusive (see the "Empirical Assessment"). Better Regulation requires that any intervention in markets be evidence based. The Regulation should therefore apply where significant difficulties or inefficiencies are indeed observed but not otherwise. Applying the current regulation retroactively as per point Art 1.2.(b) to standards already adopted before the entry into force of this regulation would create massive legal uncertainty in relation to existing rights, both for SEP owners and implementers who have already concluded contracts granting them the right to use those SEPs.

Amendment 125
Maria Grapini

Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) The FRAND determination would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State.

However, the obligation to initiate FRAND determination before the relevant court proceedings should not be required for SEPs covering those use cases of standards for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms.

Amendment

(33) The FRAND determination would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State.

Or. en

Amendment 126

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) ***The*** FRAND determination would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State. However, the obligation to initiate FRAND determination before the relevant court proceedings should not be required for SEPs covering those use cases of standards for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms.

Amendment

(33) ***In case one or more parties initiate a*** FRAND determination, ***that*** would be a mandatory step before a SEP holder would be able to initiate patent infringement proceedings or an implementer could request a determination or assessment of FRAND terms and conditions concerning a SEP before a competent court of a Member State. However, the obligation to initiate FRAND determination before the relevant court proceedings should not be required for SEPs covering those use cases of standards for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms.

Amendment 127

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Each party may choose whether it wishes to engage in the procedure and commit to comply with its outcome. ***Where a party does not reply to the FRAND determination request or does not commit to comply with the outcome of the FRAND determination, the other party should be able to request either the termination or the unilateral continuation of the FRAND determination. Such a party should not be exposed to litigation during the time of the FRAND determination. At the same time, the FRAND determination should be an effective procedure for the parties to reach agreement before litigation or to obtain a determination to be used in further proceedings. Therefore, the party or parties that commit to complying with the outcome of the FRAND determination and duly engage in the procedure should be able to benefit from its completion.***

Amendment

(34) Each party may choose whether it wishes to engage in the procedure and commit to comply with its outcome.

Amendment 128

Geoffroy Didier

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Each party may choose whether it

Amendment

(34) Each party may choose whether it

wishes to engage in the procedure and commit to comply with its outcome. ***Where a party does not reply to the FRAND determination request or does not commit to comply with the outcome of the FRAND determination, the other party should be able to request either the termination or the unilateral continuation of the FRAND determination. Such a party should not be exposed to litigation during the time of the FRAND determination.*** At the same time, the FRAND determination should be an effective procedure for the parties to reach agreement ***before*** litigation or to obtain a determination to be used in further proceedings. Therefore, ***the party or*** parties that commit to complying with the outcome of the FRAND determination and duly engage in the procedure should be able to benefit from its completion.

wishes to engage in the procedure and commit to comply with its outcome. the FRAND determination should be an effective procedure for the parties to reach agreement ***and settle any ongoing*** litigation or to obtain a determination to be used in further proceedings. Therefore, parties that commit to complying with the outcome of the FRAND determination and duly engage in the procedure should be able to benefit from its completion.

Or. en

Justification

A one-sided continuation is not useful as it will not have any chance of being accepted by the non-agreeing party. It seems inappropriate to be introducing punitive measures in this regulation.

Amendment 129

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Each party may choose whether it wishes to engage in the procedure and commit to comply with its outcome. ***Where a party does not reply to the FRAND determination request or does not commit to comply with the outcome of the FRAND determination, the other party should be able to request either the***

Amendment

(34) Each party may choose whether it wishes to engage in the procedure and commit to comply with its outcome. The FRAND determination should be an effective procedure for the parties to reach agreement ***and settle any ongoing*** litigation or to obtain a determination to be used in further proceedings. Therefore,

termination or the unilateral continuation of the FRAND determination. Such a party should not be exposed to litigation during the time of the FRAND determination. At the same time, the FRAND determination should be an effective procedure for the parties to reach agreement ***before*** litigation or to obtain a determination to be used in further proceedings. Therefore, ***the party or*** parties that commit to complying with the outcome of the FRAND determination and duly engage in the procedure should be able to benefit from its completion.

parties that commit to complying with the outcome of the FRAND determination and duly engage in the procedure should be able to benefit from its completion.

Or. en

Amendment 130

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) Each party may choose whether it wishes to engage in the procedure ***and commit to comply with its outcome.*** Where a party does not reply to the FRAND determination request ***or does not commit to comply with the outcome of the FRAND determination,*** the other party should be able to request either the termination or the unilateral continuation of the FRAND determination. Such a party should not be exposed to litigation during the time of the FRAND determination. At the same time, the FRAND determination should be an effective procedure for the parties to reach agreement before litigation or to obtain a determination to be used in further proceedings. Therefore, the party or parties that ***commit to complying with the outcome of the FRAND determination and*** duly engage in the procedure should be able to benefit from its completion.

Amendment

(34) Each party may choose whether it wishes to engage in the procedure. Where a party does not reply to the FRAND determination request, the other party should be able to request either the termination or the unilateral continuation of the FRAND determination. Such a party should not be exposed to litigation during the time of the FRAND determination. At the same time, the FRAND determination should be an effective procedure for the parties to reach agreement before litigation or to obtain a determination to be used in further proceedings. Therefore, the party or parties that duly engage in the procedure should be able to benefit from its completion.

Amendment 131**Francisco Guerreiro**

on behalf of the Verts/ALE Group

Proposal for a regulation**Recital 35***Text proposed by the Commission*

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' **rights. In that respect, the party that commits to comply with the outcome of the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND determination. In addition,** either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings, **but the parties should request that the case be suspended during the FRAND determination.** When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential

Amendment

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' **rights. No** FRAND determination **process** should **prevents access to the courts.** Either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings. When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures.

effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures. ***It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.***

Or. en

Amendment 132 Geoffroy Didier

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights. ***In that respect, the party that commits to comply with the outcome of the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND determination. In addition,*** either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures

Amendment

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights ***to address infringement and validity of SEPs. Therefore,*** the FRAND determination ***shall run in parallel to any court proceedings, except in cases where an SME is involved as a defendant.*** Either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings. When

of a financial nature, it should be possible to initiate such proceedings, ***but the parties should request that the case be suspended during the FRAND determination.*** When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures. ***It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.***

determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures.

Or. en

Amendment 133

Maria Grapini

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights. ***In that respect, the party that commits to comply with the outcome of the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND determination. In addition,*** either party should be able to request a provisional ***injunction*** of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to

Amendment

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights ***to address infringement and validity of SEPs. Therefore,*** the FRAND determination ***shall run in parallel to any court proceedings, except in cases where an SME is involved as a defendant.*** Either party should be able to request a provisional ***injunction*** of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the

the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings, ***but the parties should request that the case be suspended during the FRAND determination.*** When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures. ***It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.***

implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings. When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs ***and microenterprises***, also in order to prevent the abusive use of such measures.

Or. en

Amendment 134

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights. In that respect, the party that commits to ***comply with the outcome of*** the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND

Amendment

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights. In that respect, the party that commits to the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND determination. In addition, either

determination. In addition, either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings, ***but the parties should request that the case be suspended during the FRAND determination.*** When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures. It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.

party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings. When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures. It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.

Or. en

Amendment 135

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Recital 35

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights. In that respect, the party that commits to comply with the outcome of the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND determination. In addition, either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings, but the parties should request that the case be suspended during the FRAND determination. When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs, also in order to prevent the abusive use of such measures. It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.

(35) The obligation to initiate FRAND determination should not be detrimental to the effective protection of the parties' rights. In that respect, the party that commits to comply with the outcome of the FRAND determination while the other party fails to do so should be entitled to initiate proceedings before the competent national court pending the FRAND determination. In addition, either party should be able to request a provisional injunction of a financial nature before the competent court. In a situation where a FRAND commitment has been given by the relevant SEP holder, provisional injunctions of an adequate and proportionate financial nature should provide the necessary judicial protection to the SEP holder who has agreed to license its SEP on FRAND terms, while the implementer should be able to contest the level of FRAND royalties or raise a defence of lack of essentiality or of invalidity of the SEP. In those national systems that require the initiation of the proceedings on the merits of the case as a condition to request the interim measures of a financial nature, it should be possible to initiate such proceedings, but the parties should request that the case be suspended during the FRAND determination. When determining what level of the provisional injunction of financial nature is to be deemed adequate in a given case, account should be taken, inter alia, of the economic capacity of the applicant and the potential effects for the effectiveness of the measures applied for, in particular for SMEs **and start-ups**, also in order to prevent the abusive use of such measures. It should also be clarified that once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, should be available to parties.

Amendment 136**Maria-Manuel Leitão-Marques, Tiemo Wölken****Proposal for a regulation****Recital 36***Text proposed by the Commission*

(36) When the parties enter into the FRAND determination, they should select a **conciliator** for the FRAND determination from the roster. In case of disagreement, the competence centre would select the conciliator. The FRAND determination should be concluded within 9 months. This time would be necessary for a procedure that ensures that the rights of the parties are respected and at the same time is sufficiently swift to avoid delays in concluding licences. Parties may settle at any time during the process, which results in the termination of the FRAND determination.

Amendment

(36) When the parties enter into the FRAND determination, they should select a **panel of three conciliators** for the FRAND determination from the roster, **with each party selecting one conciliator, and both parties selecting a third conciliator in agreement**. In case of disagreement, the competence centre would select the **third** conciliator. The FRAND determination should be concluded within 9 months, **unless both parties agree to an extension**. This time would be necessary for a procedure that ensures that the rights of the parties are respected and at the same time is sufficiently swift to avoid delays in concluding licences. Parties may settle at any time during the process, which results in the termination of the FRAND determination.

Amendment 137**Maria Grapini****Proposal for a regulation****Recital 36***Text proposed by the Commission*

(36) When the parties enter into the FRAND determination, they should select a conciliator for the FRAND determination from the roster. In case of disagreement,

Amendment

(36) When the parties enter into the FRAND determination, they should select a conciliator for the FRAND determination from the roster. In case of disagreement,

the competence centre would select the conciliator. The FRAND determination should be concluded within **9** months. This time would be necessary for a procedure that ensures that the rights of the parties are respected and at the same time is sufficiently swift to avoid delays in concluding licences. Parties may settle at any time during the process, which results in the termination of the FRAND determination.

the competence centre would select the conciliator. The FRAND determination should be concluded within **6** months. This time would be necessary for a procedure that ensures that the rights of the parties are respected and at the same time is sufficiently swift to avoid delays in concluding licences. Parties may settle at any time during the process, which results in the termination of the FRAND determination.

Or. en

Amendment 138
Geoffroy Didier

Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) Upon appointment, the conciliation centre should refer the FRAND determination to the conciliator, who should examine whether the request contains the necessary information, and communicate the schedule of procedure to the parties ***or the party requesting the continuations of the FRAND determination.***

Amendment

(37) Upon appointment, the conciliation centre should refer the FRAND determination to the conciliator, who should examine whether the request contains the necessary information, and communicate the schedule of procedure to the parties.

Or. en

Justification

For consistency with the proposal that both parties have to agree to continue the FRAND determination. No one-sided continuation.

Amendment 139
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) Upon appointment, the conciliation centre should refer the FRAND determination to the conciliator, who should examine whether the request contains the necessary information, and communicate the schedule of procedure to the parties *or the party requesting the continuations of the FRAND determination.*

Amendment

(37) Upon appointment, the conciliation centre should refer the FRAND determination to the conciliator, who should examine whether the request contains the necessary information, and communicate the schedule of procedure to the parties.

Or. en

Amendment 140

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) Upon appointment, the conciliation centre should refer the FRAND determination to the conciliator, who should examine whether the request contains the necessary information, and communicate the schedule of procedure to the parties *or the party requesting the continuations of the FRAND determination.*

Amendment

(37) Upon appointment, the conciliation centre should refer the FRAND determination to the conciliator, who should examine whether the request contains the necessary information, and communicate the schedule of procedure to the parties.

Or. en

Amendment 141

Maria Grapini

Proposal for a regulation

Recital 39

Text proposed by the Commission

(39) *If a party fails to engage in the*

Amendment

deleted

FRAND determination after the conciliator has been appointed, the other party may request the termination or may request that the conciliator issues a recommendation for a FRAND determination on the basis of the information it was able to assess.

Or. en

Amendment 142

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 40

Text proposed by the Commission

(40) If a party initiates a procedure in a jurisdiction outside the Union resulting in legally binding and enforceable decisions regarding the same standard that is subject to FRAND determination and its implementation, or including SEPs from the same patent family as SEPs subject to FRAND determination and involving one or more of the parties to the FRAND determination as a party; before or during of the FRAND determination by a party, the conciliator, or where he/she has not been appointed has not been established, the competence centre, should be able to terminate the procedure upon the request of *the other* party.

Amendment

(40) If a party initiates a procedure in a jurisdiction outside the Union resulting in legally binding and enforceable decisions regarding the same standard that is subject to FRAND determination and its implementation, or including SEPs from the same patent family as SEPs subject to FRAND determination and involving one or more of the parties to the FRAND determination as a party; before or during of the FRAND determination by a party, the conciliator, or where he/she has not been appointed has not been established, the competence centre, should be able to terminate the procedure upon the request of *any* party.

Or. en

Amendment 143

Maria Grapini

Proposal for a regulation

Recital 42

(42) The Regulation respects the intellectual property rights of patent owners (Article 17(2) of EU Charter of Fundamental Rights), although it includes a restriction on the ability to enforce a SEP that has not been registered within a certain time-limit and introduces a requirement to conduct a FRAND determination before enforcing individual SEPs. The limitation on the exercise of intellectual property rights is allowed under the EU Charter, provided that the proportionality principle is respected. According to settled case-law, fundamental rights can be restricted provided that those restrictions correspond to objectives of general interest pursued by the Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference which infringes the very essence of the rights guaranteed³⁹. In that respect, this Regulation is in the public interest in that it provides a uniform, open and predictable information and outcome on SEPs for the benefit of SEP holder, implementers and end users, at Union level. It aims at dissemination of technology for the mutual advantage of the SEP holders and implementers. Furthermore, the rules concerning the FRAND determination are temporary thus limited and aimed at improving and streamlining the process but are not ultimately binding.⁴⁰

³⁹ Judgment of the Court of Justice of 13 December 1979, *Hauer v. Land Rheinland-Pfalz*, C-44/79, EU:C:1979:290, para. 32; judgment of the Court of Justice of 11 July 1989, *Hermann Schröder HS Kraftfutter GmbH & Co. KG v. Hauptzollamt Gronau*, C-256/87, EU:C:1999:332, para. 15, and judgment of the Court of Justice of 13

July 1989, Hubert Wachauf v. Bundesamt für Ernährung und Forstwirtschaft, C-5/88, EU:C:1989:321, paras. 17 and 18.

⁴⁰ *The conciliation procedure follows the conditions for mandatory recourse to alternative dispute settlement procedures as a condition for the admissibility of an action before the courts, as outlined in the CJEU judgments; Joint Cases C-317/08 to C-320/08 Alassini and Others of 18 March 2010, and Case C-75/16 Menini and Rampanelli v. Banco Popolare Società Cooperativa of 14 June 2017, taking into account the specificities of SEP licensing.*

Or. en

Amendment 144
Geoffroy Didier

Proposal for a regulation
Recital 42

Text proposed by the Commission

Amendment

(42) The Regulation respects the intellectual property rights of patent owners (Article 17(2) of EU Charter of Fundamental Rights), although it includes a restriction on the ability to enforce a SEP that has not been registered within a certain time-limit and introduces a requirement to conduct a FRAND determination before enforcing individual SEPs. The limitation on the exercise of intellectual property rights is allowed under the EU Charter, provided that the proportionality principle is respected. According to settled case-law, fundamental rights can be restricted provided that those restrictions correspond to objectives of general interest pursued by the Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable

deleted

interference which infringes the very essence of the rights guaranteed³⁹. In that respect, this Regulation is in the public interest in that it provides a uniform, open and predictable information and outcome on SEPs for the benefit of SEP holder, implementers and end users, at Union level. It aims at dissemination of technology for the mutual advantage of the SEP holders and implementers. Furthermore, the rules concerning the FRAND determination are temporary thus limited and aimed at improving and streamlining the process but are not ultimately binding.⁴⁰

³⁹ *Judgment of the Court of Justice of 13 December 1979, Hauer v. Land Rheinland-Pfalz, C-44/79, EU:C:1979:290, para. 32; judgment of the Court of Justice of 11 July 1989, Hermann Schröder HS Kraftfutter GmbH & Co. KG v. Hauptzollamt Gronau, C-256/87, EU:C:1999:332, para. 15, and judgment of the Court of Justice of 13 July 1989, Hubert Wachauf v. Bundesamt für Ernährung und Forstwirtschaft, C-5/88, EU:C:1989:321, paras. 17 and 18.*

⁴⁰ *The conciliation procedure follows the conditions for mandatory recourse to alternative dispute settlement procedures as a condition for the admissibility of an action before the courts, as outlined in the CJEU judgments; Joint Cases C-317/08 to C-320/08 Alassini and Others of 18 March 2010, and Case C-75/16 Menini and Rampanelli v. Banco Popolare Società Cooperativa of 14 June 2017, taking into account the specificities of SEP licensing.*

Or. en

Amendment 145
Geoffroy Didier

Proposal for a regulation
Recital 44

Text proposed by the Commission

(44) When **determining the aggregate royalties and** making FRAND determinations the conciliators should take into account in particular any Union acquis and judgments of the Court of Justice pertaining to SEPs **as well as guidance issued under this Regulation**, the Horizontal Guidelines⁴² and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.⁴³ Furthermore, the conciliators should consider any expert opinion on **the aggregate royalty** or in the absence thereof, should request information from the parties before it makes its final proposals **well as guidance issued under this Regulation, as well as guidance issued under this Regulation**.

⁴² Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, pp. 1 (currently under review)

⁴³ Communication on Setting out the EU approach to Standard Essential Patents, COM(2017)712 final, 29.11.2017.

Amendment

(44) When making FRAND determinations the conciliators should take into account in particular any Union acquis and judgments of the Court of Justice pertaining to SEPs the Horizontal Guidelines⁴² and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.⁴³ Furthermore, the conciliators should consider any expert opinion on **FRAND determination** or in the absence thereof, should request information from the parties before it makes its final proposals.

⁴² Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, pp. 1 (currently under review)

⁴³ Communication on Setting out the EU approach to Standard Essential Patents, COM(2017)712 final, 29.11.2017.

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 146
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 44

Text proposed by the Commission

(44) When **determining the aggregate royalties and** making FRAND determinations the conciliators should take into account in particular any Union acquis and judgments of the Court of Justice pertaining to SEPs as well as guidance issued under this Regulation, the Horizontal Guidelines⁴² and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.⁴³ Furthermore, the conciliators should consider any expert opinion on **the aggregate royalty** or in the absence thereof, should request information from the parties before it makes its final proposals well as guidance issued under this Regulation, as well as guidance issued under this Regulation.

⁴² Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, pp. 1 (currently under review)

⁴³ Communication on Setting out the EU approach to Standard Essential Patents, COM(2017)712 final, 29.11.2017.

Amendment

(44) When making FRAND determinations the conciliators should take into account in particular any Union acquis and judgments of the Court of Justice pertaining to SEPs as well as guidance issued under this Regulation, the Horizontal Guidelines⁴² and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.⁴³ Furthermore, the conciliators should consider any expert opinion on **FRAND determination**, or in the absence thereof, should request information from the parties before it makes its final proposals well as guidance issued under this Regulation, as well as guidance issued under this Regulation.

⁴² Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, pp. 1 (currently under review)

⁴³ Communication on Setting out the EU approach to Standard Essential Patents, COM(2017)712 final, 29.11.2017.

Or. en

Amendment 147
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 45 a (new)

Text proposed by the Commission

Amendment

(45 a) *In addition, it is important to ensure that the new EU rules and their implementation do not undermine the EU innovation technological leadership.*

Or. en

Amendment 148
Geoffroy Didier

Proposal for a regulation
Recital 46

Text proposed by the Commission

Amendment

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. ***While there are currently a few SME SEP holders,*** the efficiencies produced with this Regulation ***are likely to*** facilitate the licensing of their ***SEP***. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings. The SEPs of micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to. SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. The efficiencies produced with this Regulation ***should also*** facilitate the licensing ***for SME SEP holders to ensure a fair return on their investment and encourage SME participation in standards development.*** Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced ***administrative burden,*** administration fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings. The SEPs of micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to. SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

Or. en

Justification

The European Commission has been actively promoting and funding the participation of European SMEs in EU standards efforts and the patenting of their inventions. This regulation should be consistent with this policy imperative and seek to promote European technological ambitions, including fostering the growth of EU technology champions.

Amendment 149

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Recital 46

Text proposed by the Commission

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation are likely to facilitate the licensing of their SEP. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings. The SEPs of micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to. SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

Amendment

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation are likely to facilitate the licensing of their SEP. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings. The SEPs of ***start-ups and*** micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to. SME ***and start-up*** implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

Or. en

Amendment 150

Geoffroy Didier

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) In order to ***supplement certain non-essential elements*** of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of ***the items to be entered in the register or in respect of*** determining the relevant ***existing*** standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are ***no*** significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Amendment

(47) In order to ***correctly focus and develop the scope*** of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of determining the relevant standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Or. en

Justification

Only future standards and use cases where there is proof that they give rise to inefficiencies should be included in the scope.

Amendment 151
Maria Grapini

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) In order to ***supplement certain non-essential elements*** of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of ***the items to be entered in the register or in respect of*** determining the relevant ***existing*** standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are ***no*** significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Amendment

(47) In order to ***correctly focus and develop the scope*** of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of determining the relevant standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Or. en

Amendment 152

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Recital 47

Text proposed by the Commission

(47) In order to supplement certain non-essential elements of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of the items to be entered in the register or in respect of determining the relevant **existing** standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Amendment

(47) In order to supplement certain non-essential elements of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of the items to be entered in the register or in respect of determining the relevant standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁴. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Or. en

Amendment 153

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) In order to ensure uniform

Amendment

(48) In order to ensure uniform

conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁴⁵

⁴⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. ***Evaluators and conciliators should be, at all times, of good repute and possess sufficient knowledge, skills and experience to performer their duties.*** The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁴⁵

⁴⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

Or. en

Amendment 154
Geoffroy Didier

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. ***The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁴⁵

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⁴⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

Or. en

Justification

Only future standards and use cases where there is proof that they give rise to inefficiencies

should be included in the scope.

Amendment 155

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. ***The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁴⁵

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⁴⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the

Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

Or. en

Amendment 156

Maria Grapini

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. ***The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁴⁵

⁴⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general

Amendment

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council .⁴⁵

⁴⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general

principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

Or. en

Amendment 157
Geoffroy Didier

Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) Regulation (EU) 2017/1001 of the European Parliament and of the Council⁴⁶ should be amended to empower EUIPO to take on the tasks under this Regulation. The functions of the Executive Director should also be expanded to include the powers conferred on him under this Regulation. Furthermore, the EUIPO's arbitration and mediation centre should be empowered to set up processes such as the ***aggregate royalty determination and the FRAND determination***.

⁴⁶ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1.)

Amendment

(49) Regulation (EU) 2017/1001 of the European Parliament and of the Council⁴⁶ should be amended to empower EUIPO to take on the tasks under this Regulation. The functions of the Executive Director should also be expanded to include the powers conferred on him under this Regulation. Furthermore, the EUIPO's arbitration and mediation centre should be empowered to set up processes such as the FRAND determination.

⁴⁶ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1.)

Or. en

Amendment 158
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Recital 49

Text proposed by the Commission

(49) Regulation (EU) 2017/1001 of the European Parliament and of the Council⁴⁶ should be amended to empower EUIPO to take on the tasks under this Regulation. The functions of the Executive Director should also be expanded to include the powers conferred on him under this Regulation. Furthermore, the EUIPO's arbitration and mediation centre should be empowered to set up processes such as the ***aggregate royalty determination and the FRAND determination***.

⁴⁶ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1.)

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Or. en

Amendment 159

Maria Grapini

Proposal for a regulation

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⁴⁶ Regulation (EU) 2017/1001 of the

Amendment

(49) Regulation (EU) 2017/1001 of the European Parliament and of the Council⁴⁶ should be amended to empower EUIPO to take on the tasks under this Regulation. The functions of the Executive Director should also be expanded to include the powers conferred on him under this Regulation. Furthermore, the EUIPO's arbitration and mediation centre should be empowered to set up processes such as the FRAND determination.

⁴⁶ Regulation (EU) 2017/1001 of the

European Parliament and of the Council of
14 June 2017 on the European Union trade
mark (OJ L 154, 16.6.2017, p. 1.)

European Parliament and of the Council of
14 June 2017 on the European Union trade
mark (OJ L 154, 16.6.2017, p. 1.)

Or. en

Amendment 160
Arba Kokalari, Jörgen Warborn

Proposal for a regulation
Recital 52 a (new)

Text proposed by the Commission

Amendment

(52 a) As a member of the World Trade Organisation (WTO), the Union is committed to promoting a rules-based, open, multilateral trading system under the WTO. Any measures introduced by the Union that affect trade must be WTO compliant. Further, all measures introduced by the Union that affect trade must take into account the possible response of the Union's trade partners and ensure that the enforcement of the measure is not perceived as a unilateral protectionist measure. Any potential threat towards TRIPS must be taken into account before the application of this legislation.

Or. en

Amendment 161
Maria Grapini

Proposal for a regulation
Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. This Regulation shall apply to patents that are essential to a standard that has been published by a standard development organisation, to which the

2. This Regulation shall apply to patents that ***are in force in one or more Member States and*** are essential to a standard that has been published by a

SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy,

standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, ***after the entry into force of this Regulation, in accordance with article 66.***

Or. en

Amendment 162

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

2. This Regulation shall apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy,

Amendment

2. ***In accordance with article 66,*** this Regulation shall apply to patents that ***are in force in one or more Member States and*** are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy,

Or. en

Amendment 163

Geoffroy Didier

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

2. This Regulation shall apply to patents that are essential to a standard that

Amendment

2. This Regulation shall apply to patents ***are in force in one or more***

has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy,

Member States and that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy,

Or. en

Justification

The Regulation covers European patents that are essential and for which a FRAND commitment has been made. The European Union does neither have jurisdiction, nor competence, in respect of patent rights granted by non-EU states.

Amendment 164

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

2. This Regulation shall apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy,

Amendment

2. This Regulation shall apply to patents that are essential to a standard that has been published by a standard development organisation, to which the **current SEP holder or a former SEP** holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy

Or. en

Amendment 165

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

2. This Regulation shall apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions ***and that is not subject to a royalty-free intellectual property policy,***

Amendment

2. This Regulation shall apply to patents that are ***in force in one or more Member States and have been declared*** essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions,

Or. en

Amendment 166

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

(a) after the entry into force of this Regulation, with the exceptions provided in paragraph 3;

Amendment

deleted

Or. en

Amendment 167

Maria Grapini

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

(a) after the entry into force of this Regulation, with the exceptions provided in paragraph 3;

Amendment

deleted

Or. en

Amendment 168

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) after the entry into force of this Regulation, with the exceptions provided in paragraph 3;

deleted

Or. en

Amendment 169

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) after the entry into force of this Regulation, with the exceptions provided in paragraph 3;

(a) where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, and

Or. en

Amendment 170

Geoffroy Didier

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

*(a) after the entry into **force** of this Regulation, with the exceptions provided in paragraph 3;*

*(a) **3 years** after the entry into **application** of this Regulation, with the exceptions provided in paragraph 3;*

Amendment 171
Geoffroy Didier

Proposal for a regulation
Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) before the entry into force of this Regulation, in accordance with Article 66. *deleted*

Or. en

Justification

The Competence Centre will have to be built from the ground-up and will have significant new obligations. The implementation period of 2 years foreseen by the proposal will not be sufficient to get the EUIPO ready. An additional period of 3 years for the registration obligations is necessary, to allow sufficient time for technical implementation and capacity building to ensuring the EUIPO systems and administrative procedures are fully operational, with sufficient guardrails relating to security and data protection. This is also necessary in order to avoid any disruption of potentially already ongoing negotiations or litigation processes, and any highly disruptive bottleneck effects from potentially existing standards being captured in the scope. Indeed, this could create incentives for additional patent hold-out behaviour, to the detriment of SEP holders and their IP rights. The Regulation should only apply to future standards.

Amendment 172
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) before the entry into force of this Regulation, in accordance with Article 66. *deleted*

Or. en

Amendment 173
Arba Kokalari, Jörgen Warborn

Proposal for a regulation
Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) before the entry into force of this Regulation, in accordance with Article 66. *deleted*

Or. en

Amendment 174
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) before the entry into force of this Regulation, in accordance with Article 66. *deleted*

Or. en

Amendment 175
Maria Grapini

Proposal for a regulation
Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) before the entry into force of this Regulation, in accordance with Article 66. *deleted*

Or. en

Amendment 176
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation
Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) *before the entry into force of this Regulation, in accordance with Article 66.*

(b) *the Commission has, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, established a list of such use cases, standards or parts thereof.*

Or. en

Amendment 177

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

Amendment

3. *Articles 17 and 18 and Article 34(1) shall not apply to SEPs to the extent that they are implemented for use cases identified by the Commission in accordance with paragraph 4.*

deleted

Or. en

Amendment 178

Geoffroy Didier

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

Amendment

3. *Articles 17 and 18 and Article 34(1) shall not apply to SEPs to the extent that they are implemented for use cases identified by the Commission in accordance with paragraph 4.*

deleted

Or. en

Justification

Paragraph no longer necessary under the revised structure.

Amendment 179

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 1 – paragraph 4

Text proposed by the Commission

Amendment

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, establish a list of such use cases, standards or parts thereof, for the purposes of paragraph 3. *deleted*

Or. en

Amendment 180

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 1 – paragraph 4

Text proposed by the Commission

Amendment

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, establish a list of such use

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do not give *and have never given* rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67,

cases, standards or parts thereof, for the purposes of paragraph 3.

establish a list of such use cases, standards or parts thereof, for the purposes of paragraph 3. ***The Commission shall review and, where necessary, update the list at least once a year.***

Or. en

Amendment 181
Geoffroy Didier

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms ***do not*** give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, ***establish a list of*** such use cases, standards or parts thereof, ***for the purposes of paragraph 3.***

Amendment

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, ***bring*** such use cases, standards or parts thereof, ***within the scope of the Regulation.***

Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction in respect of patent rights granted by non-EU states. Furthermore, the Regulation is premised on the understanding that there are concerns about SEP licensing generally and in particular about SEP licensing in future IoT industries. However current evidence is inconclusive (see the "Empirical Assessment"). Better Regulation requires that any intervention in markets be evidence based. The Regulation should therefore apply where significant difficulties or inefficiencies are indeed observed but not otherwise. Applying the current regulation retroactively as per point Art 1.2.(b) to standards already adopted before the entry into force of this regulation would create massive legal uncertainty in relation to existing rights, both for SEP owners and implementers who have already concluded contracts granting them the right to use those SEPs.

Amendment 182
Maria Grapini

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms **do not** give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, **establish a list of** such use cases, standards or parts thereof, **for the purposes of paragraph 3**.

Amendment

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, **bring** such use cases, standards or parts thereof, **within the scope of the Regulation**.

Or. en

Amendment 183
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 1 – paragraph 7

Text proposed by the Commission

7. ***This Regulation is without prejudice to the application of Articles 101 and 102 TFEU or to the application of corresponding national competition law rules.***

Amendment

deleted

Or. en

Justification

It is a general principle that regulations cannot disrespect treaty provisions.

Amendment 184
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

(1) ‘standard essential patent’ or ‘SEP’ means any patent that *is* essential to a standard;

Amendment

(1) ‘standard essential patent’ or ‘SEP’ means any patent that *protects technology* essential to a standard;

Or. en

Amendment 185

Maria Grapini

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

(1) ‘standard essential patent’ or ‘SEP’ means any patent that is essential to a standard;

Amendment

(1) ‘standard essential patent’ or ‘SEP’ means any patent that is *proved that is* essential to a standard;

Or. en

Amendment 186

Geoffroy Didier

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘essential to a standard’ means that the patent contains at least one claim for which it is not possible on technical grounds to make or use an implementation or method which *complies* with a standard, including options therein, without infringing the patent under the current state of the art and normal technical practice;

Amendment

(2) ‘essential to a standard’ means that the patent contains at least one claim for which it is not possible on technical grounds to make or use an implementation or method which *fully* with a standard, including options therein, without infringing the patent under the current state of the art and normal technical practice;

Or. en

Justification

“Implementation or method which fully complies with a standard”: this clarification ensures compliance with ETSI’s definition.

Amendment 187

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘standard development organisation’ means any standardising body that is not a private industrial association developing proprietary technical specifications, that develops technical or quality requirements or recommendations for products, production processes, services or methods;

Amendment

(5) ‘standard development organisation’ **or ‘SDO’** means any standardising body that is not a private industrial association developing proprietary technical specifications, that develops technical or quality requirements or recommendations for products, production processes, services or methods;

Or. en

Amendment 188

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) ‘implementer’ means a natural or legal person that implements, or intends to implement, a standard in a product, process, service or system;

Amendment

(7) ‘implementer’ means a natural or legal person that implements, or intends to implement, a standard in a product, process, service or system **on the European Union market;**

Or. en

Amendment 189

Geoffroy Didier

Proposal for a regulation
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(10) ‘aggregate royalty’ means the maximum amount of royalty for all patents essential to a standard; **deleted**

Or. en

Justification

No longer necessary under the revised structure.

Amendment 190
Maria Grapini

Proposal for a regulation
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(10) ‘aggregate royalty’ means the maximum amount of royalty for all patents essential to a standard; **deleted**

Or. en

Amendment 191
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

(10) ‘aggregate royalty’ means the maximum amount of royalty for all patents essential to a standard; **deleted**

Or. en

Amendment 192
Geoffroy Didier

Proposal for a regulation
Article 2 – paragraph 1 – point 11

Text proposed by the Commission

Amendment

(11) ‘patent pool’ means an entity created by an agreement between two or more SEP holders to license one or more of their patents to one another or to third parties; **deleted**

Or. en

Justification

The notion of “private industrial association” is not clear as well as the “proprietary specifications”. There is no reason why a proprietary standard would be de facto out of the scope of the Regulation. The patent pool obligations of Article 9 are redundant with the transparency obligations of Article 4. We suggest to delete Article 9, and therefore to delete the definition of ‘patent pool’ in Article 2.

Amendment 193

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 2 – paragraph 1 – point 11

Text proposed by the Commission

Amendment

(11) ‘patent pool’ means an entity created by an agreement between two or more SEP holders to license one or more of their patents to one another or to third parties;

(11) ‘patent pool’ means an entity created by an agreement between two or more SEP holders to license one or more of their patents to one another or to third parties, *through a single transaction and on an ongoing basis*;

Or. en

Amendment 194

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 2 – paragraph 1 – point 11

Text proposed by the Commission

(11) ‘patent pool’ means an entity created by an agreement between two or more SEP holders to license one or more of their patents to one another or to third parties;

Amendment

(11) ‘patent pool’ means an entity created by an agreement **or consortium** between two or more SEP holders to license one or more of their patents to one another or to third parties;

Or. en

Amendment 195

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 2 – paragraph 1 – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) ‘patent assertion entities or ‘PEA’ or ‘patent troll’ means an entity characterised by an “obtain and assert” business model, with the purpose of generating revenues through licensing fees, royalties and damage compensations;

Or. en

Amendment 196

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 2 – paragraph 1 – point 11 b (new)

Text proposed by the Commission

Amendment

(11 b) ‘non-practicing entities’ or ‘NPEs’ means any entity that owns patents (either through acquisition, in-house development, or both) but does not practice them;

Amendment 197

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

Amendment

(18 a) ‘patent assertion entity’ means an entity that derives its revenue from the enforcement or licensing of patents, including any damages or monetary awards from the assertion of such patents, and that does not engage in the production, manufacture, sale, or distribution of goods or services utilising the patented inventions or in the research and development of such inventions, that is not an educational or research institution, or a technology transfer organisation facilitating the commercialisation of technological innovations generated by them, and that is not an individual inventor asserting patents originally granted to that inventor or patents that cover technologies originally developed by that inventor;

Or. en

Amendment 198

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

Amendment

(18 a) ‘significant difficulties or inefficiencies’ means material impediments to the normal operation of the internal market.

Amendment 199
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

***Obligation to license on FRAND terms
and conditions***

***Holders of patents essential to a standard
within the scope of this Regulation
pursuant to Article 1(2) shall not refuse a
licence to any party willing to accept a
licence based FRAND terms and
conditions.***

Amendment 200
Maria Grapini

Proposal for a regulation
Article 3 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) set up and maintain an electronic register and an electronic database for SEPs;

(a) set up and maintain an electronic register and an electronic database for SEPs, ***complying with the General Data Protection Regulation*** ;

Amendment 201
Maria Grapini

Proposal for a regulation
Article 3 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) set up and administer a system for assessment of the essentiality of SEPs;

(c) set up and administer a system for assessment of the essentiality of SEPs
based on explicit and verifiable criteria;

Or. en

Amendment 202
Geoffroy Didier

Proposal for a regulation
Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) administer a process for aggregate royalty determination;

deleted

Or. en

Amendment 203
Maria Grapini

Proposal for a regulation
Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) administer a process for aggregate royalty determination;

deleted

Or. en

Amendment 204
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) *administer a process for aggregate royalty determination;* *deleted*

Or. en

Amendment 205

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) administer a process for aggregate royalty determination;

(f) administer a process for *facilitating agreements on* aggregate royalty determination;

Or. en

Amendment 206

Maria Grapini

Proposal for a regulation

Article 3 – paragraph 2 – point h

Text proposed by the Commission

Amendment

(h) provide training, support and general advice on SEPs to SMEs;

(h) provide training, support and general advice on SEPs to SMEs *and microenterprises*;

Or. en

Amendment 207

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 3 – paragraph 2 – point h

Text proposed by the Commission

(h) provide training, support and general advice on SEPs to SMEs;

Amendment

(h) provide training, support and general advice on SEPs to SMEs ***and start-ups***;

Or. en

Amendment 208

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

The competence centre shall be set up 24 months before the application of this Regulation. The competence centre shall be equipped with the right expertise and resources and coordinated with both regional and global IP organisations, such as the European Patent Organisation and the World Intellectual Property Organisation.

Or. en

Amendment 209

Geoffroy Didier

Proposal for a regulation

Article 4 – paragraph 3 – point c

Text proposed by the Commission

(c) the standard version, the technical specification and ***the specific sections*** of the technical specification for which the patent is considered essential;

Amendment

(c) the standard version, the technical specification and ***an illustrative section*** of the technical specification for which the patent is considered essential;

Or. en

Justification

It is unnecessary, burdensome and costly to require identification of all sections for which the standard is essential. Such a provision is likely to lead to further litigation and is not necessary for the purposes of establishing whether a patent is essential and therefore required to be licensed.

Amendment 210

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 4 – paragraph 3 – point i

Text proposed by the Commission

(i) the existence of any public standard terms and conditions for SEP licensing to SMEs;

Amendment

(i) the existence of any public standard terms and conditions for SEP licensing to SMEs ***and start-ups***;

Or. en

Amendment 211

Geoffroy Didier

Proposal for a regulation

Article 4 – paragraph 4 – point c

Text proposed by the Commission

(c) information on ***whether*** an essentiality check or peer evaluation ***have been*** performed and ***reference to*** the result;

Amendment

(c) ***any*** information on an essentiality check or peer evaluation performed ***before the registration*** and the result ***of the essentiality check***;

Or. en

Amendment 212

Geoffroy Didier

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Prior to registering their patents, SEP holders may voluntarily submit their SEPs for essentiality checking to the competence centre.

Or. en

Justification

SEP holders who already have the good industry practice of systematically checking the essentiality of their patents should not have to go through the redundant, expensive process of sample-based checks foreseen by Article 29.

Amendment 213

Maria Grapini

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. The competence centre shall establish and maintain an electronic database for SEPs.

1. The competence centre shall establish and maintain an electronic database for SEPs, ***complying with the General Data Protection Regulation.***

Or. en

Amendment 214

Geoffroy Didier

Proposal for a regulation

Article 5 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) public standard terms and conditions, including SEP holder's royalty and discount policies pursuant to Article 7, first paragraph, point (b), if available;

deleted

Justification

Concern information that is not realistic, or even feasible for SEP holders to share. The obligation to share the information under (b) should fall on implementers, as they are the only ones who can realistically be expected to provide it (see Article 7).

Amendment 215

Maria Grapini

Proposal for a regulation

Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) public standard terms and conditions for SEP licensing to SMEs pursuant to Article 62(1), if available;

Amendment

(c) public standard terms and conditions for SEP licensing to SMEs **and microenterprises** pursuant to Article 62(1), if available;

Or. en

Amendment 216

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) public standard terms and conditions for SEP licensing to SMEs pursuant to Article 62(1), if available;

Amendment

(c) public standard terms and conditions for SEP licensing to SMEs **and start-ups** pursuant to Article 62(1), if available;

Or. en

Amendment 217

Geoffroy Didier

Proposal for a regulation
Article 5 – paragraph 2 – point d

Text proposed by the Commission

(d) information regarding known products, processes, services or systems and implementations pursuant to Article 7, first paragraph, point (b);

Amendment

(d) information regarding known products, processes, services or systems and implementations ***as well as projected pricing, anticipated sales volume, and any other relevant market data*** pursuant to Article 7, first paragraph, point (b);

Or. en

Amendment 218
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 5 – paragraph 2 – point g

Text proposed by the Commission

(g) information on aggregate royalties pursuant to Articles 15, 16 and 17;

Amendment

deleted

Or. en

Amendment 219
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 5 – paragraph 2 – point h

Text proposed by the Commission

(h) expert opinions referred to in Article 18;

Amendment

deleted

Or. en

Amendment 220

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 5 – paragraph 2 – point k

Text proposed by the Commission

(k) the date and the grounds for removal of the SEP from the database pursuant to Article 25;

Amendment

(k) the date and the grounds for removal of the SEP from the database pursuant to Article 25, ***and a record of all relevant information on the removed SEP;***

Or. en

Amendment 221

Geoffroy Didier

Proposal for a regulation

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The following information in the database shall be publicly accessible: a list of “unwilling licensees” containing the organizations which have been proven to be engaging in “hold-out” behaviour, either in litigation processes or by refusing to engage with the FRAND determination process, pursuant to Article 46.

Or. en

Amendment 222

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. When a party requests that data and documents of the database be kept

1. When a party requests that data and documents of the database be kept

confidential, that party shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. The competence centre may disclose that non-confidential version.

confidential, that party shall provide ***a reasoned statement justifying this confidentiality and*** a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. The competence centre may disclose that non-confidential version.

Or. en

Amendment 223
Geoffroy Didier

Proposal for a regulation
Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

A SEP **holder** shall provide to the competence centre the following information:

Amendment

A SEP **implementer** shall provide to the competence centre the following information:

Or. en

Amendment 224
Geoffroy Didier

Proposal for a regulation
Article 7 – paragraph 1 – point a

Text proposed by the Commission

(a) information as regards the products, processes, services or systems in which the subject-matter of the SEP may be incorporated or to which it is intended to be applied, for all existing or potential implementations of a standard, to the extent such information is known to the SEP **holder**.

Amendment

(a) information as regards the products, processes, services or systems in which the subject-matter of the SEP may be incorporated or to which it is intended to be applied, for all existing or potential implementations of a standard ***as well as projected pricing, anticipated sales volume, and any other relevant market data***, to the extent such information is known to the ***implementer of a SEP***.

Amendment 225
Geoffroy Didier

Proposal for a regulation
Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) where available, its standard terms and conditions for SEP licensing, including its royalty and discount policies, within 7 months from the opening of the registration for the relevant standard and implementation by the competence centre. **deleted**

Or. en

Justification

It is not feasible for SEP holders to provide information regarding potential products and implementations of patented technology. This information should be provided by the implementers and added to the database. Moreover, our suggestion to add projected pricing, sales volume and other relevant market data aims at making the transparency obligations more balanced, and therefore encourage the uptake of SEPs licenses.

Amendment 226
Geoffroy Didier

Proposal for a regulation
Article 8 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) any essentiality check *prior to [OJ: please insert the date = 24 months from entry into force of this regulation]* by an independent evaluator in the context of a pool, identifying the SEP registration number, the identity of the patent pool and its administrator, and the evaluator.

(b) any essentiality check by an independent evaluator in the context of a pool, identifying the SEP registration number, the identity of the patent pool and its administrator, and the evaluator.

Or. en

Amendment 227

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 8 – paragraph 1 – point b

Text proposed by the Commission

(b) any essentiality check *prior to [OJ: please insert the date = 24 months from entry into force of this regulation]* by an independent evaluator in the context of a pool, identifying the SEP registration number, the identity of the patent pool and its administrator, and the evaluator.

Amendment

(b) any essentiality check by an independent evaluator in the context of a pool, identifying the SEP registration number, the identity of the patent pool and its administrator, and the evaluator.

Or. en

Amendment 228

Geoffroy Didier

Proposal for a regulation

Article 8 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) any information on essentiality check or peer evaluation performed before the registration of the standard essential patent as described under Article 4(4)(c).

Or. en

Justification

Aims at recognizing the good industry practice of SEP holders who already systematically check the essentiality of their patents.

Amendment 229

Geoffroy Didier

Proposal for a regulation
Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Information to be provided by patent pools

Patent pools shall publish on their websites at least the following information and inform the competence centre thereof:

- (a) standards subject to collective licensing;***
- (b) the administrative entity's shareholders or ownership structure;***
- (c) process for evaluating SEPs;***
- (d) roster of evaluators having residence in the Union;***
- (e) list of evaluated SEPs and list of SEPs being licensed;***
- (f) illustrative cross-references to the standard;***
- (g) list of products, services and processes that may be licensed through the patent pool or the entity;***
- (h) royalties and discount policy per product category;***
- (i) standard licence agreement per product category;***
- (j) list of licensors in each product category;***
- (k) list of licensees for each product category.***

Or. en

Justification

The patent pool obligations of Article 9 are redundant with the transparency obligations of Article 4.

Amendment 230

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 9 – paragraph 1 – point h

Text proposed by the Commission

(h) royalties and discount policy per product category;

Amendment

(h) royalties, ***including, if applicable, aggregate royalty retained and detailed calculation per SEP owner in the pool,*** and discount policy per product category;

Or. en

Amendment 231

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The competence centre shall verify and report on the accuracy of the information published by patent pools in accordance with paragraph 1 on a regular basis and at least once a year, based on a publicly available methodology ensuring thorough, transparent and consistent verification.

Or. en

Amendment 232

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By way of derogation from paragraph 1, patent pools, in case of confidentiality agreements and confidential procedures,

*shall provide the protected information
directly to the competence centre.*

Or. en

Amendment 233

Maria Grapini

Proposal for a regulation

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

1. Competent courts of Member States shall notify the competence centre within 6 months from the adoption of a judgment concerning SEPs on:

Amendment

1. Competent courts of Member States shall notify the competence centre within ***maximum*** 6 months from the adoption of a judgment concerning SEPs on:

Or. en

Amendment 234

Maria Grapini

Proposal for a regulation

Article 10 – paragraph 2

Text proposed by the Commission

2. Any person may inform the competence centre about any judicial proceeding ***or alternative dispute resolution proceeding concerning a SEP.***

Amendment

2. Any person may inform the competence centre about any judicial proceeding.

Or. en

Amendment 235

Geoffroy Didier

Proposal for a regulation

Article 11

Article 11

deleted

Information on FRAND determinations

1. Persons involved in alternative dispute resolution proceedings concerning SEPs in force in a Member State shall disclose to the competence centre within 6 months from the termination of the procedure the standards and the implementations concerned, the methodology used for the calculation of FRAND terms and conditions, information on the name of the parties, and on specific licensing rates determined.

2. No confidential information shall be disclosed by the competence centre without the prior consent of the affected party.

Or. en

Justification

Alternative dispute resolution proceedings are voluntary, contractual in nature and confidential. This provision could endorse or permit breach of confidence/contract. It would undermine attempts at alternative dispute resolution for SEP licenses worldwide, nullifying the value of similar systems established by international arbitration institutions (e.g. ICC, LCIA, WIPO, AAA and many others). In addition, the EUIPO cannot be forcibly introduced to the confidentiality regimes of all SEP licensing resolution mechanisms, which are often established under non-EU jurisdictions.

Amendment 236

Maria Grapini

Proposal for a regulation

Article 11 – paragraph 1

1. Persons involved in alternative dispute resolution proceedings concerning SEPs in force in a Member State shall disclose to the competence centre within 6

deleted

months from the termination of the procedure the standards and the implementations concerned, the methodology used for the calculation of FRAND terms and conditions, information on the name of the parties, and on specific licensing rates determined.

Or. en

Amendment 237

Kosma Złotowski, Adam Bielan

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. Persons involved in alternative dispute resolution proceedings concerning SEPs in force in a Member State shall disclose to the competence centre within **6** months from the termination of the procedure the standards and the implementations concerned, the methodology used for the calculation of FRAND terms and conditions, information on the name of the parties, and on specific licensing rates determined.

Amendment

1. Persons involved in alternative dispute resolution proceedings concerning SEPs in force in a Member State shall disclose to the competence centre within **4** months from the termination of the procedure the standards and the implementations concerned, the methodology used for the calculation of FRAND terms and conditions, information on the name of the parties, and on specific licensing rates determined.

Or. en

Amendment 238

Maria Grapini

Proposal for a regulation

Article 11 – paragraph 2

Text proposed by the Commission

2. *No confidential information shall be disclosed by the competence centre without the prior consent of the affected*

Amendment

deleted

party.

Or. en

Amendment 239

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 13 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) informing the public and any interested parties of the existence of standards, with easily accessible research tools;

Or. en

Amendment 240

Maria Grapini

Proposal for a regulation

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. The competence centre shall include in the database case-law from competent courts of Member States, from third country jurisdictions *and alternative dispute resolution bodies*.

3. The competence centre shall include in the database case-law from competent courts of Member States, *and* from third country jurisdictions.

Or. en

Amendment 241

Maria Grapini

Proposal for a regulation

Article 13 – paragraph 4

Text proposed by the Commission

4. The competence centre shall collect all information on FRAND terms and conditions, including any discounts, which have been made public by SEP holders, ***disclosed to it pursuant to Article 11*** and included in the FRAND determination reports and shall make such disclosures accessible to public authorities in the Union, including competent courts of Member States, subject to a written request. Confidential documents shall be accompanied by a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

Amendment

4. The competence centre shall collect all information on FRAND terms and conditions, including any discounts, which have been made public by SEP holders, and included in the FRAND determination reports and shall make such disclosures accessible to public authorities in the Union, including competent courts of Member States, subject to a written request. Confidential documents shall be accompanied by a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

Or. en

Amendment 242
Geoffroy Didier

Proposal for a regulation
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Duty of good faith

SEP holders and implementers must behave in good faith, before, during and after licenses negotiations. SEP implementers who use standardized technology must proactively seek to take a license from the SEP holder who owns the technology they use.

Or. en

Justification

Implementers using, or intending to use, standardised technologies should seek licenses for their use.

Amendment 243
Geoffroy Didier

Proposal for a regulation
Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. *Holders of a patent in force in one or more Member States which is essential to a standard for which FRAND commitments have been made* shall notify to the competence centre, *where possible through the standard development organisation or through a joint notification, the following information:*

1. Standard *development organisations* shall notify to the competence centre:

Or. en

Amendment 244
Geoffroy Didier

Proposal for a regulation
Article 14 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) *implementations of the standard known to the SEP holders making the notification.*

deleted

Or. en

Amendment 245
Geoffroy Didier

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. Such notification shall be made within **30 days** of the publication of the

2. Such notification shall be made within **6 months** of the publication of the

latest technical specification.

latest technical specification.

Or. en

Justification

It is not feasible for SEP holders to share the information foreseen by this Article, especially not in a timeframe of 30 days. This obligation should fall on Standard Development Organizations, and to make it for practical, the timeframe should be expended to six months.

Amendment 246

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 14 – paragraph 5

Text proposed by the Commission

5. The competence centre shall also notify the relevant standard development organisation of the publication. In case of notification pursuant to paragraphs (3) and (4), it shall also notify, *where possible*, known SEP holders individually or request confirmation from the standard development organisation that it has duly notified the SEP holders.

Amendment

5. The competence centre shall also notify the relevant standard development organisation of the publication. In case of notification pursuant to paragraphs (3) and (4), it shall also notify known SEP holders individually or request confirmation from the standard development organisation that it has duly notified the SEP holders.

Or. en

Amendment 247

Geoffroy Didier

Proposal for a regulation

Article 15

Text proposed by the Commission

Article 15

Notification of an aggregate royalty to the competence centre

1. Holders of SEPs in force in one or more Member States for which FRAND commitments have been made may jointly

Amendment

deleted

notify the competence centre the aggregate royalty for the SEPs covering a standard.

2. *The notification made in accordance with paragraph (1) shall contain the information on the following:*

- (a) the commercial name of the standard;*
- (b) the list of technical specifications that define the standard;*
- (c) the names of the SEP holders making the notification referred to in paragraph (1);*
- (d) the estimated percentage the SEP holders referred to in paragraph (1) represent from all SEP holders;*
- (e) the estimated percentage of SEPs they own collectively from all SEPs for the standard;*
- (f) the implementations known to the SEP holders referred to in point (c);*
- (g) the global aggregate royalty, unless the notifying parties specify that the aggregate royalty is not global;*
- (h) any period for which the aggregate royalty referred to in paragraph (1) is valid.*

3. *The notification referred to in paragraph (1) shall be made at the latest 120 days after:*

- (a) the publication of a standard by the standard development organisation for implementations known to the SEP holders referred to in paragraph (2), point (c); or*
- (b) a new implementation of the standard becomes known to them.*

4. *The competence centre shall publish in the database the information provided under paragraph (2).*

Or. en

Justification

The provision for SEP holders to collectively set an aggregate royalty for their SEPs risks a breach of competition law principles. The aggregate royalty may, in any event, be calculated from individual rates that SEP holders are encouraged to publish. The determination of an aggregate royalty for an entire standard and specific use cases that the Commission proposes is fraught with difficulty and it has so far only been attempted a few times by national courts outside the EU. The few such cases have so far clearly demonstrated that the determination of an aggregate royalty for SEPs is a task that belongs to the courts of law. More generally, the Commission proposal appears to allow top-down price regulation, which is an infringement of Union principles unless there is a clear evidence of market failure (which in this case is absent). This provision should therefore be removed.

Amendment 248

Maria Grapini

Proposal for a regulation

Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Notification of an aggregate royalty to the competence centre

1. Holders of SEPs in force in one or more Member States for which FRAND commitments have been made may jointly notify the competence centre the aggregate royalty for the SEPs covering a standard.

2. The notification made in accordance with paragraph (1) shall contain the information on the following:

(a) the commercial name of the standard;

(b) the list of technical specifications that define the standard;

(c) the names of the SEP holders making the notification referred to in paragraph (1);

(d) the estimated percentage the SEP holders referred to in paragraph (1) represent from all SEP holders;

- (e) the estimated percentage of SEPs they own collectively from all SEPs for the standard;*
- (f) the implementations known to the SEP holders referred to in point (c);*
- (g) the global aggregate royalty, unless the notifying parties specify that the aggregate royalty is not global;*
- (h) any period for which the aggregate royalty referred to in paragraph (1) is valid.*

3. *The notification referred to in paragraph (1) shall be made at the latest 120 days after:*

- (a) the publication of a standard by the standard development organisation for implementations known to the SEP holders referred to in paragraph (2), point (c); or*
- (b) a new implementation of the standard becomes known to them.*

4. *The competence centre shall publish in the database the information provided under paragraph (2).*

Or. en

Amendment 249
Francisco Guerreiro
 on behalf of the Verts/ALE Group

Proposal for a regulation
Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Notification of an aggregate royalty to the competence centre

1. *Holders of SEPs in force in one or more Member States for which FRAND commitments have been made may jointly notify the competence centre the*

aggregate royalty for the SEPs covering a standard.

2. *The notification made in accordance with paragraph (1) shall contain the information on the following:*

- (a) the commercial name of the standard;*
- (b) the list of technical specifications that define the standard;*
- (c) the names of the SEP holders making the notification referred to in paragraph (1);*
- (d) the estimated percentage the SEP holders referred to in paragraph (1) represent from all SEP holders;*
- (e) the estimated percentage of SEPs they own collectively from all SEPs for the standard;*
- (f) the implementations known to the SEP holders referred to in point (c);*
- (g) the global aggregate royalty, unless the notifying parties specify that the aggregate royalty is not global;*
- (h) any period for which the aggregate royalty referred to in paragraph (1) is valid.*

3. *The notification referred to in paragraph (1) shall be made at the latest 120 days after:*

- (a) the publication of a standard by the standard development organisation for implementations known to the SEP holders referred to in paragraph (2), point (c); or*
- (b) a new implementation of the standard becomes known to them.*

4. *The competence centre shall publish in the database the information provided under paragraph (2).*

Or. en

Proposal for a regulation
Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

***Notification of an aggregate royalty to the
competence centre***

- 1. Holders of SEPs in force in one or more Member States for which FRAND commitments have been made may jointly notify the competence centre the aggregate royalty for the SEPs covering a standard.***
- 2. The notification made in accordance with paragraph (1) shall contain the information on the following:***
 - (a) the commercial name of the standard;***
 - (b) the list of technical specifications that define the standard;***
 - (c) the names of the SEP holders making the notification referred to in paragraph (1);***
 - (d) the estimated percentage the SEP holders referred to in paragraph (1) represent from all SEP holders;***
 - (e) the estimated percentage of SEPs they own collectively from all SEPs for the standard;***
 - (f) the implementations known to the SEP holders referred to in point (c);***
 - (g) the global aggregate royalty, unless the notifying parties specify that the aggregate royalty is not global;***
 - (h) any period for which the aggregate royalty referred to in paragraph (1) is valid.***
- 3. The notification referred to in paragraph (1) shall be made at the latest***

120 days after:

(a) the publication of a standard by the standard development organisation for implementations known to the SEP holders referred to in paragraph (2), point (c); or

(b) a new implementation of the standard becomes known to them.

4. The competence centre shall publish in the database the information provided under paragraph (2).

Or. en

Amendment 251
Geoffroy Didier

Proposal for a regulation
Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Revision of aggregate royalty

1. In case of revision of the aggregate royalty, the SEP holders shall notify the competence centre about the revised aggregate royalty and the reasons for the revision.

2. The competence centre shall publish in the database the initial aggregate royalty, the revised aggregate royalty and the reasons for the revision in the register.

Or. en

Justification

The provision for SEP holders to collectively set an aggregate royalty for their SEPs is a risk of breach of competition law principles. The aggregate royalty may, in any event, be calculated from individual rates that SEP holders are encouraged to publish. The determination of an aggregate royalty for an entire standard and specific use cases that the Commission proposes is fraught with difficulty and it has so far only been attempted a few

times by national courts outside the EU. The few such cases have so far clearly demonstrated that the determination of an aggregate royalty for SEPs is a task that belongs to the courts of law. More generally, the Commission proposal appears to allow top-down price regulation, which is an infringement of the European Union principles unless there is a clear evidence of market failure (which in this case is absent). This provision should therefore be removed.

Amendment 252

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Revision of aggregate royalty

1. In case of revision of the aggregate royalty, the SEP holders shall notify the competence centre about the revised aggregate royalty and the reasons for the revision.

2. The competence centre shall publish in the database the initial aggregate royalty, the revised aggregate royalty and the reasons for the revision in the register.

Or. en

Amendment 253

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Revision of aggregate royalty

1. In case of revision of the aggregate royalty, the SEP holders shall notify the competence centre about the

revised aggregate royalty and the reasons for the revision.

2. The competence centre shall publish in the database the initial aggregate royalty, the revised aggregate royalty and the reasons for the revision in the register.

Or. en

**Amendment 254
Geoffroy Didier**

**Proposal for a regulation
Article 17**

Text proposed by the Commission

Amendment

Article 17

deleted

Process for facilitating agreements on aggregate royalty determinations

1. Holders of SEPs in force in one or more Member States representing at least 20 % of all SEPs of a standard may request the competence centre to appoint a conciliator from the roster of conciliators to mediate the discussions for a joint submission of an aggregate royalty.

2. Such a request shall be made no later than 90 days following the publication of the standard or no later than 120 days following the first sale of new implementation on the Union market for implementations not known at the time of publication of the standard.

3. The request shall contain the following information:

(a) the commercial name of the standard;

(b) the date of publication of the latest technical specification or the date of the first sale of new implementation on the

Union market;

(c) the implementations known to the SEP holders referred to in paragraph (1);

(d) the names and contact details of the SEP holders supporting the request;

(e) the estimated percentage of SEPs they own individually and collectively from all potential SEPs claimed for the standard.

4. The competence centre shall notify the SEP holders referred to in paragraph (3), point (d) and request them to express their interest in participating in the process and to provide their estimated percentage of SEPs from all SEPs for the standard.

5. The competence centre shall appoint a conciliator from the roster of conciliators and inform all SEP holders that expressed interest to participate in the process.

6. SEP holders that submit to the conciliator confidential information shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

7. Where the SEP holders fail to make a joint notification within 6 months from the appointment of the conciliator, the conciliator shall terminate the process.

8. If the contributors agree on a joint notification, the procedure set out in Article 15(1), (2) and (4) shall apply.

Or. en

Amendment 255

Arba Kokalari, Jörgen Warborn

Proposal for a regulation
Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

***Process for facilitating agreements on
aggregate royalty determinations***

1. Holders of SEPs in force in one or more Member States representing at least 20 % of all SEPs of a standard may request the competence centre to appoint a conciliator from the roster of conciliators to mediate the discussions for a joint submission of an aggregate royalty.

2. Such a request shall be made no later than 90 days following the publication of the standard or no later than 120 days following the first sale of new implementation on the Union market for implementations not known at the time of publication of the standard.

3. The request shall contain the following information:

(a) the commercial name of the standard;

(b) the date of publication of the latest technical specification or the date of the first sale of new implementation on the Union market;

(c) the implementations known to the SEP holders referred to in paragraph (1);

(d) the names and contact details of the SEP holders supporting the request;

(e) the estimated percentage of SEPs they own individually and collectively from all potential SEPs claimed for the standard.

4. The competence centre shall notify the SEP holders referred to in paragraph (3), point (d) and request them to express their interest in participating in the process and to provide their estimated

percentage of SEPs from all SEPs for the standard.

5. The competence centre shall appoint a conciliator from the roster of conciliators and inform all SEP holders that expressed interest to participate in the process.

6. SEP holders that submit to the conciliator confidential information shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

7. Where the SEP holders fail to make a joint notification within 6 months from the appointment of the conciliator, the conciliator shall terminate the process.

8. If the contributors agree on a joint notification, the procedure set out in Article 15(1), (2) and (4) shall apply.

Or. en

Amendment 256

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Process for facilitating agreements on aggregate royalty determinations

1. Holders of SEPs in force in one or more Member States representing at least 20 % of all SEPs of a standard may request the competence centre to appoint a conciliator from the roster of conciliators to mediate the discussions for a joint submission of an aggregate

royalty.

2. *Such a request shall be made no later than 90 days following the publication of the standard or no later than 120 days following the first sale of new implementation on the Union market for implementations not known at the time of publication of the standard.*

3. *The request shall contain the following information:*

(a) *the commercial name of the standard;*

(b) *the date of publication of the latest technical specification or the date of the first sale of new implementation on the Union market;*

(c) *the implementations known to the SEP holders referred to in paragraph (1);*

(d) *the names and contact details of the SEP holders supporting the request;*

(e) *the estimated percentage of SEPs they own individually and collectively from all potential SEPs claimed for the standard.*

4. *The competence centre shall notify the SEP holders referred to in paragraph (3), point (d) and request them to express their interest in participating in the process and to provide their estimated percentage of SEPs from all SEPs for the standard.*

5. *The competence centre shall appoint a conciliator from the roster of conciliators and inform all SEP holders that expressed interest to participate in the process.*

6. *SEP holders that submit to the conciliator confidential information shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.*

7. Where the SEP holders fail to make a joint notification within 6 months from the appointment of the conciliator, the conciliator shall terminate the process.

8. If the contributors agree on a joint notification, the procedure set out in Article 15(1), (2) and (4) shall apply.

Or. en

Amendment 257

Maria Grapini

Proposal for a regulation Article 17 – paragraph 1

Text proposed by the Commission

1. Holders of SEPs in force in one or more Member States representing at least **20** % of all SEPs of a standard may request the competence centre to appoint a conciliator from the roster of conciliators to mediate the discussions for a joint submission of an aggregate royalty.

Amendment

1. Holders of SEPs in force in one or more Member States representing at least **25** % of all SEPs of a standard may request the competence centre to appoint a conciliator from the roster of conciliators to mediate the discussions for a joint submission of an aggregate royalty.

Or. en

Amendment 258

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. The competence centre shall publish a call for expression of interest to invite other holders of SEPs for the standard, current implementers and implementers intending to place products with the standard on the market to participate in the process.

Amendment 259

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 17 – paragraph 5

Text proposed by the Commission

5. The competence centre shall appoint a conciliator from the roster of conciliators and inform all SEP holders that expressed interest to participate in the process.

Amendment

5. The competence centre shall appoint a conciliator from the roster of conciliators and inform all SEP holders **and implementers** that expressed interest to participate in the process.

Amendment 260

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 17 – paragraph 6

Text proposed by the Commission

6. SEP holders that submit to the conciliator confidential information shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

Amendment

6. SEP holders **and implementers** that submit to the conciliator confidential information shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

Amendment 261

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 18

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 262

Maria Grapini

Proposal for a regulation

Article 18

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 263

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 18

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 264

Geoffroy Didier

Proposal for a regulation

Article 18

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

The provision for SEP holders to collectively set an aggregate royalty for their SEPs is a risk of breach of competition law principles. The aggregate royalty may, in any event, be calculated from individual rates that SEP holders are encouraged to publish. The determination of an aggregate royalty for an entire standard and specific use cases that the Commission proposes is fraught with difficulty and it has so far only been attempted a few times by national courts outside the EU. The few such cases have so far clearly demonstrated that the determination of an aggregate royalty for SEPs is a task that belongs to the courts of law. More generally, the Commission proposal appears to allow top-down price regulation, which is an infringement of the European Union principles unless there is a clear evidence of market failure (which in this case is absent). This provision should therefore be removed.

Amendment 265

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 18 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(d a) description of the final product in which it should be implemented.

Or. en

Amendment 266

Kosma Złotowski, Adam Bielan

Proposal for a regulation

Article 18 – paragraph 5

Text proposed by the Commission

Amendment

5. Any stakeholder may request to participate in the process after explaining the basis of its interest. SEP holders shall provide their estimated percentage of those SEPs of all SEPs for a standard. Implementers shall provide information on any relevant implementations of the standard, including any relevant market share in the Union.

5. Any stakeholder may request to participate in the process after explaining the basis of its interest. SEP holders shall provide their estimated percentage of those SEPs of all SEPs for a standard. Implementers shall provide information on any relevant implementations of the standard, including any relevant market share in the Union. **Implementers shall provide information on any relevant current or potential implementations of**

the standard.

Or. en

Amendment 267

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 18 – paragraph 6

Text proposed by the Commission

6. If the requests for participation include SEP holders representing collectively at least an estimated 20% of all SEPs for the standard, and implementers holding collectively at least 10% relevant market share in the Union or at least 10 SMEs, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the appropriate background from the relevant field of technology.

Amendment

6. If the requests for participation include SEP holders representing collectively at least an estimated 20% of all SEPs for the standard, and implementers holding collectively at least 10% relevant market share in the Union or at least 10 SMEs **and start-ups**, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the appropriate background from the relevant field of technology.

Or. en

Amendment 268

Kosma Zlotowski, Adam Bielan

Proposal for a regulation

Article 18 – paragraph 6

Text proposed by the Commission

6. If the requests for participation include SEP holders representing collectively at least an estimated **20%** of all SEPs for the standard, and implementers holding collectively at least **10%** relevant market share in the Union or at least 10 SMEs, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the

Amendment

6. If the requests for participation include SEP holders representing collectively at least an estimated **15%** of all SEPs for the standard, and implementers holding collectively at least **5%** relevant market share in the Union or at least 10 SMEs, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the

appropriate background from the relevant field of technology.

appropriate background from the relevant field of technology.

Or. en

Amendment 269

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 18 – paragraph 6

Text proposed by the Commission

6. If the requests for participation include SEP holders representing collectively at least an estimated 20% of all SEPs for the standard, **and** implementers holding collectively at least 10% relevant market share in the Union or at least 10 SMEs, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the appropriate background from the relevant field of technology.

Amendment

6. If the requests for participation include SEP holders representing collectively at least an estimated 20% of all SEPs for the standard, **or** implementers holding collectively at least 10% relevant market share in the Union or at least 10 SMEs, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the appropriate background from the relevant field of technology.

Or. en

Amendment 270

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 18 – paragraph 8 – introductory part

Text proposed by the Commission

8. Following the appointment, the panel shall request the participating **SEP holders** to, within one month:

Amendment

8. Following the appointment, the panel shall request the participating **parties** to, within one month:

Or. en

Amendment 271

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 18 – paragraph 8 – point b a (new)

Text proposed by the Commission

Amendment

(b a) provide any evidence or observations to assist the panel in determining an opinion on aggregate royalty.

Or. en

Amendment 272
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 18 – paragraph 11

Text proposed by the Commission

Amendment

11. *The expert opinion shall include a summary of the information provided in the request, the information referred to in Article 15(2), the names of the conciliators, the procedure, the reasons for the opinion on the aggregate royalty and the underlying methodology. The reasons for any divergent views shall be specified in an annex to the expert opinion.*

11. The expert opinion shall include ***the recommended aggregate royalty rate***, a summary of the information provided in the request, the information referred to in Article 15(2), the names of the conciliators, the procedure, the reasons for the opinion on the aggregate royalty and the underlying methodology. The reasons for any divergent views shall be specified in an annex to the expert opinion.

Or. en

Amendment 273
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 18 – paragraph 13 a (new)

Text proposed by the Commission

Amendment

13 a. The courts of the Member States may request the competence centre for an expert opinion/evidence on an aggregate

royalty.

Or. en

Amendment 274

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

1. The competence centre shall create an entry in the register for a standard for which FRAND commitments have been made within 60 days from *the earliest* of the *following events*:

Amendment

1. The competence centre shall create an entry in the register for a standard for which FRAND commitments have been made within 60 days from *publication by the competence centre of the standard and related information referred to in Article 14(7)*

Or. en

Amendment 275

Geoffroy Didier

Proposal for a regulation

Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

1. The competence centre shall create an entry in the register for a standard *for which FRAND commitments have been made* within 60 days from the *earliest* of the *following events*:

Amendment

1. The competence centre shall create an entry in the register for a standard *or part thereof or use case in a delegated act pursuant to Article 66* within 60 days from the *coming into effect* of the *delegated act concerned*.

Or. en

Justification

Amended to take account of new procedure to determine the scope of the Regulation.

Amendment 276
Geoffroy Didier

Proposal for a regulation
Article 19 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) publication by the competence centre of the standard and related information pursuant to Article 14(7); **deleted**

Or. en

Amendment 277
Geoffroy Didier

Proposal for a regulation
Article 19 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) publication by the competence centre of an aggregate royalty and related information pursuant to Article 15(4) and Article 18(11). **deleted**

Or. en

Amendment 278
Geoffroy Didier

Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

4. If the SEP holder fails to provide the correct and complete information, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied. **deleted**

Or. en

Justification

This provision has a disproportionate effect since a suspended patent becomes unenforceable. This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. Removal from the register renders a patent unenforceable (i.e. it removes any value).

Amendment 279

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 22 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. If the SEP has been suspended from the register pursuant to paragraph 4, the date of registration shall be the date when the incompleteness or inaccuracy has been remedied.

Or. en

Amendment 280

Maria Grapini

Proposal for a regulation

Article 22 – paragraph 5

Text proposed by the Commission

Amendment

5. A SEP holder whose SEP has been suspended from the register pursuant to paragraph (4) and considers that the finding of the competence centre is incorrect may apply before the Boards of Appeal of the EUIPO for a decision on the matter. The application shall be made within 2 months from the suspension. Within 2 months from the application, the Boards of Appeal of the EUIPO shall either reject the application or request the competence centre to correct its finding and inform the requesting person.

deleted

Amendment 281
Geoffroy Didier

Proposal for a regulation
Article 22 – paragraph 5

Text proposed by the Commission

Amendment

5. A SEP holder whose SEP has been suspended from the register pursuant to paragraph (4) and considers that the finding of the competence centre is incorrect may apply before the Boards of Appeal of the EUIPO for a decision on the matter. The application shall be made within 2 months from the suspension. Within 2 months from the application, the Boards of Appeal of the EUIPO shall either reject the application or request the competence centre to correct its finding and inform the requesting person. **deleted**

Or. en

Justification

This provision has a disproportionate effect since a suspended patent becomes unenforceable. This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. Removal from the register renders a patent unenforceable (i.e. it removes any value).

Amendment 282
Geoffroy Didier

Proposal for a regulation
Article 23 – paragraph 5

Text proposed by the Commission

Amendment

5. If the SEP holder fails to correct the entry in the register or the information submitted for the database within the given time limit, the registration shall be **deleted**

suspended from the register, until such time as the incompleteness or inaccuracy is remedied.

Or. en

Justification

This provision has a disproportionate effect since a suspended patent becomes unenforceable. This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. Removal from the register renders a patent unenforceable (i.e. it removes any value).

Amendment 283
Maria Grapini

Proposal for a regulation
Article 23 – paragraph 6

Text proposed by the Commission

Amendment

6. A SEP holder whose SEP has been deleted suspended from the register pursuant to paragraph (5) and considers that the finding of the competence centre is incorrect may apply before the Boards of Appeal of the EUIPO for a decision on the matter. The application shall be made within 2 months from the suspension. Within two months from the application, the Boards of Appeal of the EUIPO shall either reject the application or request the competence centre to correct its finding and inform the requesting person.

Or. en

Amendment 284
Geoffroy Didier

Proposal for a regulation
Article 23 – paragraph 6

Text proposed by the Commission

Amendment

6. A SEP holder whose SEP has been suspended from the register pursuant to paragraph (5) and considers that the finding of the competence centre is incorrect may apply before the Boards of Appeal of the EUIPO for a decision on the matter. The application shall be made within 2 months from the suspension. Within two months from the application, the Boards of Appeal of the EUIPO shall either reject the application or request the competence centre to correct its finding and inform the requesting person. *deleted*

Or. en

Justification

This provision has a disproportionate effect since a suspended patent becomes unenforceable. This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. Removal from the register renders a patent unenforceable (i.e. it removes any value).

Amendment 285

Maria Grapini

Proposal for a regulation

Article 24

Text proposed by the Commission

Amendment

Article 24

deleted

Effects of absence of registration or suspension of registration of SEPs

1. A SEP that is not registered within the time-limit set out in Article 20(3) may not be enforced in relation to the implementation of the standard for which a registration is required in a competent court of a Member State, from the time-limit set out in Article 20(3) until its registration in the register.

2. *A SEP holder that has not registered its SEPs within the time-limit set out in Article 20(3) shall not be entitled to receive royalties or seek damages for infringement of such SEPs in relation to the implementation of the standard for which registration is required, from the time-limit set out in Article 20(3) until its registration in the register.*

3. *Paragraphs (1) and (2) are without prejudice to provisions included in contracts setting a royalty for a broad portfolio of patents, present or future, stipulating that the invalidity, non-essentiality or unenforceability of a limited number thereof shall not affect the overall amount and enforceability of the royalty or other terms and conditions of the contract.*

4. *Paragraphs (1) and (2) apply also in case the registration of a SEP is suspended, during the suspension period pursuant to Article 22(4) or 23(5), except where the Boards of Appeal request the competence centre to correct its findings in accordance with Article 22(5) and 23(6).*

5. *A competent court of a Member State requested to decide on any issue related to a SEP in force in one or more Member States, shall verify whether the SEP is registered as part of the decision on admissibility of the action.*

Or. en

**Amendment 286
Geoffroy Didier**

**Proposal for a regulation
Article 24**

Article 24

deleted

Effects of absence of registration or suspension of registration of SEPs

- 1. A SEP that is not registered within the time-limit set out in Article 20(3) may not be enforced in relation to the implementation of the standard for which a registration is required in a competent court of a Member State, from the time-limit set out in Article 20(3) until its registration in the register.***
- 2. A SEP holder that has not registered its SEPs within the time-limit set out in Article 20(3) shall not be entitled to receive royalties or seek damages for infringement of such SEPs in relation to the implementation of the standard for which registration is required, from the time-limit set out in Article 20(3) until its registration in the register.***
- 3. Paragraphs (1) and (2) are without prejudice to provisions included in contracts setting a royalty for a broad portfolio of patents, present or future, stipulating that the invalidity, non-essentiality or unenforceability of a limited number thereof shall not affect the overall amount and enforceability of the royalty or other terms and conditions of the contract.***
- 4. Paragraphs (1) and (2) apply also in case the registration of a SEP is suspended, during the suspension period pursuant to Article 22(4) or 23(5), except where the Boards of Appeal request the competence centre to correct its findings in accordance with Article 22(5) and 23(6).***
- 5. A competent court of a Member State requested to decide on any issue related to a SEP in force in one or more Member States, shall verify whether the***

SEP is registered as part of the decision on admissibility of the action.

Or. en

Justification

This provision is incompatible with the fundamental property right granted under Article 17(2) of the Charter of Fundamental Rights of the European Union (2000/C 364/01) TFEU and its non-observance should not be allowed merely in order to encourage compliance with an administrative procedure.

Amendment 287

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

**Proposal for a regulation
Article 24 – paragraph 1**

Text proposed by the Commission

1. A SEP that is not registered within the time-limit set out in Article 20(3) may not be ***enforced in relation to the implementation of the standard for which a registration is required in a competent court of a Member State***, from the time-limit set out in Article 20(3) until its registration in the register.

Amendment

1. A SEP that is not registered within the time-limit set out in Article 20(3) may not be ***licensed or implemented*** from the time-limit set out in Article 20(3) until its registration in the register, ***without prejudice to SEPs licensed before the entry into force of this Regulation.***

Or. en

Amendment 288

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

**Proposal for a regulation
Article 24 – paragraph 2**

Text proposed by the Commission

2. ***A SEP holder that has not registered its SEPs within the time-limit set out in Article 20(3) shall not be entitled to receive royalties or seek damages for infringement of such SEPs***

Amendment

deleted

in relation to the implementation of the standard for which registration is required, from the time-limit set out in Article 20(3) until its registration in the register.

Or. en

Amendment 289

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 24 – paragraph 2

Text proposed by the Commission

2. A SEP holder that has not registered its SEPs within the time-limit set out in Article 20(3) shall ***not be entitled to receive royalties or seek damages for infringement*** of such SEPs in relation to the implementation of the standard for which registration is required, from the time-limit set out in Article 20(3) until its registration in the register.

Amendment

2. A SEP holder that has not registered its SEPs within the time-limit set out in Article 20(3) shall ***have no claim for infringements*** of such SEPs in relation to the implementation of the standard for which registration is required, from the time-limit set out in Article 20(3) until its registration in the register.

Or. en

Amendment 290

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation

Article 24 – paragraph 3

Text proposed by the Commission

3. ***Paragraphs (1) and (2) are without prejudice to provisions included in contracts setting a royalty for a broad portfolio of patents, present or future, stipulating that the invalidity, non-essentiality or unenforceability of a limited number thereof shall not affect the overall amount and enforceability of the***

Amendment

deleted

royalty or other terms and conditions of the contract.

Or. en

Amendment 291

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation Article 24 – paragraph 4

Text proposed by the Commission

Amendment

4. Paragraphs (1) and (2) apply also in case the registration of a SEP is suspended, during the suspension period pursuant to Article 22(4) or 23(5), except where the Boards of Appeal request the competence centre to correct its findings in accordance with Article 22(5) and 23(6). **deleted**

Or. en

Amendment 292

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3. The competence centre shall remove the SEP from the register and the database.

3. The competence centre shall remove the SEP from the register and the database. *The competence centre shall maintain and make publicly available information on any SEP that had been removed from the register.*

Or. en

Amendment 293

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

2. A conciliator shall **conduct the following tasks**:

Amendment

2. A conciliator shall **serve in the FRAND determination**.

Or. en

Amendment 294

Geoffroy Didier

Proposal for a regulation

Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

2. A conciliator shall **conduct the following tasks**:

Amendment

2. A conciliator shall:

Or. en

Amendment 295

Maria Grapini

Proposal for a regulation

Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

2. A conciliator shall **conduct the following tasks**:

Amendment

2. A conciliator shall **serve in a FRAND determination**.

Or. en

Amendment 296

Maria Grapini

Proposal for a regulation
Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

**(a) mediate among parties in
establishing an aggregate royalty;** ***deleted***

Or. en

Amendment 297
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

**(a) mediate among parties in
establishing an aggregate royalty;** ***deleted***

Or. en

Amendment 298
Geoffroy Didier

Proposal for a regulation
Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

**(a) mediate among parties in
establishing an aggregate royalty;** ***deleted***

Or. en

Amendment 299
Maria Grapini

Proposal for a regulation
Article 26 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) provide a non-binding opinion on an aggregate royalty; *deleted*

Or. en

Amendment 300

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 26 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) provide a non-binding opinion on an aggregate royalty; *deleted*

Or. en

Amendment 301

Geoffroy Didier

Proposal for a regulation

Article 26 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) provide a non-binding opinion on an aggregate royalty; *deleted*

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 302

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation
Article 26 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) serve in a FRAND determination. *deleted*

Or. en

Amendment 303
Maria Grapini

Proposal for a regulation
Article 26 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) serve in a FRAND determination. *deleted*

Or. en

Amendment 304
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 26 – paragraph 4

Text proposed by the Commission

Amendment

4. The competence centre shall appoint [10] evaluators from the roster of evaluators as peer evaluators for a period of [three] years.

4. The competence centre shall appoint [10] evaluators from the roster of evaluators as peer evaluators for a period of [three] years, ***that shall act in anonymity.***

Or. en

Amendment 305
Geoffroy Didier

Proposal for a regulation
Article 26 – paragraph 4 a (new)

4 a. When setting up and managing the roster of experts pursuant to Article 3(b), the competence centre shall comply with the following requirements:

(a) before appointing an expert, the competence centre shall carry out a thorough evaluation of past affiliations in order to identify any potential conflicts of interest;

(b) The competence centre shall ensure that every individual appointed to the roster has the necessary skills to perform the required tasks.

In particular, the experts shall have the following qualifications at minimum:

- qualification as a European Patent Attorney according to the requirements set out by EPI, including the European qualification examination;**
- substantial experience of at least 10 years in the patent industry and dispute resolution in Europe;**
- demonstrated understanding of FRAND commitments and thorough knowledge of standards development organisations;**
- solid technical background in relevant technology fields (telecommunications, electronics).**

Or. en

Justification

The proposal's suggestion of outsourcing the most impactful functions of the competence centre to external experts (aggregate royalty, providing a non-binding opinion on an aggregate royalty, serving in a FRAND determination), raises significant concerns for consistency, quality, and impartiality. Sufficient requirements must be provided in the regulation itself, both to avoid any conflict of interest, and to ensure the professional qualification of experts.

Amendment 306

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 26 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. The competence centre shall require that evaluators shall at all times be of sufficiently good repute, independent, impartial and possess sufficient knowledge, skills and experience to perform their duties.

Or. en

Amendment 307

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 26 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4 b. The competence centre shall perform a case-by-case assessment to confirm that the any situation of direct or indirect conflict of interest negatively affect the performance of the evaluator or conciliator.

Or. en

Amendment 308

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 26 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4 c. The Competence centre shall create a repository of conciliations reports, and ensure that the confidential

version would be accessible only to conciliators.

Or. en

Amendment 309

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 26 – paragraph 5 – introductory part

Text proposed by the Commission

5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in , lay down the practical and operational arrangements concerning:

Amendment

5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in **Article 68(2)**, lay down the practical and operational arrangements concerning:

Or. en

Amendment 310

Maria Grapini

Proposal for a regulation

Article 26 – paragraph 5 – introductory part

Text proposed by the Commission

5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in , lay down the practical and operational arrangements concerning:

Amendment

5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in **Article 68(2)**, lay down the practical and operational arrangements concerning:

Or. en

Amendment 311
Geoffroy Didier

Proposal for a regulation
Article 26 – paragraph 5 – introductory part

Text proposed by the Commission

5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in , lay down the practical and operational arrangements concerning:

Amendment

5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in **Article 68(2)**, lay down the practical and operational arrangements concerning:

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 312
Geoffroy Didier

Proposal for a regulation
Article 26 – paragraph 5 – point a

Text proposed by the Commission

(a) the requirements for evaluators or conciliators, including a Code of Conduct;

Amendment

deleted

Or. en

Amendment 313
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 26 – paragraph 5 – point a

Text proposed by the Commission

- (a) the requirements for evaluators or conciliators, including a Code of Conduct;

Amendment

- (a) the requirements for evaluators or conciliators, including a Code of Conduct ***and necessary qualifications, experience, and criteria for impartiality;***

Or. en

Amendment 314
Maria Grapini

Proposal for a regulation
Article 26 – paragraph 5 – point b

Text proposed by the Commission

- (b) the procedures pursuant to Articles ***17, 18,*** 31 and 32 and Title VI.

Amendment

- (b) the procedures pursuant to Articles 31 and 32 and Title VI.

Or. en

Amendment 315
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 26 – paragraph 5 – point b

Text proposed by the Commission

- (b) the procedures pursuant to Articles ***17, 18,*** 31 and 32 and Title VI.

Amendment

- (b) the procedures pursuant to Articles 31 and 32 and Title VI.

Or. en

Amendment 316
Geoffroy Didier

Proposal for a regulation
Article 26 – paragraph 5 – point b

Text proposed by the Commission

(b) the procedures pursuant to Articles 17, 18, 31 and 32 and Title VI.

Amendment

(b) the procedures pursuant to Articles 31 and 32 and Title VI.

Or. en

Amendment 317
Geoffroy Didier

Proposal for a regulation
Article 27 – paragraph 1

Text proposed by the Commission

1. The competence centre shall conduct a procedure of selecting candidates based on the requirements established in *the implementing act referred to in* Article 26(5).

Amendment

1. The competence centre shall conduct a procedure of selecting candidates based on the requirements established in Article 26(5).

Or. en

Amendment 318
Maria Grapini

Proposal for a regulation
Article 27 – paragraph 1

Text proposed by the Commission

1. The competence centre shall conduct a procedure of selecting candidates based on the requirements established in the implementing act referred to in Article 26(5).

Amendment

1. The competence centre shall conduct a *transparent* procedure of selecting candidates based on the requirements established in the implementing act referred to in Article 26(5).

Or. en

Amendment 319
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission

2. The competence centre shall establish a roster of ***suitable*** candidates for evaluators or conciliators. There may be different rosters of evaluators and conciliators depending on the technical area of their specialisation or expertise.

Amendment

2. The competence centre shall establish a roster of ***qualified, experienced and impartial*** candidates for evaluators or conciliators. There may be different rosters of evaluators and conciliators depending on the technical area of their specialisation or expertise.

Or. en

Amendment 320
Geoffroy Didier

Proposal for a regulation
Article 27 – paragraph 3

Text proposed by the Commission

3. ***Where the competence centre has not yet established roster of candidates evaluators or conciliators at the moment of the first registrations or FRAND determination, the competence centre shall invite ad hoc renowned experts who satisfy the requirements set out in the implementing act referred to in Article 26(5).***

Amendment

deleted

Or. en

Amendment 321
Geoffroy Didier

Proposal for a regulation
Article 28 – paragraph 3

Text proposed by the Commission

3. Essentiality checks shall not be

Amendment

3. Essentiality checks shall not be

done on more than one SEP from the respective patent family.

done on more than one SEP from the respective patent family ***and shall not be performed over standard essential patents that have been subjected to an essentiality check in accordance with article 4 (4) (c) or 4a.***

Or. en

Justification

SEP holders who already have the good industry practice of systematically checking the essentiality of their patents should not have to go through the redundant, expensive process of sample-based checks foreseen by Article 29.

Amendment 322

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

1. The competence centre shall select annually a sample of registered SEPs from different patent families from each SEP holder and with regard to each specific standard in the register for essentiality checks. Registered SEPs of micro and small enterprises shall be excluded from the annual sampling process. The checks shall be conducted based on a methodology that ensures the establishment of a fair and statistically valid selection that can produce sufficiently accurate results about the essentiality rate in all registered SEPs of a SEP holder with regard to each specific standard in the register. By [OJ: please insert the date = 18 months from entry into force of this regulation] the Commission shall, by means of an implementing act, determine the detailed methodology. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Amendment

1. The competence centre shall select annually a sample of registered SEPs from different patent families from each SEP holder and with regard to each specific standard in the register for essentiality checks. Registered SEPs of micro and small enterprises shall be excluded from the annual sampling process, ***unless they are a patent assertion entity or directly or indirectly controlled by a legal person that does not satisfy the definition of a micro or small enterprise.*** The checks shall be conducted based on a methodology that ensures the establishment of a fair and statistically valid selection that can produce sufficiently accurate results about the essentiality rate in all registered SEPs of a SEP holder with regard to each specific standard in the register. By [OJ: please insert the date = 18 months from entry into force of this regulation] the Commission shall, by means of an implementing act, determine the detailed methodology. That implementing act shall be adopted in

accordance with the examination procedure referred to in Article 68(2).

Or. en

Amendment 323

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 29 – paragraph 4

Text proposed by the Commission

4. If a SEP selected for essentiality check was already the subject of a previous or ongoing essentiality check pursuant to This title or of an essentiality decision or check *referred to in Article 8*, no additional essentiality check shall be done. The result from the previous essentiality check or decision shall be used for the determination of the percentage of sampled per SEP holder and per specific registered standard that has passed successfully the essentiality check.

Amendment

4. If a SEP selected for essentiality check was already the subject of a previous or ongoing essentiality check pursuant to This title or of an essentiality decision or check *performed, in good-faith, by an independent evaluator in the context of a patent pool*, no additional essentiality check shall be done, *if verified the criteria foreseen in Article 29 (4a)*. The result from the previous essentiality check or decision shall be used for the determination of the percentage of sampled per SEP holder and per specific registered standard that has passed successfully the essentiality check.

Or. en

Amendment 324

Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation

Article 29 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Patent pools shall transmit to the competence centre all the information about the methodology of the essentiality check and the criteria used for the selection of the evaluators.

Amendment 325
Geoffroy Didier

Proposal for a regulation
Article 29 – paragraph 5

Text proposed by the Commission

Amendment

5. Each SEP holder may voluntarily propose annually up to 100 registered SEPs from different patent families to be checked for essentiality with regard to each specific standard for which SEP registration was made. **deleted**

Or. en

Amendment 326
Geoffroy Didier

Proposal for a regulation
Article 29 – paragraph 6

Text proposed by the Commission

Amendment

6. Any implementer may voluntarily propose annually up to 100 registered SEPs from different patent families to be checked for essentiality with regard to each specific standard for which SEP registrations have been made. **deleted**

Or. en

Justification

There are many SEP holders, and even more implementers and there will only ever be more. This provision leaves scope for implementers to collectively challenge very large numbers of registered SEPs, albeit at their own expense. The consequent burden on the EUIPO is likely to lead to delays, which may be used to justify delays in negotiating SEP licenses.

Amendment 327

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 29 – paragraph 6

Text proposed by the Commission

Amendment

6. *Any implementer may voluntarily propose annually up to 100 registered SEPs from different patent families to be checked for essentiality with regard to each specific standard for which SEP registrations have been made.* *deleted*

Or. en

Amendment 328

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 31 – paragraph 2

Text proposed by the Commission

Amendment

2. The evaluator may invite the SEP holder concerned to file observations, within a period to be fixed by the evaluator.

2. The evaluator may invite the SEP holder *or implementer* concerned to file observations, within a period to be fixed by the evaluator.

Or. en

Amendment 329

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 32 – paragraph 6

Text proposed by the Commission

Amendment

6. The competence centre shall notify the final reasoned opinion to the SEP holder.

6. The competence centre shall notify the final reasoned opinion to the SEP holder *and all other parties which have provided observations or evidence.*

Amendment 330
Geoffroy Didier

Proposal for a regulation
Article 34 – paragraph 1 – introductory part

Text proposed by the Commission

1. The FRAND determination in respect of a standard and implementation for which an entry in the register has been created, ***shall*** be initiated by any of the following persons:

Amendment

1. The FRAND determination in respect of a standard and implementation for which an entry in the register has been created, ***may*** be initiated ***at any time 6 months after SEP holder and implementer have entered into licensing negotiations*** by any of the following persons:

Or. en

Amendment 331
Geoffroy Didier

Proposal for a regulation
Article 34 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the FRAND determination shall not apply to existing licensing agreement during their term and their renewal.

Or. en

Amendment 332
Geoffroy Didier

Proposal for a regulation
Article 34 – paragraph 3

Text proposed by the Commission

Amendment

3. The FRAND determination may be

3. The FRAND determination may be

initiated by a party or entered into by the parties to resolve disputes related to FRAND terms and conditions voluntarily.

initiated by a party or entered into by the parties to resolve disputes related to FRAND terms and conditions voluntarily ***only insofar that the parties entered into licensing negotiations since at least 6 months.***

Or. en

Amendment 333

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 34 – paragraph 4

Text proposed by the Commission

Amendment

4. The obligation to initiate FRAND determination pursuant to paragraph 1 prior to the court proceedings is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction of a financial nature against the alleged infringer. The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP. Where national law provides that the provisional injunction of a financial nature can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

deleted

Amendment 334
Geoffroy Didier

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

4. The ***obligation to initiate*** FRAND determination pursuant to paragraph 1 prior to the court proceedings is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction ***of a financial nature against the alleged infringer. The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP. Where national law provides that the provisional injunction of a financial nature can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.***

Amendment

4. The FRAND determination pursuant to paragraph 1 prior to the court proceedings is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction.

Justification

FRAND is by nature a process to facilitate licensing negotiations. The FRAND determination process should only occur when licensing negotiations are underway between SEP holders and implementers. Existing negotiations are the sign that a functioning market exists, and that parties are likely to negotiate FRAND conditions more easily. This approach optimizes the

alignment of royalty rates with market realities. Moreover, the mandatory nature of the determination implies that parties seldom engage in voluntary cooperation and FRAND negotiation on good terms, when it is in fact the norm – litigation on FRAND matters is a rare occurrence. It is preferable to allow parties to choose when and how to engage in the FRAND determination process on a voluntary basis, to foster goodwill and mutually beneficial outcomes. The FRAND determination should proceed in parallel with any court proceedings in order to respect the sovereignty of national jurisdictions.

Amendment 335

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 34 – paragraph 4

Text proposed by the Commission

4. The obligation to initiate FRAND determination pursuant to paragraph 1 ***prior to the court proceedings*** is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction ***of a financial nature*** against the alleged infringer. ***The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP.*** Where national law provides that the provisional injunction ***of a financial nature*** can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. ***However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination.*** In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Amendment

4. The obligation to initiate FRAND determination pursuant to paragraph 1 is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction against the alleged infringer. Where national law provides that the provisional injunction can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Or. en

Amendment 336
Maria Grapini

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

4. The obligation to initiate FRAND determination pursuant to paragraph 1 ***prior to the court proceedings*** is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction ***of a financial nature*** against the alleged infringer. ***The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP.*** Where national law provides that the provisional injunction ***of a financial nature*** can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. ***However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination.*** In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Amendment

4. The obligation to initiate FRAND determination pursuant to paragraph 1 is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction against the alleged infringer. Where national law provides that the provisional injunction can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Or. en

Amendment 337
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

4. The obligation to initiate FRAND determination pursuant to paragraph 1 prior to the court proceedings is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction ***of a financial nature*** against the alleged infringer. ***The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP.*** Where national law provides that the provisional injunction of a financial nature can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Amendment

4. The obligation to initiate FRAND determination pursuant to paragraph 1 prior to the court proceedings is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction against the alleged infringer. Where national law provides that the provisional injunction of a financial nature can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Or. en

Amendment 338

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 34 – paragraph 5

Text proposed by the Commission

5. ***Once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, shall be available to***

Amendment

deleted

parties.

Or. en

Amendment 339
Maria Grapini

Proposal for a regulation
Article 34 – paragraph 5

Text proposed by the Commission

Amendment

5. *Once the FRAND determination is terminated, the whole range of measures, including provisional, precautionary and corrective measures, shall be available to parties.* *deleted*

Or. en