



2023/0133(COD)

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AMENDMENTS

340 - 495

Draft opinion

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(PE753.649v01-00)

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 340

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

Proposal for a regulation

Article 36 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(f a) commitment to comply with the outcome of the FRAND determination.

Or. en

Amendment 341

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 37

Text proposed by the Commission

Amendment

Article 37

deleted

Duration of the FRAND determination

1. Unless otherwise agreed by the parties, the period from the date of the submission of the request to continue the FRAND determination in accordance with Article 38(5)(b) or Article 38(3)(c) or Article 38(4)(a), second sentence, or Article 38(4)(c), as applicable, until the date of the termination of the procedure shall not exceed 9 months.

2. The period for the time barring of claims before a competent court of a Member State shall be suspended for the duration of the FRAND determination.

Or. en

Amendment 342

Maria Grapini

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. ***The period for the time barring of claims before a competent court of a Member State shall be suspended for the duration of the FRAND determination.*** ***deleted***

Or. en

Amendment 343

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. ***The period for the time barring of claims before a competent court of a Member State shall be suspended for the duration of the FRAND determination.*** ***deleted***

Or. en

Amendment 344

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

Amendment

2. The responding party shall notify the competence centre within 15 days from the receipt of the notification of the request for FRAND determination from the competence centre in accordance with paragraph (1). The response shall indicate whether the responding party agrees to the FRAND determination and ***whether it commits to comply with its outcome.***

2. The responding party shall notify the competence centre within 15 days from the receipt of the notification of the request for FRAND determination from the competence centre in accordance with paragraph (1). The response shall indicate whether the responding party agrees to the FRAND determination and, ***in case of disagreement, include the reasons for declining to participate.***

Amendment 345
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 2

Text proposed by the Commission

2. The responding party shall notify the competence centre within 15 days from the receipt of the notification of the request for FRAND determination from the competence centre in accordance with paragraph (1). The response shall indicate whether the responding party agrees to the FRAND determination ***and whether it commits to comply with its outcome.***

Amendment

2. The responding party shall notify the competence centre within 15 days from the receipt of the notification of the request for FRAND determination from the competence centre in accordance with paragraph (1). The response shall indicate whether the responding party agrees to the FRAND determination.

Or. en

Justification

The commitment made has no legal force or meaning since it can be later withdrawn and the determination may in any case be rejected. The "commitment" aspect is unnecessary where a FRAND determination proceeds because both parties agree to participate.

Amendment 346

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

Proposal for a regulation
Article 38 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where the responding party does not reply within the time limit laid down in paragraph (2) ***or informs the competence centre of its decision not to participate in the FRAND determination, or not to commit to comply with the outcome,*** the following shall apply:

Amendment

3. Where the responding party does not reply within the time limit laid down in paragraph (2) the following shall apply:

Amendment 347

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 38 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where the responding party does not reply within the time limit laid down in paragraph (2) or informs the competence centre of its decision not to participate in the FRAND determination, ***or not to commit to comply with the outcome***, the following shall apply:

Amendment

3. Where the responding party does not reply within the time limit laid down in paragraph (2) or informs the competence centre of its decision not to participate in the FRAND determination, the following shall apply:

Amendment 348

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 38 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where the responding party does not reply within the time limit laid down in paragraph (2) or informs the competence centre of its decision not to participate in the FRAND determination, ***or not to commit to comply with the outcome, the following*** shall ***apply***:

Amendment

3. Where the responding party does not reply within the time limit laid down in paragraph (2) or informs the competence centre of its decision not to participate in the FRAND determination, ***the competence centre*** shall ***terminate the FRAND determination***.

Amendment 349

Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the competence centre shall notify the requesting party thereof and invite it to indicate within seven days whether it requests the continuation of the FRAND determination and whether it commits to comply with the outcome of the FRAND determination; **deleted**

Or. en

Amendment 350
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 38 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the competence centre shall notify the requesting party thereof and invite it to indicate within seven days whether it requests the continuation of the FRAND determination and whether it commits to comply with the outcome of the FRAND determination; **deleted**

Or. en

Amendment 351
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 38 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the competence centre shall notify the requesting party thereof and invite it to indicate within seven days whether it **(a) the competence centre shall notify the requesting party thereof and invite it to indicate within seven days whether it**

requests the continuation of the FRAND determination *and whether it commits to comply with the outcome of the FRAND determination*;

requests the continuation of the FRAND determination;

Or. en

Amendment 352
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) where the requesting party requests the continuation of the FRAND determination and commits to its outcome, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for the requesting party in relation to the same subject matter.

deleted

Or. en

Amendment 353
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 38 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) where the requesting party requests the continuation of the FRAND determination and commits to its outcome, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for the requesting party in relation to the same subject matter.

deleted

Or. en

Amendment 354

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 38 – paragraph 3 – point b

Text proposed by the Commission

(b) where the requesting party requests the continuation of the FRAND determination ***and commits to its outcome***, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for the requesting party in relation to the same subject matter.

Amendment

(b) where the requesting party requests the continuation of the FRAND determination, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for the requesting party in relation to the same subject matter.

Or. en

Amendment 355

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 38 – paragraph 3 – point c

Text proposed by the Commission

(c) ***where the requesting party fails to request, within the time limit referred to in subparagraph (a), the continuation of the FRAND determination, the competence centre shall terminate the FRAND determination.***

Amendment

deleted

Or. en

Amendment 356

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) ***where the requesting party fails to request, within the time limit referred to in subparagraph (a), the continuation of the FRAND determination,*** the competence centre shall terminate the FRAND determination.

(c) the competence centre shall terminate the FRAND determination.

Or. en

Justification

The amendment provides that the FRAND determination will only continue if both parties agree to participate. A one-sided continuation is not useful as it will not have any chance of being accepted by the non-agreeing party.

Amendment 357

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

Proposal for a regulation

Article 38 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Where the responding party informs the competence centre of its decision not to participate in the FRAND determination, or not to commit to comply with the outcome the competence centre shall terminate the FRAND determination.

Or. en

Amendment 358

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

Proposal for a regulation

Article 38 – paragraph 4

4. Where the responding party agrees to the FRAND determination and commits to comply with its outcome pursuant to paragraph (2), including where such commitment is contingent upon the commitment of the requesting party to comply with the outcome of the FRAND determination, the following shall apply: **deleted**

(a) the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days whether it also commits to comply with the outcome of the FRAND determination. In case of acceptance of the commitment by the requesting party, the FRAND determination shall continue and the outcome shall be binding for both parties;

(b) where the requesting party does not reply within the time limit referred to in subparagraph (a) or informs the competence centre of its decision not to commit to comply with outcome of the FRAND determination, the competence centre shall notify the responding party and invite it to indicate within seven days whether it requests the continuation of the FRAND determination.

(c) where the responding party requests the continuation of the FRAND determination, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for by the responding party in relation to the same subject matter;

(d) where the responding party fails to request, within the time-limit referred to in subparagraph (b), the continuation of the FRAND determination, the competence centre shall terminate the FRAND determination.

Amendment 359
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 4 – introductory part

Text proposed by the Commission

4. Where the responding party agrees to the FRAND determination and ***commits to comply with its outcome pursuant to paragraph (2), including where such commitment is contingent upon the commitment of the requesting party to comply with the outcome of the FRAND determination, the following shall apply:***

Amendment

4. Where the responding party agrees to the FRAND determination ***shall continue and upon mutual agreement*** the outcome ***may be binding for both parties.***

Or. en

Amendment 360
Maria Grapini

Proposal for a regulation
Article 38 – paragraph 4 – introductory part

Text proposed by the Commission

4. Where the responding party agrees to the FRAND determination ***and commits to comply with its outcome pursuant to paragraph (2), including where such commitment is contingent upon the commitment of the requesting party to comply with the outcome of the FRAND determination, the following shall apply:***

Amendment

4. Where the responding party agrees to the FRAND determination, the FRAND determination shall ***continue and upon mutual agreement the outcome may be binding for both parties.***

Or. en

Amendment 361
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation

Article 38 – paragraph 4 – introductory part

Text proposed by the Commission

4. Where the responding party agrees to the FRAND determination ***and commits to comply with its outcome pursuant to paragraph (2), including where*** such commitment ***is contingent upon the commitment of the requesting party to comply with*** the outcome of the FRAND determination, ***the following shall apply:***

Amendment

4. Where the responding party agrees to the FRAND determination, such commitment ***shall continue and, provided there is mutual agreement,*** the outcome of the FRAND determination ***may be finding for both parties;***

Or. en

Amendment 362

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 38 – paragraph 4 – point a

Text proposed by the Commission

(a) the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days whether it also commits to comply with the outcome of the FRAND determination. In case of acceptance of the commitment by the requesting party, the FRAND determination shall continue and the outcome shall be binding for both parties;

Amendment

deleted

Or. en

Amendment 363

Maria Grapini

Proposal for a regulation

Article 38 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) *the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days whether it also commits to comply with the outcome of the FRAND determination. In case of acceptance of the commitment by the requesting party, the FRAND determination shall continue and the outcome shall be binding for both parties;* ***deleted***

Or. en

Amendment 364
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) *the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days whether it also commits to comply with the outcome of the FRAND determination. In case of acceptance of the commitment by the requesting party,* the FRAND determination shall continue and the outcome shall be binding for both parties;

(a) the FRAND determination shall continue and the outcome shall be binding for both parties;

Or. en

Amendment 365
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 38 – paragraph 4 – point a

Text proposed by the Commission

(a) the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days ***whether it also commits to comply with the outcome of the FRAND determination.*** In case of acceptance of the commitment by the requesting party, the FRAND determination shall continue and the outcome shall be binding for both parties;

Amendment

(a) the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days. In case of acceptance of the commitment by the requesting party, the FRAND determination shall continue and the outcome shall be binding for both parties;

Or. en

Amendment 366

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 38 – paragraph 4 – point b

Text proposed by the Commission

(b) ***where the requesting party does not reply within the time limit referred to in subparagraph (a) or informs the competence centre of its decision not to commit to comply with outcome of the FRAND determination, the competence centre shall notify the responding party and invite it to indicate within seven days whether it requests the continuation of the FRAND determination.***

Amendment

deleted

Or. en

Amendment 367

Maria Grapini

Proposal for a regulation

Article 38 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) where the requesting party does not reply within the time limit referred to in subparagraph (a) or informs the competence centre of its decision not to commit to comply with outcome of the FRAND determination, the competence centre shall notify the responding party and invite it to indicate within seven days whether it requests the continuation of the FRAND determination. *deleted*

Or. en

**Amendment 368
Geoffroy Didier**

**Proposal for a regulation
Article 38 – paragraph 4 – point b**

Text proposed by the Commission

Amendment

(b) where the requesting party does not reply within the time limit referred to in subparagraph (a) or informs the competence centre of its decision not to commit to comply with outcome of the FRAND determination, the competence centre shall notify the responding party and invite it to indicate within seven days whether it requests the continuation of the FRAND determination. *deleted*

Or. en

**Amendment 369
Maria-Manuel Leitão-Marques, Tiemo Wölken**

**Proposal for a regulation
Article 38 – paragraph 4 – point b**

Text proposed by the Commission

(b) where the requesting party does not reply within the time limit referred to in subparagraph (a) ***or informs the competence centre of its decision not to commit to comply with outcome of the FRAND determination***, the competence centre shall notify the responding party and invite it to indicate within seven days whether it requests the continuation of the FRAND determination.

Amendment

(b) where the requesting party does not reply within the time limit referred to in subparagraph (a), the competence centre shall notify the responding party and invite it to indicate within seven days whether it requests the continuation of the FRAND determination.

Or. en

Amendment 370
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 4 – point c

Text proposed by the Commission

(c) ***where the responding party requests the continuation of the FRAND determination, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for by the responding party in relation to the same subject matter;***

Amendment

deleted

Or. en

Amendment 371
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 38 – paragraph 4 – point c

Text proposed by the Commission

(c) ***where the responding party requests the continuation of the FRAND***

Amendment

deleted

determination, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for by the responding party in relation to the same subject matter;

Or. en

Amendment 372

Maria Grapini

Proposal for a regulation

Article 38 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) where the responding party requests the continuation of the FRAND determination, the FRAND determination shall continue, but Article 34(1) shall not apply to the court proceedings for by the responding party in relation to the same subject matter;

deleted

Or. en

Amendment 373

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 4 – point d

Text proposed by the Commission

Amendment

(d) where the responding party fails to request, within the time-limit referred to in subparagraph (b), the continuation of the FRAND determination, the competence centre shall terminate the FRAND determination.

deleted

Or. en

Amendment 374
Maria Grapini

Proposal for a regulation
Article 38 – paragraph 4 – point d

Text proposed by the Commission

Amendment

(d) where the responding party fails to request, within the time-limit referred to in subparagraph (b), the continuation of the FRAND determination, the competence centre shall terminate the FRAND determination. **deleted**

Or. en

Amendment 375
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 38 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Both parties may declare a commitment to comply with the outcome of the FRAND determination at any time during the process. The commitment may be unilateral or contingent upon the other party's agreement. The commitment shall have no impact on the outcome or continuation of the FRAND determination process.

Or. en

Amendment 376
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation
Article 38 – paragraph 5

Text proposed by the Commission

Amendment

5. *Where either party commits to
comply with the outcome of the FRAND
determination, while the other party fails
to do so within the applicable time limits,
the competence centre shall adopt a notice
of commitment to the FRAND
determination and notify the parties
within 5 days from the expiry of the time-
limit to provide the commitment. The
notice of commitment shall include the
names of the parties, the subject-matter of
the FRAND determination, a summary of
the procedure and information on the
commitment provided or on the failure to
provide commitment for each party.* **deleted**

Or. en

Amendment 377
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 5

Text proposed by the Commission

Amendment

5. *Where either party commits to
comply with the outcome of the FRAND
determination, while the other party fails
to do so within the applicable time limits,
the competence centre shall adopt a notice
of commitment to the FRAND
determination and notify the parties
within 5 days from the expiry of the time-
limit to provide the commitment. The
notice of commitment shall include the
names of the parties, the subject-matter of
the FRAND determination, a summary of
the procedure and information on the
commitment provided or on the failure to
provide commitment for each party.* **deleted**

Or. en

Amendment 378
Maria Grapini

Proposal for a regulation
Article 38 – paragraph 5

Text proposed by the Commission

Amendment

5. Where either party commits to *deleted*
comply with the outcome of the FRAND
determination, while the other party fails
to do so within the applicable time limits,
the competence centre shall adopt a notice
of commitment to the FRAND
determination and notify the parties
within 5 days from the expiry of the time-
limit to provide the commitment. The
notice of commitment shall include the
names of the parties, the subject-matter of
the FRAND determination, a summary of
the procedure and information on the
commitment provided or on the failure to
provide commitment for each party.

Or. en

Amendment 379
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 38 – paragraph 6

Text proposed by the Commission

Amendment

6. The FRAND determination shall *deleted*
concern a global SEP licence, unless
otherwise specified by the parties in case
both parties agree to the FRAND
determination or by the party that
requested the continuation of the FRAND
determination. SMEs that are parties to
the FRAND determination may request to
limit the territorial scope of the FRAND
determination.

Amendment 380
Maria Grapini

Proposal for a regulation
Article 38 – paragraph 6

Text proposed by the Commission

6. The FRAND determination shall concern a global SEP licence, unless otherwise specified by the parties ***in case both parties agree to the FRAND determination or by the party that requested the continuation of the FRAND determination.*** SMEs that are parties to the FRAND determination may request to limit the territorial scope of the FRAND determination.

Amendment

6. The FRAND determination shall concern a global SEP licence, unless otherwise specified by the parties. SMEs that are parties to the FRAND determination may request to limit the territorial scope of the FRAND determination.

Amendment 381
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 6

Text proposed by the Commission

6. The FRAND determination shall concern a ***global*** SEP licence, unless otherwise specified by the parties ***in case both parties agree to the FRAND determination or by the party that requested the continuation of the FRAND determination.*** SMEs that are parties to the FRAND determination may request to limit the territorial scope of the FRAND determination.

Amendment

6. The FRAND determination shall concern a SEP licence ***in force in one or more Member States***, unless otherwise specified by the parties, SMEs that are parties to the FRAND determination may request to limit the territorial scope of the FRAND determination.

Justification

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

Amendment 382

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

Proposal for a regulation Article 38 – paragraph 6

Text proposed by the Commission

6. The FRAND determination shall concern a global SEP licence, unless otherwise specified by the parties in case both parties agree to the FRAND determination or by the party that requested the continuation of the FRAND determination. **SMEs** that are parties to the FRAND determination may request to limit the territorial scope of the FRAND determination.

Amendment

6. The FRAND determination shall concern a global SEP licence, unless otherwise specified by the parties in case both parties agree to the FRAND determination or by the party that requested the continuation of the FRAND determination, **as set out in paragraph (3). SMEs and start-ups** that are parties to the FRAND determination may request to limit the territorial scope of the FRAND determination.

Or. en

Amendment 383

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation Article 39 – title

Text proposed by the Commission

Selection of conciliators

Amendment

Selection **of the panel** of conciliators

Or. en

Amendment 384

Geoffroy Didier

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5)***, the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties ***or party*** shall select one of the proposed candidates as a conciliator for the FRAND determination.

Amendment

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties shall select one of the proposed candidates as a conciliator for the FRAND determination.

Or. en

Amendment 385
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. Following the ***reply to*** the FRAND determination ***by the responding party*** in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5)***, ***the competence centre*** shall ***propose at least 3 candidates for the FRAND determination*** from the roster of conciliators referred to Article 27(2). ***The parties or party*** shall ***select one of the proposed candidates as a*** conciliator for the FRAND determination.

Amendment

1. Following the ***continuation of*** the FRAND determination in accordance with Article 38, ***the requesting and responding parties*** shall ***each nominate one conciliator*** from the roster of conciliators referred to ***in*** Article 27(2) ***to the panel of conciliators***. ***Both conciliators*** shall ***jointly agree on one additional*** conciliator for the FRAND determination.

Or. en

Amendment 386
Maria Grapini

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5)***, the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties ***or party*** shall select one of the proposed candidates as a conciliator for the FRAND determination.

Amendment

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties shall select one of the proposed candidates as a conciliator for the FRAND determination.

Or. en

Amendment 387

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

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5)***, the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties or party shall select one of the proposed candidates as a conciliator for the FRAND determination.

Amendment

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties or party shall select one of the proposed candidates as a conciliator for the FRAND determination.

Or. en

Amendment 388

Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5)***, the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties or party shall select one of the proposed candidates as a conciliator for the FRAND determination.

Amendment

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties or party shall select one of the proposed candidates as a conciliator for the FRAND determination.

Or. en

Amendment 389
Geoffroy Didier

Proposal for a regulation
Article 39 – paragraph 2

Text proposed by the Commission

2. If the parties do not agree on a conciliator, the ***competence centre shall select one candidate from the roster of conciliators referred to in Article 27(2)***.

Amendment

2. If the parties do not agree on a conciliator, the ***procedure will not continue***.

Or. en

Amendment 390
Geoffroy Didier

Proposal for a regulation
Article 42 – paragraph 2

Text proposed by the Commission

2. He/she shall communicate to the parties ***or the party requesting the continuation of the FRAND***

Amendment

2. He/she shall communicate to the parties the conduct as well as the schedule of procedure.

determination the conduct as well as the schedule of procedure.

Or. en

Amendment 391

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 42 – paragraph 2

Text proposed by the Commission

2. He/she shall communicate to the parties **or the party requesting the continuation of the FRAND determination** the conduct as well as the schedule of procedure.

Amendment

2. He/she shall communicate to the parties the conduct as well as the schedule of procedure.

Or. en

Amendment 392

Geoffroy Didier

Proposal for a regulation

Article 44 – paragraph 1

Text proposed by the Commission

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties, **no later than in the first written submission**. The other party shall be given opportunity to submit its observations.

Amendment

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties **at any time**. The other party shall be given opportunity to submit its observations.

Or. en

Amendment 393
Maria Grapini

Proposal for a regulation
Article 44 – paragraph 1

Text proposed by the Commission

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties, ***no later than in the first written submission***. The other party shall be given opportunity to submit its observations.

Amendment

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties ***at any time***. The other party shall be given opportunity to submit its observations.

Or. en

Amendment 394
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation
Article 44 – paragraph 1

Text proposed by the Commission

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties, ***no later than in the first written submission***. The other party shall be given opportunity to submit its observations.

Amendment

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties ***at any time***. The other party shall be given opportunity to submit its observations.

Or. en

Amendment 395
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 44 – paragraph 1

Text proposed by the Commission

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties, ***no later than in the first written submission***. The other party shall be given opportunity to submit its observations.

Amendment

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties, ***at any time***. The other party shall be given opportunity to submit its observations.

Or. en

Amendment 396
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 44 – paragraph 2

Text proposed by the Commission

2. The conciliator ***shall decide on the objection and either reject it as unfounded before considering the merits of the case or join it to the examination of the merits of the FRAND determination. If the conciliator overrules the objection or joins it to the examination of the merits of the determination of FRAND terms and conditions, it shall resume consideration of the determination of FRAND terms and conditions.***

Amendment

2. The conciliator ***may invite the parties to meet with him/her or may communicate with him/her orally or in writing.***

Or. en

Amendment 397
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 2

Text proposed by the Commission

2. The conciliator may invite the parties ***or the party requesting the continuation of the FRAND determination*** to meet with him/her or may communicate with him/her orally or in writing.

Amendment

2. The conciliator may invite the parties to meet with him/her or may communicate with him/her orally or in writing.

Or. en

Amendment 398

Maria Grapini

Proposal for a regulation

Article 45 – paragraph 2

Text proposed by the Commission

2. The conciliator may invite the parties ***or the party requesting the continuation of the FRAND determination*** to meet with him/her or may communicate with him/her orally or in writing.

Amendment

2. The conciliator may invite the parties to meet with him/her or may communicate with him/her orally or in writing.

Or. en

Amendment 399

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

Proposal for a regulation

Article 45 – paragraph 2

Text proposed by the Commission

2. The conciliator may invite the parties or the party requesting the continuation of the FRAND determination to meet with him/her or may communicate with him/her orally or in writing.

Amendment

2. The conciliator may invite the parties or the party requesting the continuation of the FRAND determination, ***as set out in Article 38 (3)***, to meet with him/her or may communicate with him/her orally or in writing.

Or. en

Amendment 400
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 3

Text proposed by the Commission

3. The parties *or the party requesting the continuation of the FRAND determination* shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Amendment

3. The parties shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Or. en

Amendment 401
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 45 – paragraph 3

Text proposed by the Commission

3. The parties *or the party requesting the continuation of the FRAND determination* shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Amendment

3. The parties shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Or. en

Amendment 402
Maria Grapini

Proposal for a regulation
Article 45 – paragraph 3

Text proposed by the Commission

3. The parties ***or the party requesting the continuation of the FRAND determination*** shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Amendment

3. The parties shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Or. en

Amendment 403
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 45 – paragraph 3

Text proposed by the Commission

3. The parties or the party requesting the continuation of the FRAND determination shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Amendment

3. The parties or the party requesting the continuation of the FRAND determination, ***as set out in Article 38 (3)***, shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Or. en

Amendment 404
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

4. The responding party may join the FRAND determination at any moment before its termination. **deleted**

Or. en

Justification

For consistency with the amendment that provides that the FRAND determination will only continue if both parties agree to participate.

Amendment 405
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

4. The responding party may join the FRAND determination at any moment before its termination. **deleted**

Or. en

Amendment 406
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

4. The responding party may join the FRAND determination at any moment before its termination.

4. The responding party, *that failed to respond within the time limit laid down in Article 38 (2)*, may join the FRAND determination at any moment before its termination.

Amendment 407
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 5

Text proposed by the Commission

5. At any stage of the procedure upon request by both parties, ***or the party requesting the continuation of the FRAND determination, as applicable,*** the conciliator shall terminate the FRAND determination.

Amendment

5. At any stage of the procedure upon request by both parties, the conciliator shall terminate the FRAND determination.

Amendment 408
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 45 – paragraph 5

Text proposed by the Commission

5. At any stage of the procedure upon request by both parties, ***or the party requesting the continuation of the FRAND determination, as applicable,*** the conciliator shall terminate the FRAND determination.

Amendment

5. At any stage of the procedure upon request by both parties, the conciliator shall terminate the FRAND determination.

Amendment 409
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 45 – paragraph 5

Text proposed by the Commission

Amendment

5. At any stage of the procedure upon request by both parties, or the party requesting the continuation of the FRAND determination, as applicable, the conciliator shall terminate the FRAND determination.

5. At any stage of the procedure upon request by both parties, or the party requesting the continuation of the FRAND determination, as ***set out in Article 38 (3)***, ***as*** applicable, the conciliator shall terminate the FRAND determination.

Or. en

Amendment 410

Maria Grapini

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) withdraws its commitment to comply with the outcome of the FRAND determination as set out in Art. 38, or

deleted

Or. en

Amendment 411

Geoffroy Didier

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) withdraws its commitment to comply with the outcome of the FRAND determination as set out in Art. 38, or

deleted

Or. en

Justification

For consistency with the amendment that provides that the FRAND determination will only continue if both parties agree to participate.

Amendment 412

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

**(b) *withdraws its commitment to* *deleted*
comply with the outcome of the FRAND
*determination as set out in Art. 38, or***

Or. en

Amendment 413

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

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

**(b) *withdraws its commitment to* *deleted*
comply with the outcome of the FRAND
*determination as set out in Art. 38, or***

Or. en

Amendment 414

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

**(b) *withdraws its commitment to* *deleted*
comply with the outcome of the FRAND
*determination as set out in Art. 38, or***

Or. en

Amendment 415
Geoffroy Didier

Proposal for a regulation
Article 46 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. If an implementer party to the FRAND determination:

(a) refuses to participate or withdraw from the FRAND determination at any stage of the procedure or

(b) do not commit to or withdraw its commitment to comply with its outcome, then the conciliator shall inform the competence centre and such implementer shall be added to a public list of “unwilling licensees” by the competence centre.

Any final court decision relating to the alleged infringement by the “unwilling licensee” shall be published in the competence centre database.

Or. en

Justification

There is a practice among certain implementers of standardised technology users to adopt “hold-out” strategies, also known as “efficient infringement”, whereby they use standardised technologies for as long as possible without a licence. This threatens open standards and undermines European leadership in 5G and 6G. We believe that in order to guarantee the effectiveness of the FRAND determination, and to avoid situations where it would become another opportunity for hold-out, the Competence Centre should design a public list of such implementers who would be recognized as “unwilling licensees”.

Amendment 416
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 46 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. If a party withdraws its commitment to comply with the outcome of the FRAND determination, the conciliator shall terminate the procedure.

Or. en

Amendment 417

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 46 – paragraph 3

Text proposed by the Commission

Amendment

3. If the party requesting the continuation of the FRAND determination fails to comply with any request of the conciliator or in any other way fails to comply with a requirement relating to the FRAND determination, the conciliator shall terminate the procedure.

deleted

Or. en

Amendment 418

Maria Grapini

Proposal for a regulation

Article 46 – paragraph 3

Text proposed by the Commission

Amendment

3. If the party requesting the continuation of the FRAND determination fails to comply with any request of the conciliator or in any other way fails to comply with a requirement relating to the FRAND determination, the conciliator shall terminate the procedure.

deleted

Amendment 419
Geoffroy Didier

Proposal for a regulation
Article 46 – paragraph 3

Text proposed by the Commission

Amendment

3. If the party requesting the continuation of the FRAND determination fails to comply with any request of the conciliator or in any other way fails to comply with a requirement relating to the FRAND determination, the conciliator shall terminate the procedure. **deleted**

Or. en

Justification

For consistency with the amendment that provides that the FRAND determination will only continue if both parties agree to participate.

Amendment 420

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

Proposal for a regulation
Article 46 – paragraph 3

Text proposed by the Commission

Amendment

3. If the party requesting the continuation of the FRAND determination fails to comply with any request of the conciliator or in any other way fails to comply with a requirement relating to the FRAND determination, the conciliator shall terminate the procedure.

3. If the party requesting the continuation of the FRAND determination, *as set out in Article 38 (3)*, fails to comply with any request of the conciliator or in any other way fails to comply with a requirement relating to the FRAND determination, the conciliator shall terminate the procedure.

Or. en

Amendment 421

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 47 – paragraph 2

Text proposed by the Commission

2. Where a parallel proceeding has been initiated before or during the FRAND determination by a party, the conciliator, or where he/she has not been appointed, the competence centre, shall terminate the FRAND determination upon the request of any *other* party.

Amendment

2. Where a parallel proceeding has been initiated before or during the FRAND determination by a party, the conciliator, or where he/she has not been appointed, the competence centre, shall terminate the FRAND determination upon the request of any party.

Or. en

Amendment 422

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 48 – paragraph 2

Text proposed by the Commission

2. The *conciliator* may examine publicly available information and the competence centre's register and confidential and non-confidential reports of other FRAND determinations, as well as non-confidential documents and information produced by or submitted to the competence centre.

Amendment

2. The *panel of conciliators* may examine publicly available information and the competence centre's register and confidential and non-confidential reports of other FRAND determinations, *aggregate royalty rates submitted pursuant to Article 15, non-binding expert opinions on aggregate royalty rates established pursuant to Article 18* as well as non-confidential documents and information produced by or submitted to the competence centre.

Or. en

Amendment 423

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation
Article 50 – paragraph 3

Text proposed by the Commission

3. When submitting suggestions for FRAND terms and conditions, the conciliator shall take into account the impact of the determination FRAND terms and conditions on the value chain and on the incentives to innovation of both the SEP holder and the stakeholders in the relevant value chain. ***To that end, the conciliator may rely on the expert opinion referred to in Article 18 or, in case of absence of such an opinion request additional information and hear experts or stakeholders.***

Amendment

3. When submitting suggestions for FRAND terms and conditions, the conciliator shall take into account the impact of the determination FRAND terms and conditions on the value chain and on the incentives to innovation of both the SEP holder and the stakeholders in the relevant value chain.

Or. en

Amendment 424
Geoffroy Didier

Proposal for a regulation
Article 50 – paragraph 3

Text proposed by the Commission

3. When submitting suggestions for FRAND terms and conditions, the conciliator shall take into account the impact of the determination FRAND terms and conditions on the value chain and on the incentives to innovation of both the SEP holder and the stakeholders in the relevant value chain. To that end, the conciliator may ***rely on the expert opinion referred to in Article 18 or, in case of absence of such an opinion*** request additional information and hear experts or stakeholders.

Amendment

3. When submitting suggestions for FRAND terms and conditions, the conciliator shall take into account the impact of the determination FRAND terms and conditions on the value chain and on the incentives to innovation of both the SEP holder and the stakeholders in the relevant value chain. To that end, the conciliator may request additional information and hear experts or stakeholders.

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 425

Maria Grapini

Proposal for a regulation

Article 54 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. A conciliator shall respect the confidentiality rights of third parties, for instance concerning a confidential license from or to either party. The third party shall be notified by the conciliator and afforded a reasonable opportunity to make its representations concerning the protection of its confidential material in the conduct of the FRAND determination and any subsequent report.

Or. en

Amendment 426

Maria Grapini

Proposal for a regulation

Article 54 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3 b. Where confidentiality provisions are agreed or imposed in a FRAND determination they shall have contractual force, and shall include the right to seek ex parte injunctive relief against disclosure in any relevant court.

Or. en

Amendment 427
Geoffroy Didier

Proposal for a regulation
Article 55 – paragraph 1

Text proposed by the Commission

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND ***terms and conditions to the parties or, as applicable, the party requesting the continuation of the FRAND determination.***

Amendment

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND.

Or. en

Amendment 428
Maria Grapini

Proposal for a regulation
Article 55 – paragraph 1

Text proposed by the Commission

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND terms and conditions to the parties ***or, as applicable, the party requesting the continuation of the FRAND determination.***

Amendment

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND terms and conditions to the parties.

Or. en

Amendment 429
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 55 – paragraph 1

Text proposed by the Commission

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND terms and conditions to the parties ***or, as applicable, the party requesting the continuation of the FRAND determination.***

Amendment

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND terms and conditions to the parties.

Or. en

Amendment 430
Geoffroy Didier

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

2. Either party may submit observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties ***or the party requesting the continuation of the FRAND determination, as applicable,*** of such reformulation.

Amendment

2. Either party may submit observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties of such reformulation.

Or. en

Amendment 431
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

2. Either party may submit

Amendment

2. Either party may submit

observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties *or the party requesting the continuation of the FRAND determination, as applicable*, of such reformulation.

observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties of such reformulation.

Or. en

Amendment 432
Maria Grapini

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

2. Either party may submit observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties *or the party requesting the continuation of the FRAND determination, as applicable*, of such reformulation.

Amendment

2. Either party may submit observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties of such reformulation.

Or. en

Amendment 433
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 56 – paragraph 1 – introductory part

Text proposed by the Commission

1. In addition to the termination of the FRAND determination for reasons provided for Article 38(4), Article 44(3), Article 45(5), Article 46(2), point (b),

Amendment

1. In addition to the termination of the FRAND determination for reasons provided for Article 38(3), *Article 38 (3a)*, Article 44(3), Article 45(5), Article 46(2),

Article 46(3) and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

point (b), Article 46(3) and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

Or. en

Amendment 434
Geoffroy Didier

Proposal for a regulation
Article 56 – paragraph 1 – introductory part

Text proposed by the Commission

1. In addition to the termination of the FRAND determination for reasons provided for Article **38(4)**, Article 44(3), Article **45(5)**, Article 46(2), point (b), **Article 46(3)** and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

Amendment

1. In addition to the termination of the FRAND determination for reasons provided for Article **38(3)**, Article 44(3), Article **45(4)**, Article 46(2), point (b), and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

Or. en

Amendment 435
Maria Grapini

Proposal for a regulation
Article 56 – paragraph 1 – introductory part

Text proposed by the Commission

1. In addition to the termination of the FRAND determination for reasons provided for Article **38(4)**, Article 44(3), Article **45(5)**, Article 46(2), point (b), **Article 46(3)** and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

Amendment

1. In addition to the termination of the FRAND determination for reasons provided for Article **38(3)**, Article 44(3), Article **45(4)**, Article 46(2), point (b), and Article 47(2), the FRAND determination shall be terminated in any of the following ways :

Or. en

Amendment 436
Geoffroy Didier

Proposal for a regulation
Article 56 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) a binding FRAND determination agreed between the parties pursuant to Article 38(4) shall terminate when the conciliator makes its final reasoned proposal under Article 55.

Or. en

Amendment 437
Maria Grapini

Proposal for a regulation
Article 56 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) a binding FRAND determination agreed between the parties pursuant to Article 38(4) shall terminate when the conciliator makes its final reasoned proposal under Article 55.

Or. en

Amendment 438
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Lara Comi, Pilar del Castillo Vera

Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

Amendment

4. A competent court of a Member State, asked to decide on determination of FRAND terms and conditions, including in abuse of dominance cases among ***deleted***

private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination, or, in the cases foreseen in Article 38(3)(b) and Article 38(4)(c), with a notice of commitment pursuant to Article 38(5).

Or. en

Amendment 439
Maria Grapini

Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

4. A competent court of a Member State, asked to decide on determination of FRAND terms and conditions, including in abuse of dominance cases among private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination, or, in the cases foreseen in Article 38(3)(b) and Article 38(4)(c), with a notice of commitment pursuant to Article 38(5).

Amendment

4. ***In any claim involving an SME as defendant***, a competent court of a Member State, asked to decide on determination of FRAND terms and conditions, including in abuse of dominance cases among private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination, or, in the cases foreseen in Article 38(3)(b) and Article 38(4)(c), with a notice of commitment pursuant to Article 38(5). ***In all other cases a court may proceed in parallel with any FRAND determination.***

Or. en

Amendment 440
Geoffroy Didier

Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

4. A competent court of a Member State, asked to decide on determination of FRAND terms and conditions, including in abuse of dominance cases among private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination, or, in the cases foreseen in Article 38(3)(b) and Article 38(4)(c), with a notice of commitment pursuant to Article 38(5).

Amendment

4. ***In any claim involving an SME as defendant***, a competent court of a Member State, asked to decide on determination of FRAND terms and conditions, including in abuse of dominance cases among private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination, or, in the cases foreseen in Article 38(3)(b) and Article 38(4)(c), with a notice of commitment pursuant to Article 38(5). ***In all other cases a court may proceed in parallel with any FRAND determination.***

Or. en

Justification

Delaying the commencement of proceedings to determine validity and infringement would be contrary to the correct order or procedure in all Member States Courts, who have to first determine if a patent is valid and infringed and only afterwards can they proceed to a FRAND determination. It will therefore be useful for the FRAND determination procedure under this article if parties are enabled to run parallel court proceedings to determine validity and infringement if necessary where doubts arise on such issues. The EUIPO cannot determine validity or infringement of a patent. However SMEs are not well placed to engage in claims concerning validity and infringement, and so where an SME is involved as defendant the proceedings should be delayed pending the FRAND determination.

Amendment 441
Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

4. A competent court of a Member State, asked to decide on determination of

Amendment

4. A competent court of a Member State, asked to decide on determination of

FRAND terms and conditions, including in abuse of dominance cases among private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination, *or, in the cases foreseen in Article 38(3)(b) and Article 38(4)(c), with a notice of commitment pursuant to Article 38(5).*

FRAND terms and conditions, including in abuse of dominance cases among private parties, or SEP infringement claim concerning a SEP in force in one or more Member States subject to the FRAND determination shall not proceed with the examination of the merits of that claim, unless it has been served with a notice of termination of the FRAND determination.

Or. en

Amendment 442
Geoffroy Didier

Proposal for a regulation
Article 56 – paragraph 5

Text proposed by the Commission

Amendment

5. *In the cases foreseen in Article 38(3)(b) and in Article 38(4)(c), Article 34(5) shall apply mutatis mutandis in the proceedings before a competent court of a Member State.*

deleted

Or. en

Amendment 443
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 56 – paragraph 5

Text proposed by the Commission

Amendment

5. *In the cases foreseen in Article 38(3)(b) and in Article 38(4)(c), Article 34(5) shall apply mutatis mutandis in the proceedings before a competent court of a Member State.*

deleted

Amendment 444
Maria Grapini

Proposal for a regulation
Article 56 – paragraph 5

Text proposed by the Commission

Amendment

5. In the cases foreseen in Article 38(3)(b) and in Article 38(4)(c), Article 34(5) shall apply mutatis mutandis in the proceedings before a competent court of a Member State.

deleted

Amendment 445
Kosma Zlotowski, Adam Bielan

Proposal for a regulation
Article 60 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The period specified in days ends on the last day, a period marked in weeks ends at the end of the day in the last week, a period specified in months ends on the expiry of the day corresponding to the initial day of the period, and if there was no such day in the last month - then on the last day of that month, a period marked in years ends on the expiry of the day corresponding to the initial day of a given period, and if there was no such day, the end date will be the last day of that month.

Amendment 446
Geoffroy Didier

Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission

1. The competence centre shall offer training and support on SEP related matters for micro, small and medium-size enterprises free of charge.

Amendment

1. ***The competence centre shall develop an SME SEP licensing Assistance Hub. In particular***

the competence centre shall offer training and support on SEP related matters for micro, small and medium-size enterprises free of charge. ***In particular, the competence centre shall work in close collaboration with the European Commission, national patent office and governmental schemes that support SMEs, in order to offer practical guidance and advice to SMEs, whether these are SEP holders or implementers.***

Or. en

Amendment 447
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission

1. The competence centre shall offer training and support on SEP related matters for micro, small and medium-size enterprises free of charge.

Amendment

1. The competence centre shall offer training and support on SEP related matters for micro, small and medium-size enterprises free of charge, ***whether they are SEP holders or implementers. The competence centre will, on a regular basis, proactively seek input from micro, small and medium-size enterprises on what training and support would be most helpful.***

Amendment 448
Geoffroy Didier

Proposal for a regulation
Article 61 – paragraph 2

Text proposed by the Commission

2. The competence centre may commission studies, if it considers it necessary, to assist micro, small and medium-size enterprises on SEP related matters.

Amendment

2. The competence centre may commission studies, if it considers it necessary, to assist micro, small and medium-size enterprises on SEP related matters. ***Such studies may include requiring SEP holders and implementers to provide information regarding licenses entered into, royalties paid or collected, and products sold for IoT applications, and the competence centre may provide estimates of licensing costs for such applications to SMEs.***

Justification

The agreement with WIPO in paragraph (1) is adopted from Option 1 in the Impact Assessment (at page 30). Paragraph (2) gives SMEs an option to require patent holders to mediate with them under the auspices of WIPO before initiating any infringement action. This would give SMEs the benefit of an opportunity to reach an out-of-court settlement before expending large litigation costs similar to the effect of the original FRAND Determination provisions that would be deleted elsewhere. Paragraph (3) gives SMEs the opportunity to make a commitment to accept a FRAND license on a SEP Holder-by-SEP Holder basis. If an SME makes such a commitment, the SEP Holder would be prohibited from seeking an injunction since it could enforce the commitment under contract law in a national court. Paragraph (4) expressly provides that no adverse inference should be drawn against SMEs that do not avail themselves of the safe harbors.

Amendment 449
Geoffroy Didier

Proposal for a regulation
Article 61 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The competence centre shall require each SEP holder with a registered SEP to report annually:

(a) all license agreements concluded with SMEs;

(b) all SMEs that sent it unsolicited requests it for an SEP license; and

(c) all SMEs to which it specifically directed a request to take an SEP license. The competence centre shall publish an annual report on SME SEP licensing based on such reports.

Or. en

Amendment 450

Geoffroy Didier

Proposal for a regulation

Article 61 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. The competence centre shall invite SEP holders with a registered SEP to identify an employee to the competence centre, known as an “SME Ambassador,” to whom the competence centre may direct inquiries under paragraph (1), paragraph (2), or paragraph (3). SEP holders may identify an SME Ambassador on a voluntary basis.

Or. en

Amendment 451

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 61 – paragraph 2

Text proposed by the Commission

2. The competence centre may commission studies, ***if it considers it necessary***, to assist micro, small and medium-size enterprises on SEP related matters.

Amendment

2. The competence centre may commission studies to assist micro, small and medium-size enterprises on SEP related matters. ***The competence centre will, on a regular basis, proactively seek the input of micro, small and medium-size enterprises to inform its own decisions on which studies would be most helpful.***

Or. en

Amendment 452

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 61 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. This Article shall not apply to patent assertion entities irrespective of their status as a micro, small or medium-sized enterprise.

Or. en

Amendment 453

Geoffroy Didier

Proposal for a regulation

Article 61 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The EUIPO shall ensure that this function is sufficiently funded and resourced.

Or. en

Amendment 454
Geoffroy Didier

Proposal for a regulation
Article 61 a (new)

Text proposed by the Commission

Amendment

Article 61a

***Safe harbours and ADR for micro, small
and medium-sized enterprises***

- 1. The competence centre shall seek to sign an agreement with the World Intellectual Property Organization (WIPO) to promote the use of the WIPO Arbitration and Mediation Centre for SEP disputes involving SMEs in the EU and to exchange information.***
- 2. The competence centre shall offer SMEs the opportunity to register their willingness to engage in mediation under the WIPO rules for SEP-related disputes. If an SME has registered such willingness and has not revoked it, then an SEP Holder shall not commence an action to enforce an SEP against such SME in a national court without first initiating mediation proceedings under the WIPO rules.***
- 3. The competence center shall offer SMEs the opportunity to make an irrevocable commitment to accept a license on FRAND terms and conditions from any SEP holder that has registered an SEP. A SEP holder that is the beneficiary of such a commitment may not initiate any action seeking an injunction in any court of a member state for an SEP covered by such commitment after such commitment is made.***
- 4. The registration or willingness to mediate and commitment to accept FRAND terms in Paragraph (2) and Paragraph (3) are purely voluntary and no adverse inference may be drawn by any court of a member state arising from a failure to register or make a***

commitment under those paragraphs.

Or. en

Amendment 455

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 61 a (new)

Text proposed by the Commission

Amendment

Article 61a

Safe harbour for micro, small and medium-size enterprises

1. The competence centre shall offer micro, small and medium-size enterprises in the EU the opportunity to register their willingness to engage in mediation under the World Intellectual Property Organisation (WIPO) Arbitration and Mediation system for SEP-related disputes involving SMEs. SEP holders shall not initiate any legal action to enforce a SEP against micro, small and medium-sized enterprises in the EU having registered their willingness to engage in such mediation system.

2. The competence centre shall offer the possibility to micro, small and medium-size enterprises in the EU to make an commitment to accept a licence on FRAND terms and conditions from any SEP holder with a registered SEP. In such case, the relevant SEP holder may not initiate any legal action seeking an injunction if a Member State court.

Or. en

Amendment 456

Kosma Zlotowski, Adam Bielan

Proposal for a regulation
Article 62 – paragraph 1

Text proposed by the Commission

1. When negotiating a SEP licence with micro, small and medium-sized enterprises, SEP holders shall **consider offering** to them FRAND terms and conditions that are more favourable than the FRAND terms and conditions they offer to enterprises that are not micro, small and medium-sized for the same standard and implementations.

Amendment

1. When negotiating a SEP licence with micro, small and medium-sized enterprises, SEP holders shall **offer** to them FRAND terms and conditions that are more favourable than the FRAND terms and conditions they offer to enterprises that are not micro, small and medium-sized for the same standard and implementations.

Or. en

Amendment 457
Kosma Zlotowski, Adam Bielan

Proposal for a regulation
Article 62 – paragraph 3

Text proposed by the Commission

3. SEP holders shall also consider discounts or royalty-free licensing for low sales volumes irrespective of the size of the implementer taking the licence. Such discounts or royalty-free licensing shall be fair, reasonable and non-discriminatory and shall be available in the electronic database as set out in Article 5(2), point (b).

Amendment

3. SEP holders shall also consider discounts, **spreading payments into interest-free instalments** or royalty-free licensing for low sales volumes irrespective of the size of the implementer taking the licence. Such discounts or royalty-free licensing shall be fair, reasonable and non-discriminatory and shall be available in the electronic database as set out in Article 5(2), point (b).

Or. en

Amendment 458
Maria Grapini

Proposal for a regulation
Article 63 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) for the conciliators facilitating agreements on aggregate royalty determinations in accordance with Article 17; *deleted*

Or. en

**Amendment 459
Geoffroy Didier**

**Proposal for a regulation
Article 63 – paragraph 2 – point a**

Text proposed by the Commission

Amendment

(a) for the conciliators facilitating agreements on aggregate royalty determinations in accordance with Article 17; *deleted*

Or. en

Justification

No longer necessary as of the deletion of the aggregate royalty mechanism.

**Amendment 460
Maria Grapini**

**Proposal for a regulation
Article 63 – paragraph 2 – point b**

Text proposed by the Commission

Amendment

(b) for the expert opinion on aggregate royalty in accordance with Article 18; *deleted*

Or. en

Amendment 461

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 63 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) for the expert opinion on aggregate royalty in accordance with Article 18;

deleted

Or. en

Amendment 462

Geoffroy Didier

Proposal for a regulation

Article 63 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) for the expert opinion on aggregate royalty in accordance with Article 18;

deleted

Or. en

Justification

No longer necessary as of the deletion of the aggregate royalty mechanism.

Amendment 463

Maria Grapini

Proposal for a regulation

Article 63 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the fees referred to in paragraph (2), point (a) by the SEP holders that participated in the process based on their estimated percentage of SEPs from all

deleted

SEPs for the standard;

Or. en

Amendment 464

Geoffroy Didier

Proposal for a regulation

Article 63 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the fees referred to in paragraph (2), point (a) by the SEP holders that participated in the process based on their estimated percentage of SEPs from all SEPs for the standard; *deleted*

Or. en

Justification

For consistency with the previous amendment. For consistency with the previous amendment.

Amendment 465

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 63 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the fees referred to in paragraph (2), point (a) by the SEP holders that participated in the process based on their estimated percentage of SEPs from all SEPs for the standard; *deleted*

Or. en

Amendment 466

Geoffroy Didier

Proposal for a regulation
Article 63 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the fees referred to in paragraph (2), point (b) equally by the parties that participated in the procedure of the expert opinion on aggregate royalty, unless they agree otherwise, or the panel suggests a different apportionment based on the size of the parties determined on the basis of their turnover; *deleted*

Or. en

Justification

For consistency with the previous amendment.

Amendment 467
Francisco Guerreiro
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 63 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the fees referred to in paragraph (2), point (b) equally by the parties that participated in the procedure of the expert opinion on aggregate royalty, unless they agree otherwise, or the panel suggests a different apportionment based on the size of the parties determined on the basis of their turnover; *deleted*

Or. en

Amendment 468
Maria Grapini

Proposal for a regulation
Article 63 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the fees referred to in paragraph (2), point (b) equally by the parties that participated in the procedure of the expert opinion on aggregate royalty, unless they agree otherwise, or the panel suggests a different apportionment based on the size of the parties determined on the basis of their turnover;

deleted

Or. en

Amendment 469

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

Proposal for a regulation
Article 63 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the fees referred to in paragraph (2), point (b) *equally* by the *parties that participated in* the procedure of the expert opinion on aggregate royalty, *unless they agree otherwise, or the panel suggests a different apportionment based on the size of the parties determined on the basis of their turnover;*

(b) the fees referred to in paragraph (2), point (b) by the *party that requested* the procedure of the expert opinion on aggregate royalty;

Or. en

Amendment 470
Geoffroy Didier

Proposal for a regulation
Article 64 – paragraph 2

Text proposed by the Commission

Amendment

2. If the amounts requested are not paid in full within 10 days after the date of

2. If the amounts requested are not paid in full within 10 days after the date of

the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of the request to the other party, in case of ***an aggregate royalty or FRAND*** determination.

the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of the request to the other party, in case of FRAND determination.

Or. en

Amendment 471

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 64 – paragraph 2

Text proposed by the Commission

2. If the amounts requested are not paid in full within 10 days after the date of the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of the request to the other party, in case of ***an aggregate royalty or FRAND*** determination.

Amendment

2. If the amounts requested are not paid in full within 10 days after the date of the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of the request to the other party, in case of FRAND determination.

Or. en

Amendment 472

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

Proposal for a regulation

Article 64 – paragraph 2

Text proposed by the Commission

2. If the amounts requested are not paid in full within 10 days after the date of the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of

Amendment

2. If the amounts requested are not paid in full within 10 days after the date of the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of

the request to the other party, in case of ***an aggregate royalty or*** FRAND determination.

the request to the other party, in case of FRAND determination.

Or. en

Amendment 473
Maria Grapini

Proposal for a regulation
Article 64 – paragraph 2

Text proposed by the Commission

2. If the amounts requested are not paid in full within 10 days after the date of the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of the request to the other party, in case of ***an aggregate royalty or*** FRAND determination.

Amendment

2. If the amounts requested are not paid in full within 10 days after the date of the request, the competence centre may notify the defaulting party and give it the opportunity to make the required payment within [5] days. It shall submit a copy of the request to the other party, in case of FRAND determination.

Or. en

Amendment 474
Geoffroy Didier

Proposal for a regulation
Article 66

Text proposed by the Commission

Article 66

Opening registration for an existing standard

1. Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify

Amendment

deleted

the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

2. Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the existing standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

3. Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to an existing standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The requirements and procedures set out in Article 18 apply mutatis mutandis.

4. Where the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the existing standards, parts thereof or relevant use cases can be notified in accordance with paragraph (1) or paragraph (2), or for which an expert opinion can be requested in accordance with paragraph (3). The delegated act shall also determine which procedures, notification and publication requirements

set out in this Regulation apply to those existing standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].

5. *This article shall apply without prejudice to any acts concluded and rights acquired by [OJ: please insert the date = 28 months from entry into force of this regulation].*

Or. en

Justification

The regulation should only apply to future standards (published after the coming into force of the Regulation). If the Regulation applies to standards that have been published before the regulation, then the market that has been created and is currently functioning could be paralysed due to the new requirements that will unbalance that market, by reinforcing incentives to “hold-out” behaviors.

Amendment 475

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 66

Text proposed by the Commission

Amendment

Article 66

deleted

Opening registration for an existing standard

1. *Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation (‘existing standards’), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation*

apply mutatis mutandis.

2. *Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the existing standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.*

3. *Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to an existing standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The requirements and procedures set out in Article 18 apply mutatis mutandis.*

4. *Where the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the existing standards, parts thereof or relevant use cases can be notified in accordance with paragraph (1) or paragraph (2), or for which an expert opinion can be requested in accordance with paragraph (3). The delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those existing standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].*

5. *This article shall apply without prejudice to any acts concluded and rights*

acquired by [OJ: please insert the date = 28 months from entry into force of this regulation].

Or. en

Amendment 476

Maria-Manuel Leitão-Marques, Tiemo Wölken

Proposal for a regulation

Article 66

Text proposed by the Commission

Amendment

Article 66

deleted

Opening registration for an existing standard

1. Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

2. Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the existing standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation

apply mutatis mutandis.

3. *Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to an existing standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The requirements and procedures set out in Article 18 apply mutatis mutandis.*

4. *Where the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the existing standards, parts thereof or relevant use cases can be notified in accordance with paragraph (1) or paragraph (2), or for which an expert opinion can be requested in accordance with paragraph (3). The delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those existing standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].*

5. *This article shall apply without prejudice to any acts concluded and rights acquired by [OJ: please insert the date = 28 months from entry into force of this regulation].*

Or. en

Amendment 477

Francisco Guerreiro

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 66

Article 66

deleted

Opening registration for an existing standard

1. *Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.*

2. *Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the existing standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.*

3. *Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to an existing standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The requirements and procedures set out in Article 18 apply mutatis mutandis.*

4. *Where the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the existing standards, parts thereof or relevant use cases can be notified in accordance with paragraph (1) or paragraph (2), or for which an expert opinion can be requested in accordance with paragraph (3). The delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those existing standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].*

5. *This article shall apply without prejudice to any acts concluded and rights acquired by [OJ: please insert the date = 28 months from entry into force of this regulation].*

Or. en

Amendment 478

Maria Grapini

Proposal for a regulation

Article 66 – title

Text proposed by the Commission

Opening registration for an existing standard

Amendment

Delegated act procedure to bring standard and use cases within the scope of the Regulation

Or. en

Amendment 479

Maria Grapini

Proposal for a regulation
Article 66 – paragraph 1

Text proposed by the Commission

1. *Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.*

Amendment

1. *Where and when the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which standards published after the coming into effect of this Regulation, parts thereof or relevant use cases shall be brought within the scope of the Regulation.*

Or. en

Amendment 480

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

Proposal for a regulation
Article 66 – paragraph 1

Text proposed by the Commission

1. Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the **existing** standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

Amendment

1. Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

Amendment 481
Maria Grapini

Proposal for a regulation
Article 66 – paragraph 2

Text proposed by the Commission

Amendment

2. *Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the existing standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.* *deleted*

Amendment 482
Maria da Graça Carvalho, Andreas Schwab, Ivan Štefanec, Pilar del Castillo Vera

Proposal for a regulation
Article 66 – paragraph 2

Text proposed by the Commission

Amendment

2. Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, *standard published before the entry into force of this Regulation*, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the *existing* standards or parts thereof, that will be determined in the delegated act in

2. Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication

accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

requirements set out in this Regulation apply mutatis mutandis.

Or. en

Amendment 483

Maria Grapini

Proposal for a regulation

Article 66 – paragraph 3

Text proposed by the Commission

Amendment

3. Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to an existing standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The requirements and procedures set out in Article 18 apply mutatis mutandis.

deleted

Or. en

Amendment 484

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

Proposal for a regulation

Article 66 – paragraph 3

Text proposed by the Commission

Amendment

3. Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to *an existing* standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The

3. Until [OJ: please insert the date = 30 months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to *a* standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The

requirements and procedures set out in Article 18 apply mutatis mutandis.

requirements and procedures set out in Article 18 apply mutatis mutandis.

Or. en

Amendment 485

Maria Grapini

Proposal for a regulation

Article 66 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the existing standards, parts thereof or relevant use cases can be notified in accordance with paragraph (1) or paragraph (2), or for which an expert opinion can be requested in accordance with paragraph (3). The delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those existing standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].

deleted

Or. en

Amendment 486

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

Proposal for a regulation

Article 66 – paragraph 4

Text proposed by the Commission

Amendment

4. Where the functioning of the internal market is severely distorted due to

4. Where the functioning of the internal market is severely distorted due to

inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the **existing** standards, parts thereof or relevant use cases can be notified **in accordance with paragraph (1) or paragraph (2)**, or for which an expert opinion can be requested **in accordance with paragraph (3)**. The delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those **existing** standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].

inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which of the standards, parts thereof or relevant use cases can be notified **i**, or for which an expert opinion can be requested . The delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].

Or. en

Amendment 487
Geoffroy Didier

Proposal for a regulation
Article 67 a (new)

Text proposed by the Commission

Amendment

Article 67a

***Delegated act procedure to bring standard
and use cases within the scope of the
Regulation***

Where and when the functioning of the internal market is severely distorted due to inefficiencies in the licensing of SEPs, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, determine which standards published after the coming into effect of this Regulation, parts thereof or relevant use cases shall be brought 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 488

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69a

Impact assessment

No later than 6 months after the application of this Regulation, external experts shall create an impact assessment evaluating its WTO compatibility, its impact on the European and global IP and innovation ecosystem as well as its effect on European competitiveness.

Or. en

Amendment 489

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 70 – paragraph 1

Text proposed by the Commission

Amendment

1. By [OJ: please insert the date = **5** years from entry into force of this

1. By [OJ: please insert the date = **1** years from entry into force of this

regulation] the Commission shall *evaluate* the effectiveness *and efficiency* of *the SEP registration* and the *essentiality check system*.

regulation] the Commission shall *review the application, enforcement and impact of this Regulation and present a report to the European Parliament and the Council. The report shall in particular assess the following issues: a) the effectiveness of this Regulation in achieving its intended goal, increasing transparency b) the cost-benefit to SEP holders and implementers of this Regulation c) the overall impact on the IP and innovation ecosystem in Europe and globally d) the impact of this regulation on SMEs and micro enterprises e) the impact on trade and the competitiveness of the Union's industry g) the impact in terms of administrative burdens for the economic operators h) whether the regulation goes against WTO compatibility and TRIPS. Where the Commission considers it appropriate, the report should be accompanied by relevant legislative proposals or repeal the existing regulation.*

Or. en

Amendment 490
Kosma Zlotowski, Adam Bielan

Proposal for a regulation
Article 70 – paragraph 1

Text proposed by the Commission

1. By [OJ: please insert the date = 5 years from entry into force of this regulation] the Commission shall evaluate the effectiveness and efficiency of the SEP registration and the essentiality check system.

Amendment

1. By [OJ: please insert the date = 3 years from entry into force of this regulation] the Commission shall evaluate the effectiveness and efficiency of the SEP registration and the essentiality check system.

Or. en

Amendment 491

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

Proposal for a regulation

Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. By [OJ: please insert the date = 3 years from entry into force of this regulation] the Commission shall evaluate the impact that the essentiality check system and the FRAND determination system on the competitiveness of the Union SEP holders on a global level and on innovation in the Union.

Or. en

Amendment 492

Arba Kokalari, Jörgen Warborn

Proposal for a regulation

Article 70 – paragraph 2

Text proposed by the Commission

Amendment

2. By [OJ: please insert the date = 8 years from entry into force of this regulation], and every **five** years thereafter, the Commission shall evaluate the implementation of this Regulation. The evaluation shall assess the operation of this Regulation, in particular the impact, effectiveness and efficiency of the competence centre and its working methods.

2. By [OJ: please insert the date = 8 years from entry into force of this regulation], and every **three** years thereafter, the Commission shall evaluate the implementation of this Regulation. The evaluation shall assess the operation of this Regulation, in particular the impact, effectiveness and efficiency of the competence centre and its working methods.

Or. en

Amendment 493

Kosma Złotowski, Adam Bielan

Proposal for a regulation
Article 70 – paragraph 2

Text proposed by the Commission

2. By [OJ: please insert the date = 8 years from entry into force of this regulation], and every **five** years thereafter, the Commission shall evaluate the implementation of this Regulation. The evaluation shall assess the operation of this Regulation, in particular the impact, effectiveness and efficiency of the competence centre and its working methods.

Amendment

2. By [OJ: please insert the date = 5 years from entry into force of this regulation], and every **3** years thereafter, the Commission shall evaluate the implementation of this Regulation. The evaluation shall assess the operation of this Regulation, in particular the impact, effectiveness and efficiency of the competence centre and its working methods.

Or. en

Amendment 494
Arba Kokalari, Jörgen Warborn

Proposal for a regulation
Article 70 – paragraph 3

Text proposed by the Commission

3. When preparing the evaluation reports referred to in paragraphs (1) and (2), the Commission shall consult the EUIPO **and** stakeholders.

Amendment

3. When preparing the evaluation reports referred to in paragraphs (1) and (2), the Commission shall consult the EUIPO, ***EPO, the World Intellectual Property Organisation and other global stakeholders, including third country governments, as well as business representatives and innovators, including small and medium enterprises.***

Or. en

Amendment 495
Arba Kokalari, Jörgen Warborn

Proposal for a regulation
Article 72 – paragraph 2

Text proposed by the Commission

2. It shall apply from ... [OP: please insert the date = **24** months after the date of entry into force of this Regulation].

Amendment

2. It shall apply from ... [OP: please insert the date = **36** months after the date of entry into force of this Regulation].

Or. en