



2023/0133(COD)

31.10.2023

AMENDMENTS

119 - 388

Draft report
Marion Walsmann
(PE753.697v01-00)

Proposal for a Regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001

Proposal for a regulation
(COM(2023)0232 – C9-0147/2023 – 2023/0133(COD))

Amendment 119
Patrick Breyer

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) This Regulation aims at improving the licensing of SEPs, by addressing the causes of inefficient licensing such as insufficient transparency with regard to SEPs, fair, reasonable and non-discriminatory (FRAND) terms and conditions and licensing in the value chain, and limited use of dispute resolution procedures for resolving FRAND disputes. All these together reduce the overall fairness and efficiency of the system and result in excess administrative and transactional costs. By improving the licensing of SEPs, the Regulation aims to incentivise participation by European firms in the standard development process and the broad implementation of such standardised technologies, particularly in Internet of Things (IoT) industries. Therefore, this Regulation pursues objectives that are complementary to, but different from that of protecting undistorted competition, guaranteed by Articles 101 and 102 TFEU. This Regulation should also be without prejudice to national competition rules.

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The non-discriminatory character of licensing for SEPs by any patent holder, including patent pool participants, should draw particular scrutiny when implementing this Regulation, in the aim of promoting the standardisation process and innovation in the EU.

Or. en

Amendment 120
Adrián Vázquez Lázara

Proposal for a regulation
Recital 2

Text proposed by the Commission

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Or. en

Amendment 121
Adrián Vázquez Lázara

Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Good faith negotiations between parties willing to participate occur in many FRAND cases, yet in other instances, SEPs become the subject of

legal proceedings. This Regulation aims to provide advantages to both Union SEP holders and SEP implementers by introducing mechanisms designed to address two key issues: firstly, situations where SEP implementers unreasonably delay or decline FRAND licenses; and secondly, scenarios where SEP holders impose non-FRAND royalties due to the threat of injunction and a lack of transparency.

Or. en

Amendment 122
Geoffroy Didier

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on

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fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, after the entry into force of this Regulation.

commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, after the entry into force of this Regulation.

Or. en

Justification

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

Amendment 123 **Patrick Breyer**

Proposal for a regulation **Recital 3**

Text proposed by the Commission

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents **that are** essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on

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fair, reasonable and non-discriminatory (FRAND) terms and conditions ***and that is not subject to a royalty-free intellectual property policy, after the entry into force of this Regulation.***

SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions.

Or. en

Amendment 124

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 3

Text proposed by the Commission

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

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Amendment 125
Patrick Breyer

Proposal for a regulation
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The key role of Standards Development Organisations (SDOs) in developing and defining technical standards for interoperable technologies should be strengthened. The global and collaborative effort of increasing transparency of SEPs should be reinforced not only through FRAND licensing obligations, but also thanks to an efficient cooperation between SDOs and the competent patent offices, so that the declaration of standards has a maximum level of legal certainty, with robust essentiality checks from the start of the assessment chain.

Amendment 126
Emmanuel Maurel

Proposal for a regulation
Recital 4

Text proposed by the Commission

Amendment

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, such as the standards for wireless communications, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are

deleted

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

Or. fr

Amendment 127
Geoffroy Didier

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, such as the standards for wireless communications, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer

Amendment

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communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, ***certain procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied*** to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms ***do not*** give rise to significant difficulties or inefficiencies.

communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, this Regulation, ***shall only apply*** to identified use cases of certain standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms give rise to significant difficulties or inefficiencies.

Or. en

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 128

Adrián Vázquez Lázara

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain ***use cases of*** standards, ***such as the standards for wireless***

Amendment

(4) There are well established commercial relationships and licensing practices for certain standards leading to considerable mutual dependency and

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

significant value visibly accruing to both SEP holders and implementers. There are other standards *such as e.g. Wi-Fi, HEVC, and cellular standards, including LTE and 5G*, with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, certain procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied to identified standards or parts thereof for which there is sufficient evidence that SEP licensing negotiations on FRAND terms *and conditions* do not give rise to significant difficulties or inefficiencies.

Or. en

Justification

It is important that wireless communication standards are not excluded from the scope of application.

Amendment 129

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, *such as the standards for wireless*

Amendment

(4) There are well established commercial relationships and licensing practices for certain use cases of standards with iterations over multiple generations

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

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Or. en

Amendment 130

Patrick Breyer

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) There are well established commercial relationships and licensing practices for certain use cases of standards, ***such as the standards for wireless communications***, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases –

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Or. en

Justification

We want the regulation to apply cross-sector and not make it tailor-made for some specific industrial sectors. The risk of such explicit exemption bears the risk of calling for other ones targeting other specific sectors, which should be avoided in order to guarantee some legal certainty in the implementation of this Regulation. The operative part of the Regulation already provides for sufficient guarantees as to the nuances in the application of the Regulation, depending on the relevant market failures observed, without the need to provide for an explicit exemption.

Amendment 131

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) There are already structures in place like the unitary patent system encompassing the Unitary Patent (UP), entrusted to the EPO, which is a legal title that provides uniform protection across all participating countries on a one-stop-

shop basis, providing huge cost advantages and reducing administrative burdens. And the Unified Patent Court (UPC) which offers Member States a single and specialised patent jurisdiction.

Or. en

Amendment 132

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 4 c (new)

Text proposed by the Commission

Amendment

(4c) The EPO has an existing register with a wealth of information on European patents that is tied to the UP register which contains patent holders' commitment to license patents on FRAND terms. The owners of SEPs are thus already required to license the patents on FRAND terms.

Or. en

Amendment 133

Geoffroy Didier

Proposal for a regulation

Recital 5

Text proposed by the Commission

Amendment

(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology use cases underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the

deleted

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

Or. en

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 134 **Emmanuel Maurel**

Proposal for a regulation **Recital 5**

Text proposed by the Commission

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

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

Regulation should also apply to standards or parts thereof, published before its entry into force.

Or. fr

Amendment 135

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 5

Text proposed by the Commission

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

Amendment

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

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

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Or. en

Amendment 136
Patrick Breyer

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) Licensing on FRAND terms and conditions includes licensing royalty-free. ***Given that most issues arise with royalty-bearing licensing policies, this Regulation does not apply to royalty-free licensing.***

Amendment

(7) Licensing on FRAND terms and conditions includes licensing royalty-free.

Or. en

Amendment 137
Patrick Breyer

Proposal for a regulation
Recital 7 a (new)

Text proposed by the Commission

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

Amendment

development.

Or. en

Amendment 138
Geoffroy Didier

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 139
Geoffroy Didier

Proposal for a regulation
Recital 10

Text proposed by the Commission

Amendment

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

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

Justification

See the justification to Article 56 paragraph 4.

Amendment 140
Angelika Niebler

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The measures of this Regulation should be balanced and proportionate and rely on existing tools and the best available practices, thus avoiding duplication of work. Relevant structures have already been set up and should be built on. Patent registers and databases providing for relevant data and know how on patent procedures are already set up and administrated at the European Patent Office. This is equally valid for the Unified Patent Court which has introduced a dedicated Patent Mediation and Arbitration Centre. To build on this expertise, the European Patent Office should be mandated with the tasks of the new competence centre, namely setting up and maintaining an electronic register and an electronic database for SEPs, setting up and managing rosters of evaluators and conciliators, setting up and administering a system for assessment of the essentiality of SEPs, setting up and administering the process for the FRAND determination, providing training to evaluators and conciliators, administering a process for aggregate royalty determination, enhancing transparency and information sharing, providing training, support and general advice on SEPs to SMEs, conducting studies and any other necessary activities to support the objectives of this

Regulation, raising awareness about SEP licensing, including SEP licensing in the value chain. The European Patent Office should find a procedure for national patent offices to contribute technical advice to the work of the competence centre.

Or. en

Amendment 141
Adrián Vázquez Lázara

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) ***To facilitate the implementation of this regulation***, the European Union Intellectual Property Office (EUIPO) should perform the relevant tasks by means of a competence centre. The EUIPO has extensive experience with managing databases, electronic registers and alternative dispute settlement mechanisms, which are key aspects of the functions assigned under this Regulation. It is ***necessary*** to equip the competence centre with necessary human and financial resources to ***fulfil*** its tasks.

Amendment

(12) ***As the agency of the European Union in charge of intellectual property rights***, the European Union Intellectual Property Office (EUIPO) should perform the relevant tasks by means of a competence centre ***and facilitate the implementation of this Regulation***. The EUIPO has extensive experience with managing databases, electronic registers and alternative dispute settlement mechanisms, which are key aspects of the functions assigned under this Regulation. It is ***crucial*** to equip the competence centre with necessary human and financial resources to ***efficiently perform*** its tasks.

Or. en

Amendment 142
Gilles Lebreton

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) ***To facilitate*** the ***implementation*** of

Amendment

(12) ***Without impinging upon*** the

this regulation, the European Union Intellectual Property Office (EUIPO) should perform the relevant tasks by means of a competence centre. The EUIPO has extensive experience with managing databases, electronic registers and alternative dispute settlement mechanisms, which are key aspects of the functions assigned under this Regulation. It is necessary to equip the competence centre with necessary human and financial resources to fulfil its tasks.

powers of the European Patents Office, the European Union Intellectual Property Office (EUIPO) should perform the relevant tasks by means of a competence centre. The EUIPO has extensive experience with managing databases, electronic registers and alternative dispute settlement mechanisms, which are key aspects of the functions assigned under this Regulation. It is necessary to equip the competence centre with necessary human and financial resources to fulfil its tasks.

Or. fr

Amendment 143
Angelika Niebler

Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) To facilitate the implementation of this regulation, the European **Union Intellectual Property Office (EUIPO)** should perform the relevant tasks by means of a competence centre. The **EUIPO** has extensive experience with managing databases, electronic registers and alternative dispute settlement mechanisms, which are key aspects of the functions assigned under this Regulation. It is necessary to equip the competence centre with necessary human and financial resources to fulfil its tasks.

Amendment

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(Changing European Union Intellectual Property Office (EUIPO) to European Patent Office (EPO) shall apply throughout the whole text.)

Or. en

Amendment 144
Adrián Vázquez Lázara

Proposal for a regulation
Recital 13

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Deletion of essentiality check results for consistency with new proposed technical conciliation procedure. Essentiality checks resulting from a final decision from a competent court should be included in the register.

Amendment 145
Geoffroy Didier

Proposal for a regulation
Recital 13

Text proposed by the Commission

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

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Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 146
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Recital 13

Text proposed by the Commission

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

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Or. en

Amendment 147
Patrick Breyer

Proposal for a regulation
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The register and the electronic database should serve as primary reference points for users, providing easily accessible and information about SEPs free of charge. The information made accessible should not be subject to

licensing terms, so that it can be used freely. The register administered by the competence centre should offer a high level of legal certainty and should guarantee easy access to members of the public, so that it becomes a reference in the field in the near future.

Or. en

Amendment 148
Patrick Breyer

Proposal for a regulation
Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) The rules of coexistence between the register administered by the EUIPO competence centre and the other SEPs registers should be clarified by the Commission in its evaluation exercise.

Or. en

Amendment 149
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Recital 14

Text proposed by the Commission

Amendment

(14) The competence centre should be the subject of Union rules on access to documents and data protection. Its tasks should be designed to increase transparency by making existing information relevant to SEPs available to all stakeholders in a centralised and systematic way. Therefore, a balance would have to be made between the free public access to basic information and the need to finance the functioning of the

(14) The competence centre should be the subject of Union rules on access to documents and data protection. Its tasks should be designed to increase transparency by making existing information relevant to SEPs available to all stakeholders in a centralised and systematic way. Therefore, a balance would have to be made between the free public access to basic information and the need to finance the functioning of the

competence centre. In order to cover the maintenance costs a registration fee should be requested to access detailed information contained in the database, *such as results of any essentiality checks and non-confidential FRAND determination reports*.

competence centre. In order to cover the maintenance costs a registration fee should be requested to access detailed information contained in the database.

Or. en

Amendment 150
Adrián Vázquez Lázara

Proposal for a regulation
Recital 14

Text proposed by the Commission

(14) The competence centre should be the subject of Union rules on access to documents and data protection. Its tasks should be designed to increase transparency by making existing information relevant to SEPs available to all stakeholders in a centralised and systematic way. Therefore, a balance would have to be made between the free public access to basic information and the need to finance the functioning of the competence centre. In order to cover the maintenance costs a registration fee should be requested to access detailed information contained in the database, such as results of any *essentiality checks and non-confidential FRAND determination reports*.

Amendment

(14) The competence centre should be the subject of Union rules on access to documents and data protection. Its tasks should be designed to increase transparency by making existing information relevant to SEPs available to all stakeholders in a centralised and systematic way. Therefore, a balance would have to be made between the free public access to basic information and the need to finance the functioning of the competence centre. In order to cover the maintenance costs a registration fee should be requested to access detailed information contained in the database, such as results of any non-confidential FRAND determination reports.

Or. en

Justification

Consistency with the new article 28a on the conciliation process.

Amendment 151
Geoffroy Didier

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 152

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 15

Text proposed by the Commission

Amendment

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer's cost

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer's cost

determinations. It also helps SEP **holder** to plan expected return on investment. The publication of the expected aggregate royalty and the standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, it is necessary to make public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing.

determinations. It also helps SEP **holders** to plan expected return on investment **and SEP implementers to estimate the cost of standard integration in their products**. The publication of the expected aggregate royalty and the standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, it is necessary to make public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing.

Or. en

Amendment 153
Geoffroy Didier

Proposal for a regulation
Recital 16

Text proposed by the Commission

Amendment

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

deleted

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

Or. en

Amendment 154

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) SEP holders should have the opportunity to first inform the competence centre of the publication of the standard or the aggregate royalty which they have agreed upon among themselves. Except for those use cases of standards for which the

Amendment

(16) SEP holders should have the opportunity to first inform the competence centre of the publication of the standard or the aggregate royalty which they have agreed upon among themselves. Except for those use cases of standards for which the

Commission establishes that there are well established and broadly well-functioning licensing practices of SEPs, the competence centre may assist the parties in the relevant aggregate royalty determination. In this context, if there is no agreement on an aggregate royalty among SEP holders, certain SEP holders may request the competence centre to appoint a conciliator to assist the SEP holders willing to participate in the process in determining an aggregate royalty for the SEPs covering the relevant standard. In this case, the role of the conciliator would be to facilitate the decision-making by the participating SEP holders without making any recommendation for an aggregate royalty. Finally, it is important to ensure that there is a third independent party, an expert, that could recommend an aggregate royalty. Therefore, SEP holders *and/or* implementers should be able to request the competence centre for an expert opinion on an aggregate royalty. When such a request is made, the competence centre should appoint a panel of conciliators and administer a process in which all interested stakeholders are invited to participate. After receiving information from all of the participants, the panel should provide a non-binding expert opinion for an aggregate royalty. The expert opinion on the aggregate royalty should contain a non-confidential analysis of the expected impact of the aggregate royalty on the SEP holders and the stakeholders in the value chain. Important in this respect would be to consider factors such as, efficiency of SEP licensing, including insights from any customary rules or practices for licensing of intellectual property in the value chain and cross-licensing, and impact on incentives to innovate of SEP holders and different stakeholders in the value chain.

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Or. en

Amendment 155
Patrick Breyer

Proposal for a regulation
Recital 16

Text proposed by the Commission

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

Amendment

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

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

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Or. en

Amendment 156
Geoffroy Didier

Proposal for a regulation
Recital 18

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 157
Emmanuel Maurel

Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) In order to ensure transparency of about SEPs, it is appropriate to require from SEP holders to register their patents which are essential to the standard for which the registration is open. SEP holders should register their SEPs within 6 months following the opening of the

Amendment

(19) In order to ensure transparency of about SEPs, it is appropriate to require from SEP holders to register their patents which are essential to the standard for which the registration is open. SEP holders should register their SEPs within 6 months following the opening of the

registration by the competence centre or the grant of the relevant SEPs, whichever is first. In case of timely registration, SEPs holders should be able to collect royalties and claim damages for uses and infringements that happened before the registration.

registration by the competence centre or the grant of the relevant SEPs, whichever is first. In case of timely registration, SEPs holders should be able to collect royalties and claim damages for uses and infringements that happened before the registration, ***provided that the amount thereof has been established in accordance with the FRAND determination rules set out in this Regulation.***

Or. fr

Amendment 158
Angelika Niebler

Proposal for a regulation
Recital 20

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 159
Geoffroy Didier

Proposal for a regulation
Recital 20

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

This provision provides the EUIPO, an administrative body of the EU with powers that substitute national courts' decisions and the Unified Patent Court. No case has been made to justify a limitation or barrier to exercising on fundamental rights (e.g. IP rights, or the right to access courts: see Articles 16, 17 47, 52, 53 EU Charter of Fundamental Rights).

Compliance with the WTO TRIPS Agreement is also required by the EU along with EU Member States. It also runs counter to Art.13(1) of the Enforcement Directive (2004/48/EC).

Amendment 160

Patrick Breyer

Proposal for a regulation

Recital 20

Text proposed by the Commission

Amendment

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

Or. en

Justification

Such provision would give the EUIPO, an administrative body of the EU, powers that would substitute national courts' and the Unified Patent Court's decisions. There would be a risk to increase legal uncertainty, also as regards the application of the IP Enforcement Directive (2004/48/EC).

Amendment 161

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 20

Text proposed by the Commission

Amendment

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

(20) SEP holders may register *their patents which are essential to a standard* after the indicated time limit. However, in that case, SEP holders should not be able to collect royalties and claim damages for the

period of delay.

Or. en

Amendment 162

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 20 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 163

Adrián Vázquez Lázara

Proposal for a regulation

Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Regardless of the position within the supply chain at which a potential licensee operates, an SEP holder must not decline to grant a FRAND license to any party seeking one, for any standard to which the SEP holder or a prior holder has made a FRAND commitment

Or. en

Justification

It is crucial to emphasise that licenses for all SEPs with FRAND commitments should be made available to any party seeking a FRAND license, irrespective of their position within

the supply chain

Amendment 164
Angelika Niebler

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) SEP holders should ensure that their SEP registration(s) are updated. Updates should be registered ***within 6 months*** for relevant status changes, including ownership, invalidation findings or other applicable changes resulting from contractual commitments or public authorities' decisions. ***Failure to update the registration may lead to the suspension of the registration of the SEP from the register.***

Amendment

(22) SEP holders should ensure that their SEP registration(s) are updated. Updates should be registered ***yearly*** for relevant status changes, including ownership, invalidation findings or other applicable changes resulting from contractual commitments or public authorities' decisions.

Or. en

Amendment 165
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 23

Text proposed by the Commission

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

Amendment

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

any modifications to the SEP register should be made available publicly to maintain transparency.

Or. en

Amendment 166
Adrián Vázquez Lázara

Proposal for a regulation
Recital 23

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Deleted essentiality check results for consistency with new proposed technical conciliation procedure.

Amendment 167
Geoffroy Didier

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) A SEP holder may also request the

Amendment

(23) A SEP holder may also request the

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

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

Or. en

Justification

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

Amendment 168

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 24

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 169

Adrián Vázquez Lázara

Proposal for a regulation
Recital 24

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 170

Timo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 24

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 171

Adrián Vázquez Lázara

Proposal for a regulation
Recital 25

Text proposed by the Commission

Amendment

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

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 172
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Recital 25

Text proposed by the Commission

Amendment

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

Or. en

Amendment 173
Geoffroy Didier

Proposal for a regulation
Recital 26

Text proposed by the Commission

Amendment

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

Or. en

Amendment 174
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Recital 26

Text proposed by the Commission

Amendment

(26) SEP holders or implementers may also designate annually up to 100 registered SEPs for essentiality checks. If the pre-selected SEPs are confirmed essential, the SEP holders may use this information in negotiations and as evidence in courts, without prejudicing the right of an implementer to challenge the essentiality of a registered SEP in court. The selected SEPs would have no *deleted*

bearing on the sampling process as the sample should be selected from all registered SEPs of each SEP holder. If a preselected SEP and a SEP selected for the sample set are the same, only one essentiality check should be done. Essentiality checks should not be repeated on SEPs from the same patent family.

Or. en

Amendment 175
Adrián Vázquez Lázara

Proposal for a regulation
Recital 26

Text proposed by the Commission

Amendment

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

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 176
Adrián Vázquez Lázara

Proposal for a regulation
Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The technical conciliation procedure could also help the parties to discuss the relevant technical details for their specific licensing negotiation, e.g., how the SEP portfolio relates to the specific product and/or service implementation. The processes would be similar to current industry practices: following the execution of a mutual Non-Disclosure Agreement provided by the competence centre, SEP holders shall provide a relevant sample of claim charts for the patent families that it offers to license. In the event the licensor-SEP holder that enforces its patent-rights is an SME, the competence centre shall advice such SME in relation to the evaluation and exercise of its IP rights. The parties should be allowed to bring external technical advisors to the procedure.

Or. en

Justification

The procedure aims to incentivize good faith negotiation and facilitate the technical aspects of SEP licensing. It is important to protect confidential information from both parties, but the parties should be able to use the report provided by the technical conciliator, within the boundaries set by the mutual NDA, in further discussions to conclude the SEP license.

Amendment 177
Adrián Vázquez Lázara

Proposal for a regulation
Recital 27

Text proposed by the Commission

Amendment

(27) Any assessment of essentiality of ***deleted***

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

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 178

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 27

Text proposed by the Commission

Amendment

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

Or. en

Amendment 179

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 27

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 180

Adrián Vázquez Lázara

Proposal for a regulation

Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) The technical conciliation procedure should not take more than 5 months, unless otherwise agreed between the parties, and should be offered separately or combined with the FRAND determination procedure. The overall timing for the combined procedure should not go beyond the timing of 9 months foreseen in Article 37(1).

Or. en

Justification

As foreseen in Recital 36, it is important to guarantee that the rights of the parties are respected and at the same time sufficiently swift to avoid unreasonable delays in concluding licenses.

Amendment 181
Patrick Breyer

Proposal for a regulation
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) The role of patent pools, including those created by SEP implementers, should be evaluated by the Commission, in order to assess their benefit once this Regulation is in place, notably in terms of their incidence on competitiveness on the EU market.

Or. en

Amendment 182
Adrián Vázquez Lázara

Proposal for a regulation
Recital 28

Text proposed by the Commission

Amendment

(28) The evaluators should work independently in accordance with the rules of procedure and Code of Conduct to be determined by the Commission. The SEP holder would be able request a peer evaluation before the issuance of a reasoned opinion. Unless a SEP is the subject of a peer review, there would be no further review of the essentiality check results. The results of the peer evaluation should serve to improve the essentiality check process, to identify and remedy shortcomings and improve consistency.

deleted

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 183

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 28

Text proposed by the Commission

Amendment

(28) The evaluators should work independently in accordance with the rules of procedure and Code of Conduct to be determined by the Commission. The SEP holder would be able request a peer evaluation before the issuance of a reasoned opinion. Unless a SEP is the subject of a peer review, there would be no further review of the essentiality check results. The results of the peer evaluation should serve to improve the essentiality check process, to identify and remedy shortcomings and improve consistency.

deleted

Or. en

Amendment 184

Adrián Vázquez Lázara

Proposal for a regulation

Recital 29

Text proposed by the Commission

Amendment

(29) The competence centre would publish the results of the essentiality checks, whether positive or negative, in the register and the database. The results of the essentiality checks would not be legally binding. Thus, any subsequent disputes with regard to essentiality would have to be addressed in the relevant court. The results from the essentiality checks, whether requested by a SEP holder or based on a sample, may, however, be used for the purpose of demonstrating essentiality of those SEPs in negotiations,

deleted

in patent pools and in court.

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 185

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 29

Text proposed by the Commission

Amendment

(29) *The competence centre would publish the results of the essentiality checks, whether positive or negative, in the register and the database. The results of the essentiality checks would not be legally binding. Thus, any subsequent disputes with regard to essentiality would have to be addressed in the relevant court. The results from the essentiality checks, whether requested by a SEP holder or based on a sample, may, however, be used for the purpose of demonstrating essentiality of those SEPs in negotiations, in patent pools and in court.* *deleted*

Or. en

Amendment 186

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 30

Text proposed by the Commission

Amendment

(30) *It is necessary to ensure that the registration and ensuing obligations provided for in this Regulation are not* *deleted*

circumvented by removing a SEP from the register. When an evaluator finds a claimed SEP non-essential, only the SEP holder can request its removal from the register and only after the annual sampling process has been completed and the proportion of true SEPs from the sample has been established and published.

Or. en

Amendment 187

Adrián Vázquez Lázara

Proposal for a regulation

Recital 30

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Deleted for consistency with new proposed technical conciliation procedure. See proposed new recitals 24-27 and new Title V.

Amendment 188

Adrián Vázquez Lázara

Proposal for a regulation

Recital 30 a (new)

(30a) Recognizing the complexity and technical specificity inherent in negotiations surrounding SEPs, it is imperative to institute a structured ‘Technical Conciliation Procedure’, thereby facilitating more streamlined, transparent, and efficient discussions between concerned parties. This specialized procedure shall be organized and overseen by the competence centre, ensuring that both SEP holders and implementers have a fair and knowledgeable platform for negotiation.

Or. en

Justification

New proposal to introduce a technical conciliation procedure to support stakeholders with the technical discussions in relation to SEP licensing. The procedure should be mandatory where an SME is involved in SEP licensing upon the request of such SME, either as a SEP holder or SEP implementer. The procedure should be available on a voluntary basis upon mutual agreement for non-SMEs if they believe it can help facilitating ongoing technical discussions. Non-SMEs involved in SEP licensing often have the resources and expertise to navigate such discussions and making the technical conciliation procedure mandatory for them could result in unnecessary steps and be counterproductive. Therefore, the procedure should be made available on a voluntary basis for these (non-SMEs) parties. Combined with the training and general advice provided by this competence centre for SMEs (e.g., as foreseen in Article 3), the technical conciliation procedure could help SMEs gain more experience and a better understanding of the more technical aspects of SEP licensing, both as implementer and as SEP holder. The procedure could also make participation in standard development more attractive for SMEs (in line with other Union policies and as foreseen in Recital 2), as they would have support to license their SEPs without incurring excessive costs. Finally, the procedure could also help the competence centre to gain valuable experience in the different technical aspects that are important in the SEP licensing context.

Amendment 189

Adrián Vázquez Lázara

Proposal for a regulation

Recital 30 b (new)

Text proposed by the Commission

Amendment

(30b) The Technical Conciliation Procedure aims to mediate disputes by enabling parties to present their respective standpoints concerning the technical dimensions crucial to SEP licensing negotiations. By appointing a skilled technical conciliator from its roster, the competence centre ensures that the discussions are guided by technical expertise and a balanced perspective, essential for reaching mutually agreeable licensing terms.

Or. en

Justification

See justification AM 18

Amendment 190
Adrián Vázquez Lázara

Proposal for a regulation
Recital 30 c (new)

Text proposed by the Commission

Amendment

(30c) To maintain the inclusivity and efficacy of this procedure, provision is designed for the participation of SMEs, either as SEP holders or implementers, guaranteeing their right to request this mandatory procedure. Conversely, entities other than SMEs may opt for this procedure upon mutual consent, reinforcing its role as a versatile tool for resolving disputes and aiding license agreement renewals. The procedure is designed to be time-efficient, with a maximum duration of five months for a standalone process, and not exceeding nine months when combined with a FRAND determination procedure, as per Article 37(1). This stipulation ensures that

the parties involved are incentivized towards expedient and constructive engagement, minimizing potential delays in reaching licensing agreements.

Or. en

Justification

See justification AM 18

Amendment 191
Adrián Vázquez Lázara

Proposal for a regulation
Recital 30 d (new)

Text proposed by the Commission

Amendment

(30d) The procedure hinges on detailed technical discussions where parties scrutinize the relevance of the SEP portfolio to their specific products or services. The competence centre shall provide the necessary resources, including a mutual NDA and assistance for SMEs, thereby ensuring that negotiations are based on a thorough understanding of the patents in question. Post-procedure, the technical conciliator shall compile a comprehensive report detailing the discussions, arguments, and a recommendation based on the deliberations. While maintaining confidentiality under the mutual NDA, this report shall be admissible in subsequent FRAND Determination procedures or ensuing litigation, ensuring continuity and reference to the insights gained during conciliation.

Or. en

Justification

See justification AM 18

Amendment 192
Adrián Vázquez Lázara

Proposal for a regulation
Recital 30 e (new)

Text proposed by the Commission

Amendment

(30e) For SMEs, the procedure is particularly advantageous when combined with additional training and resources provided by the competence centre. By enhancing their understanding of SEP licensing and reducing financial burdens through reduced fees or pro bono services, SMEs are better positioned to engage in standard development, thereby aligning with broader EU objectives of technological innovation and SME participation. Additionally, the consistent application of the TPC enables the EUIPO's competence centre to gain invaluable expertise in various technical realms pertinent to SEP licensing. This accumulated knowledge is instrumental in refining the centre's approaches and methodologies, ultimately contributing to more sophisticated and informed handling of SEP-related matters

Or. en

Justification

See justification AM 18

Amendment 193
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 31

Text proposed by the Commission

Amendment

(31) The purpose of the FRAND

(31) The purpose of the FRAND

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

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

Or. en

Amendment 194

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) The FRAND determination should simplify and speed up negotiations concerning FRAND terms and reduce costs. The EUIPO should administer the procedure. The competence centre should create a roster of conciliators that satisfy established competence and independence criteria, as well as a repository of non-confidential reports (the confidential

Amendment

(32) The FRAND determination should simplify and speed up negotiations concerning FRAND terms and reduce costs. The EUIPO should administer the procedure. The competence centre should create a roster of conciliators that satisfy established competence and independence criteria, as well as a repository of non-confidential reports (the confidential

version of the reports will be accessible only by the parties and the conciliators). The conciliators should be neutral persons with extensive experience in dispute resolution and substantial understanding of the economics of licensing on FRAND terms and conditions.

version of the reports will be accessible only by the parties and the conciliators). The conciliators should be neutral **and impartial** persons with extensive experience in dispute resolution and substantial understanding of the economics of licensing on FRAND terms and conditions.

Or. en

Amendment 195

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 33

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 196

Geoffroy Didier

Proposal for a regulation

Recital 33

Text proposed by the Commission

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

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

Amendment

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

Or. en

Justification

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

Amendment 197

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) ***The*** FRAND determination would be a mandatory step before a SEP holder would be able to ***initiate*** patent

Amendment

(33) ***In case one or more parties initiate a*** FRAND determination ***process, it*** would be a mandatory step before a SEP holder

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

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

Or. en

Amendment 198 Geoffroy Didier

Proposal for a regulation Recital 34

Text proposed by the Commission

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

Amendment

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

able to benefit from its completion.

Or. en

Justification

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

Amendment 199

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 34

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 200

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 34

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 201
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Recital 35

Text proposed by the Commission

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

Amendment

deleted

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

Or. en

Amendment 202
Geoffroy Didier

Proposal for a regulation
Recital 35

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

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

Amendment 203
Angelika Niebler

Proposal for a regulation
Recital 35

Text proposed by the Commission

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

Amendment

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

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

use of such measures.

Or. en

Amendment 204

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 35

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Amendment 205

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 36

Text proposed by the Commission

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

Amendment

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

determination.

Or. en

Amendment 206

Patrick Breyer

Proposal for a regulation

Recital 36

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 207

Geoffroy Didier

Proposal for a regulation

Recital 37

Text proposed by the Commission

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

Amendment

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

the parties *or the party requesting the continuations of the FRAND determination.*

the parties.

Or. en

Justification

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

Amendment 208

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 37

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 209

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) The *conciliator* should examine the parties' submissions and suggestions for the determination of FRAND terms and conditions, and consider the relevant negotiation steps, among other relevant circumstances. The *conciliator*, upon its

Amendment

(38) The *panel of conciliators* should examine the parties' submissions and suggestions for the determination of FRAND terms and conditions, and consider the relevant negotiation steps, among other relevant circumstances. The

own initiative or the request of a party, should be able to require the parties to submit evidence it deems necessary for the fulfilment of its task. It should also be able to examine publicly available information and the competence centre's register and reports of other FRAND determinations, as well as non-confidential documents and information produced by or submitted to the competence centre.

panel of conciliators, upon its own initiative or the request of a party, should be able to require the parties to submit evidence it deems necessary for the fulfilment of its task. It should also be able to examine publicly available information and the competence centre's register and reports of other FRAND determinations, as well as non-confidential documents and information produced by or submitted to the competence centre.

Or. en

Amendment 210
Patrick Breyer

Proposal for a regulation
Recital 38

Text proposed by the Commission

(38) The *conciliator* should examine the parties' submissions and suggestions for the determination of FRAND terms and conditions, and consider the relevant negotiation steps, among other relevant circumstances. The *conciliator*, upon its own initiative or the request of a party, should be able to require the parties to submit evidence it deems necessary for the fulfilment of its task. It should also be able to examine publicly available information and the competence centre's register and reports of other FRAND determinations, as well as non-confidential documents and information produced by or submitted to the competence centre.

Amendment

(38) The *panel of conciliators* should examine the parties' submissions and suggestions for the determination of FRAND terms and conditions, and consider the relevant negotiation steps, among other relevant circumstances. The *panel of conciliators*, upon its own initiative or the request of a party, should be able to require the parties to submit evidence it deems necessary for the fulfilment of its task. It should also be able to examine publicly available information and the competence centre's register and reports of other FRAND determinations, as well as non-confidential documents and information produced by or submitted to the competence centre.

Or. en

Amendment 211
Emmanuel Maurel

Proposal for a regulation
Recital 39

Text proposed by the Commission

(39) If a party fails to engage in the FRAND determination after the conciliator has been appointed, ***the other party may request the termination or may request that the conciliator issues a recommendation for a FRAND determination on the basis of the information it was able to assess.***

Amendment

(39) If a party fails to engage in the FRAND determination after the conciliator has been appointed ***and has issued a binding opinion***, the ***other party*** may refer the ***dispute to the EUIPO***.

Or. fr

Amendment 212

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 39

Text proposed by the Commission

(39) If a party fails to engage in the FRAND determination after the ***conciliator*** has been appointed, the other party may request the termination or may request that the ***conciliator*** issues a recommendation for a FRAND determination on the basis of the information it was able to assess.

Amendment

(39) If a party fails to engage in the FRAND determination after the ***panel of conciliators*** has been appointed, the other party may request the termination or may request that the ***panel of conciliators*** issues a recommendation for a FRAND determination on the basis of the information it was able to assess.

Or. en

Amendment 213

Patrick Breyer

Proposal for a regulation
Recital 39

Text proposed by the Commission

(39) If a party fails to engage in the FRAND determination after the ***conciliator***

Amendment

(39) If a party fails to engage in the FRAND determination after the ***panel of***

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

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

Or. en

Amendment 214
Patrick Breyer

Proposal for a regulation
Recital 40

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 215
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Recital 40

Text proposed by the Commission

(40) If a party initiates a procedure in a

Amendment

(40) If a party initiates a procedure in a

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

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

Or. en

Amendment 216
Emmanuel Maurel

Proposal for a regulation
Recital 41

Text proposed by the Commission

(41) At the conclusion of the procedure, the conciliator should make a proposal ***recommending FRAND terms and conditions. Either party should have the option to accept or reject the proposal. If the parties do not settle and/or do not accept its proposal, the conciliator should draft a report of the FRAND determination. The report would have a confidential and a non-confidential version. The non-confidential version of the report should contain the proposal for FRAND terms and conditions and the methodology used and should be provided to the competence centre for publication in order to inform any subsequent FRAND determination between the parties and other stakeholders involved in similar negotiations. The report would thus have a dual purpose to encourage the parties to settle and to provide***

Amendment

(41) At the conclusion of the procedure, the conciliator should make a proposal ***setting out binding*** FRAND terms and conditions.

transparency as to the process and the recommended FRAND terms in cases of disagreement.

Or. fr

Amendment 217

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) At the conclusion of the procedure, the *conciliator* should make a proposal recommending FRAND terms and conditions. Either party should have the option to accept or reject the proposal. If the parties do not settle and/or do not accept its proposal, the *conciliator* should draft a report of the FRAND determination. The report would have a confidential and a non-confidential version. The non-confidential version of the report should contain the proposal for FRAND terms and conditions and the methodology used and should be provided to the competence centre for publication in order to inform any subsequent FRAND determination between the parties and other stakeholders involved in similar negotiations. The report would thus have a dual purpose to encourage the parties to settle and to provide transparency as to the process and the recommended FRAND terms in cases of disagreement.

Amendment

(41) At the conclusion of the procedure, the *panel of conciliators* should make a proposal recommending FRAND terms and conditions. Either party should have the option to accept or reject the proposal. If the parties do not settle and/or do not accept its proposal, the *panel of conciliators* should draft a report of the FRAND determination. The report would have a confidential and a non-confidential version. The non-confidential version of the report should contain the proposal for FRAND terms and conditions and the methodology used and should be provided to the competence centre for publication in order to inform any subsequent FRAND determination between the parties and other stakeholders involved in similar negotiations. The report would thus have a dual purpose to encourage the parties to settle and to provide transparency as to the process and the recommended FRAND terms in cases of disagreement.

Or. en

Amendment 218

Patrick Breyer

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) At the conclusion of the procedure, the **conciliator** should make a proposal recommending FRAND terms and conditions. Either party should have the option to accept or reject the proposal. If the parties do not settle and/or do not accept its proposal, the **conciliator** should draft a report of the FRAND determination. The report would have a confidential and a non-confidential version. The non-confidential version of the report should contain the proposal for FRAND terms and conditions and the methodology used and should be provided to the competence centre for publication in order to inform any subsequent FRAND determination between the parties and other stakeholders involved in similar negotiations. The report would thus have a dual purpose to encourage the parties to settle and to provide transparency as to the process and the recommended FRAND terms in cases of disagreement.

Amendment

(41) At the conclusion of the procedure, the **panel of conciliators** should make a proposal recommending FRAND terms and conditions. Either party should have the option to accept or reject the proposal. If the parties do not settle and/or do not accept its proposal, the **panel of conciliators** should draft a report of the FRAND determination. The report would have a confidential and a non-confidential version. The non-confidential version of the report should contain the proposal for FRAND terms and conditions and the methodology used and should be provided to the competence centre for publication in order to inform any subsequent FRAND determination between the parties and other stakeholders involved in similar negotiations. The report would thus have a dual purpose to encourage the parties to settle and to provide transparency as to the process and the recommended FRAND terms in cases of disagreement.

Or. en

Amendment 219
Geoffroy Didier

Proposal for a regulation
Recital 42

Text proposed by the Commission

(42) The Regulation respects the intellectual property rights of patent owners (Article 17(2) of EU Charter of Fundamental Rights), although it includes a restriction on the ability to enforce a SEP that has not been registered within a certain time-limit and introduces a requirement to conduct a FRAND determination before enforcing individual SEPs. The limitation on the

Amendment

deleted

exercise of intellectual property rights is allowed under the EU Charter, provided that the proportionality principle is respected. According to settled case-law, fundamental rights can be restricted provided that those restrictions correspond to objectives of general interest pursued by the Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference which infringes the very essence of the rights guaranteed³⁹. In that respect, this Regulation is in the public interest in that it provides a uniform, open and predictable information and outcome on SEPs for the benefit of SEP holder, implementers and end users, at Union level. It aims at dissemination of technology for the mutual advantage of the SEP holders and implementers. Furthermore, the rules concerning the FRAND determination are temporary thus limited and aimed at improving and streamlining the process but are not ultimately binding.⁴⁰

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

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

*Società Cooperativa of 14 June 2017,
taking into account the specificities of
SEP licensing.*

Or. en

Amendment 220

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 42

Text proposed by the Commission

Amendment

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

deleted

*improving and streamlining the process but are not ultimately binding.*⁴⁰

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

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

Or. en

Amendment 221
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Recital 43

Text proposed by the Commission

Amendment

(43) *The FRAND determination is also consistent with the right to an effective remedy and to access to justice as laid down in Article 47 of the Charter of Fundamental Rights of the European Union as the implementer and the SEP holder fully retain that right. In case of* ***deleted***

failure to register within the prescribed time limit, the exclusion of the right to effective enforcement is limited and necessary and meets objectives of general interest. As confirmed by the CJEU⁴¹, the provision of a mandatory dispute resolution as a precondition to access to competent courts of Member States is deemed to be compatible with the principle of effective judicial protection. The FRAND determination follows the conditions for mandatory dispute resolution outlined in the CJEU judgments, taking into account the particular characteristics of SEP licensing.

⁴¹ *Judgment of the Court of Justice of 18 March 2010, Rosalba Alassini v Telecom Italia SpA (C-317/08), Filomena Califano v Wind SpA (C-318/08), Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08), Joined cases C-317/08, C-318/08, C-319/08 and C-320/08, EU:C:2010:146, and judgement of the Court of Justice of 14 June 2017, Livio Menini and Maria Antonia Rampanelli v Banco Popolare – Società Cooperativa, C-75/16, EU:C:2017:457*

Or. en

Amendment 222
Angelika Niebler

Proposal for a regulation
Recital 43

Text proposed by the Commission

(43) The FRAND determination is also consistent with the right to an effective remedy and to access to justice as laid down in Article 47 of the Charter of Fundamental Rights of the European Union

Amendment

(43) The FRAND determination is also consistent with the right to an effective remedy and to access to justice as laid down in Article 47 of the Charter of Fundamental Rights of the European Union

as the implementer and the SEP holder fully retain that right. ***In case of failure to register within the prescribed time limit, the exclusion of the right to effective enforcement is limited and necessary and meets objectives of general interest. As confirmed by the CJEU⁴¹, the provision of a mandatory dispute resolution as a precondition to access to competent courts of Member States is deemed to be compatible with the principle of effective judicial protection. The FRAND determination follows the conditions for mandatory dispute resolution outlined in the CJEU judgments, taking into account the particular characteristics of SEP licensing.***

⁴¹ Judgment of the Court of Justice of 18 March 2010, Rosalba Alassini v Telecom Italia SpA (C-317/08), Filomena Califano v Wind SpA (C-318/08), Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08), Joined cases C-317/08, C-318/08, C-319/08 and C-320/08, EU:C:2010:146, and judgement of the Court of Justice of 14 June 2017, Livio Menini and Maria Antonia Rampanelli v Banco Popolare – Società Cooperativa, C-75/16, EU:C:2017:457

as the implementer and the SEP holder fully retain that right.

⁴¹ Judgment of the Court of Justice of 18 March 2010, Rosalba Alassini v Telecom Italia SpA (C-317/08), Filomena Califano v Wind SpA (C-318/08), Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08), Joined cases C-317/08, C-318/08, C-319/08 and C-320/08, EU:C:2010:146, and judgement of the Court of Justice of 14 June 2017, Livio Menini and Maria Antonia Rampanelli v Banco Popolare – Società Cooperativa, C-75/16, EU:C:2017:457

Or. en

Amendment 223 **Geoffroy Didier**

Proposal for a regulation **Recital 44**

Text proposed by the Commission

(44) When ***determining the aggregate royalties and*** making FRAND determinations the conciliators should take into account in particular any Union acquis

Amendment

(44) When making FRAND determinations the conciliators should take into account in particular any Union acquis and judgments of the Court of Justice

and judgments of the Court of Justice pertaining to SEPs *as well as guidance issued under this Regulation*, the Horizontal Guidelines⁴² and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.⁴³ Furthermore, the conciliators should consider any expert opinion on *the aggregate royalty* or in the absence thereof, should request information from the parties before it makes its final proposals *well as guidance issued under this Regulation, as well as guidance issued under this Regulation*.

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

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

pertaining to SEPs the Horizontal Guidelines⁴² and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.⁴³ Furthermore, the conciliators should consider any expert opinion on *FRAND determination* or in the absence thereof, should request information from the parties before it makes its final proposals.

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

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

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 224

Adrián Vázquez Lázara

Proposal for a regulation

Recital 46

Text proposed by the Commission

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation are likely to facilitate the licensing of their SEP. Additional conditions are necessary to

Amendment

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation are likely to facilitate the licensing of their SEP. Additional conditions are necessary to

relieve the cost burden on such SMEs such as reduced administration fees and ***potentially reduced fees for essentiality checks and*** conciliation in addition to free support and trainings. ***The SEPs of micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to.*** SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

relieve the cost burden on such SMEs such as reduced ***or waiver of*** administration fees and conciliation ***related fees*** in addition to free support and trainings. SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

Or. en

Justification

For consistency with new technical conciliation procedure. SME SEP holders should benefit from technical advice on how to license their SEPs.

Amendment 225

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 46

Text proposed by the Commission

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

Amendment

(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation are likely to facilitate the licensing of their SEP. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration fees and potentially reduced fees and conciliation in addition to free support and trainings. SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or

SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.

exemptions from FRAND royalties.

Or. en

Amendment 226
Geoffroy Didier

Proposal for a regulation
Recital 46

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The European Commission has been actively promoting and funding the participation of

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

Amendment 227

Geoffroy Didier

Proposal for a regulation

Recital 47

Text proposed by the Commission

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

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Amendment

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

⁴⁴ OJ L 123, 12.5.2016, p. 1.

Or. en

Justification

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

Amendment 228

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Recital 48

Text proposed by the Commission

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

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

Amendment

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

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

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

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

Or. en

Amendment 229
Emmanuel Maurel

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. ***The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴⁵.

⁴⁵ Regulation (EU) No 182/2011 of the

Amendment

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴⁵.

⁴⁵ Regulation (EU) No 182/2011 of the

European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)

Or. fr

Amendment 230
Geoffroy Didier

Proposal for a regulation
Recital 48

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Justification

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

Amendment 231

Adrián Vázquez Lázara

Proposal for a regulation

Recital 49

Text proposed by the Commission

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

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

Amendment

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

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

Or. en

Justification

For consistency with the new technical conciliation procedure.

Amendment 232

Geoffroy Didier

Proposal for a regulation

Recital 49

Text proposed by the Commission

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

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

Amendment

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

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

Or. en

Amendment 233

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 1 – paragraph 1 – point c

Text proposed by the Commission

(c) ***a procedure to evaluate the essentiality of registered SEPs;***

Amendment

deleted

Or. en

Amendment 234

Adrián Vázquez Lázara

Proposal for a regulation

Article 1 – paragraph 1 – point c

Text proposed by the Commission

(c) a procedure *to evaluate the essentiality of registered SEPs*;

Amendment

(c) a *technical conciliation* procedure

Or. en

Justification

For consistency with new technical conciliation procedure. Peer evaluation procedure would no longer exist.

Amendment 235

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Regulation shall only apply to patents that are in force after the entry into force of this Regulation.

Or. en

Justification

To ensure legal certainty, the proposed Regulation should apply to future standards only.

Amendment 236

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. This Regulation shall apply to patents that are essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual property policy, ***if the Commission has determined with regard to the standard concerned, by means of a delegated act pursuant to Article 67, that the functioning of the internal market is severely distorted.***

Or. en

Justification

The proposed Regulation seeks to make the existing Standard Essential Patents (SEP) market in Europe more transparent, more predictable and more efficient. However, it does not introduce evidence that this problem exists. That is concerning, considering that SEPs are becoming increasingly important, for the general ICT sector and other sectors, such as car manufacturers and the Internet of Things. The ‘Empirical Assessment’[1] that the Commission asked for showed inconclusive evidence. This is contrary to the Better Regulation principles, which require that any intervention in the markets is evidence-based. Furthermore, important stakeholders on SEP-licensing for this report, including the EPO and UPC, have not been consulted. Finally, the SEPs market is a global market, in which the EU is currently playing an important role. It is important to ensure that the proposed Regulation will not impact the market contrary of what it tries to achieve, by for example incentivizing others countries outside of the EU to continue to infringe existing patents or worse. Until proven otherwise, the current global SEP system seems to work well, giving legal certainty to both SEP holders and implementers. The proposed regulation should therefore only apply to SEPs where the Commission has determined that a genuine internal market problem has manifested itself, and presented this in a delegated act to both co-legislators.[1] European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Baron, J., Essentiality checks for potential SEPs – Framework for assessing the impact of different policy options, Publications Office of the European Union, 2023, <https://data.europa.eu/doi/10.2873/002897>

Amendment 237
Geoffroy Didier

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 238

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 239
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 240
Emmanuel Maurel

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

Text proposed by the Commission

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

Amendment

deleted

Or. fr

Amendment 241
Catharina Rinzema, Bart Groothuis

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

Text proposed by the Commission

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

Amendment

deleted

Amendment 242

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 243

Geoffroy Didier

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 244

Patrick Breyer

Proposal for a regulation

Article 1 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 245
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 246
Catharina Rinzema, Bart Groothuis

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

See Art 1(1a)

Amendment 247

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 248

Patrick Breyer

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 249

Emmanuel Maurel

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

b) before **and after** the entry into force of this Regulation.

Or. fr

Amendment 250

Emmanuel Maurel

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 251

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Amendment 252

Geoffroy Didier

Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Justification

Paragraph no longer necessary under the revised structure.

Amendment 253
Emmanuel Maurel

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Amendment 254
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

Amendment

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

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

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

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

Or. en

Amendment 255
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, ***by [OJ: please insert the date: 24 months from the date of entry into force of this Regulation], and*** after an appropriate consultation process, by means of a delegated act pursuant to Article 67, establish a list of such use cases, standards or parts thereof.

Or. en

Amendment 256
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do

Amendment

4. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do

not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, establish a list of such use cases, standards or parts thereof, **for the purposes of paragraph 3.**

not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, establish a list of such use cases, standards or parts thereof.

Or. en

Amendment 257
Geoffroy Didier

Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 258
Emmanuel Maurel

Proposal for a regulation
Article 1 – paragraph 5

Text proposed by the Commission

5. This Regulation shall apply to **holders of SEP** in force in one or more Member States.

Amendment

5. This Regulation shall apply to **all SEPs** in force in one or more Member States.

Or. fr

Amendment 259
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 260
Emmanuel Maurel

Proposal for a regulation
Article 2 – paragraph 1 – point 6

Text proposed by the Commission

6) ‘SEP holder’ means an owner of a SEP or a person holding an exclusive licence for a SEP in one of more Member States;

Amendment

6) ‘SEP holder’ means an owner of a SEP or a person holding an exclusive licence for a SEP;

Or. fr

Amendment 261

Adrián Vázquez Lázara

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Text proposed by the Commission

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

Amendment

(7) ‘implementer’ means a natural or legal person that implements, or intends to implement, a standard in a product, process, service or system ***regardless of where in the supply chain the potential licensee operates.***

Or. en

Justification

The holder of an SEP with a FRAND commitment has a duty to grant licences to any third party upon request, irrespective of the third party's place in the supply chain

Amendment 262

Patrick Breyer

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Text proposed by the Commission

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

Amendment

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

Amendment 263
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

No longer necessary under the revised structure.

Amendment 264
Emmanuel Maurel

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

Text proposed by the Commission

Amendment

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

10) ‘aggregate royalty’ means the maximum amount of royalty for all patents essential to a standard ***used in a product, process, service or system;***

Or. fr

Amendment 265
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 266

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 2 – paragraph 1 – point 11

Text proposed by the Commission

Amendment

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

(11) ‘patent pool’ means *a consortium of at least two companies agreeing to cross-license patents relating to a particular technology. The creation of a patent pool can save holders and licensees not only time, but also often offer better scrutiny on essentiality, more clarity on aggregate licensing fees and the license rates can be expected to be FRAND. Additionally, they can function as one-stop-shop solutions and should therefore be stimulated in its use.*

Or. en

Amendment 267

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 268
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 2 – paragraph 1 – point 12

Text proposed by the Commission

(12) ‘**peer evaluation**’ means a process for the re-examination of the preliminary results of essentiality checks by evaluators other than those that carried out the original essentiality check;

Amendment

deleted

Or. en

Amendment 269
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 2 – paragraph 1 – point 16

Text proposed by the Commission

(16) ‘patent family’ means a collection of patent documents that **cover the same invention and whose members have the same priorities**;

Amendment

(16) ‘patent family’ means a collection of patent documents that **all have at least one priority in common, including the priority document(s) themselves**;

Or. en

Amendment 270

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 271

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(18a) ‘Unitary Patent’ means a legal title that provides uniform protection across all participating countries on a one-stop-shop basis, providing huge cost advantages and reducing administrative burdens;

Or. en

Amendment 272

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(18b) ‘Unified Patent Court ’ means an agreement between EU countries to set up a single and specialised patent jurisdiction, used for resolving SEP disputes;

Or. en

Amendment 273

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(18c) ‘Unitary Patent Register’ means a register that contains patent holders’ commitment to license patents on FRAND terms;

Or. en

Amendment 274

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(18d) ‘Patent Mediation and Arbitration Centre’ means a centre that can be used to resolve SEP disputes, such as determining the essentiality of the

patent(s) concerned and the appropriate FRAND licensing conditions. It offers support in the settlement of disputes relating to “classic” European patents and Unitary Patents. The Court may explore with the parties, the possibility to reach a settlement using the facilities of the Patent Mediation and Arbitration Centre;

Or. en

Amendment 275
Adrián Vázquez Lázara

Proposal for a regulation
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

License to all

Standard essential patent holders, whether their patents pertain to standards covered by this Regulation or not, and where they or previous owners have committed to FRAND terms, must not decline to grant a FRAND license to any party seeking one, regardless of the position of the potential licensee within the supply chain.

Or. en

Justification

It is crucial to emphasize that licenses for all SEPs with FRAND commitments should be made available to any party seeking a FRAND license, irrespective of their position within the supply chain

Amendment 276
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Non-discriminatory licensing

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

Or. en

Amendment 277
Patrick Breyer

Proposal for a regulation
Article -3 (new)

Text proposed by the Commission

Amendment

Article-3

Composition of the competence centre

The competence centre shall be composed of independent experts having proven experience in the patent field.

The independence of these experts shall be verified by the Management Board of the European Patent Office before they take office and any time deemed necessary by the during the performance of their tasks.

Or. en

Amendment 278
Patrick Breyer

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

1. The tasks under this Regulation shall be performed by a competence centre established within the EUIPO with the necessary human and financial resources.

Amendment

1. The tasks under this Regulation shall be performed by a competence centre established within the EUIPO with the necessary human and financial resources ***and in close cooperation with the European Patent Office, national patent offices and standards development organisations.***

Or. en

Amendment 279

Adrián Vázquez Lázara

Proposal for a regulation

Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) set up and manage rosters of ***evaluators and*** conciliators;

Amendment

(b) set up and manage rosters of conciliators ***for the technical conciliation and FRAND determination procedures***

Or. en

Justification

For consistency with new technical conciliation procedure. The conciliator for the technical procedure must have relevant technical expertise.

Amendment 280

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 3 – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 281

Adrián Vázquez Lázara

Proposal for a regulation

Article 3 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

(c) set up and administer a **technical conciliation procedure**

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 282

Adrián Vázquez Lázara

Proposal for a regulation

Article 3 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) provide training to **evaluators and conciliators**;

(e) provide training to conciliators **for the technical conciliation procedure and FRAND determination**;

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 283

Geoffroy Didier

Proposal for a regulation

Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

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

Or. en

Amendment 284

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

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

Or. en

Amendment 285

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 3 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) administer a process for aggregate royalty determination;

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

Or. en

Amendment 286

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 3 – paragraph 2 – point g – point i

Text proposed by the Commission

Amendment

(i) publishing the results and reasoned opinions of the essentiality checks and non-confidential reports of the FRAND determinations;

deleted

Or. en

Amendment 287
Emmanuel Maurel

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

Text proposed by the Commission

Amendment

i) publishing the results and reasoned opinions of the essentiality checks and non-confidential **reports** of the FRAND determinations;

i) publishing the results and reasoned opinions of the essentiality checks and non-confidential **opinions** of the FRAND determinations;

Or. fr

Amendment 288
Adrián Vázquez Lázara, Catharina Rinzema

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

Text proposed by the Commission

Amendment

(i) publishing the results and reasoned opinions of the **essentiality checks and** non-confidential reports of the FRAND determinations;

(i) publishing the results and reasoned opinions of the non-confidential reports of the FRAND determinations;

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 289
Emmanuel Maurel

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

Text proposed by the Commission

j) *raise awareness about SEP licensing, including SEP licensing in the value chain.*

Amendment

j) *establish a dedicated working group on conditions for licensing SEPs in the value chain.*

Or. fr

Amendment 290
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article -4 (new)

Text proposed by the Commission

Amendment

Article-4

European Patent Office

1. A Union register for SEPs ('the register') is established, in cooperation with the European Patent Office.

2. The essentiality check of standard essential patents shall be conducted, where necessary, as part of a patent application at the European Patent Office.

Or. en

Amendment 291
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. A Union register for SEPs ('the register') is established.

deleted

Or. en

Amendment 292
Gilles Lebreton

Proposal for a regulation
Article 4 – paragraph 3 – point b

Text proposed by the Commission

Amendment

b) registered SEPs **identification**, including the country of registration and patent number;

b) **identification of** registered SEPs, **including SEPs already in force in one or more Member States before the entry into force of this Regulation**, including the country of registration and patent number ;

Or. fr

Amendment 293
Geoffroy Didier

Proposal for a regulation
Article 4 – paragraph 3 – point c

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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

Amendment 294

Patrick Breyer

Proposal for a regulation

Article 4 – paragraph 3 – point h

Text proposed by the Commission

(h) the existence of any public standard terms and conditions, including SEP holder's royalty and discount policies;

Amendment

(h) the existence of any public standard terms and conditions, including SEP holder's royalty, **royalty-free** and discount policies;

Or. en

Amendment 295

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 4 – paragraph 4 – point b

Text proposed by the Commission

(b) the grant or transfer of a licence through patent pools, where applicable pursuant to Article 9;

Amendment

deleted

Or. en

Justification

Patent pools should be stimulated, because they can address many of the SEP licensing challenges by offering better scrutiny on essentiality, more clarity on aggregate licensing fees and one-stop-shop solutions. This was confirmed by the European Commission Communication of 29 November 2017 "Setting out the EU approach to Standard Essential Patents", COM(2017) 712 final, which stated that "The creation of patent pools or other licensing platforms, within the scope of EU competition law, should be encouraged." Article 9 already requires patent pools to publish a list of licensees by sector. This provision would require an extra administrative burden. It also confirms the amendments related to art 15-18.

Amendment 296

Antonius Manders, Annie Schreijer-Pierik

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 297
Catharina Rinzema, Bart Groothuis

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

Text proposed by the Commission

Amendment

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

(c) information on whether an essentiality check or peer evaluation **has** been performed and, **unless not possible because of contractual obligations agreed upon between parties, the outcome of that process;**

Or. en

Justification

See art 4(b). Because essentiality check done by patent pools can be subject to confidentiality clauses, the confidentiality of these agreements needs to be respected.

Amendment 298
Adrián Vázquez Lázara, Catharina Rinzema

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

Text proposed by the Commission

Amendment

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

(c) information on whether an essentiality check **has** been performed **by a competent court of a Member State** and

reference the result *if from a final judgement*

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 299
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 300
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

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

Text proposed by the Commission

(f) date of publication of information pursuant to Article 19(1) *in conjunction with Article 14(7), Article 15(4) and Article 18(11)*;

Amendment

(f) date of publication of information pursuant to Article 19(1);

Or. en

Justification

See art 15-18

Amendment 301

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 4 – paragraph 4 – point g

Text proposed by the Commission

Amendment

**(g) the date of suspension of the SEP
from the Register pursuant to Article 22;** *deleted*

Or. en

Justification

See art 4(b)

Amendment 302

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 4 – paragraph 4 – point i

Text proposed by the Commission

Amendment

**(i) the date of removal of the SEP
from the register pursuant to Article 25
and the grounds for removal;** *deleted*

Or. en

Amendment 303

Geoffroy Didier

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

**4a. Prior to registering their patents,
SEP holders may voluntarily submit their
SEPs for essentiality checking to the
Competence Centre.**

Or. en

Justification

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

Amendment 304
Emmanuel Maurel

Proposal for a regulation
Article 4 – paragraph 7

Text proposed by the Commission

7. The competence centre shall keep the register easily accessible for public inspection. The data shall be considered to be of public interest and may be accessed by any third party free of charge.

Amendment

7. The competence centre shall keep the register easily accessible for public inspection. ***The competence centre shall provide a copy translated into the official languages of the European Union if necessary.*** The data shall be considered to be of public interest and may be accessed by any third party free of charge.

Or. fr

Amendment 305
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

concern information that is not realistic, or even feasible for SEP holders to share. The obligation to share the information under (b) should fall on implementers, as they are the only

ones who can realistically be expected to provide it (see Article 7).

Amendment 306
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 307
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 5 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) any commitment by an SEP holder to offer SMEs favourable conditions or royalty-free access to its SEPs in line with Article 62;

Or. en

Amendment 308
Geoffroy Didier

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

Text proposed by the Commission

(d) information regarding known products, processes, services or systems

Amendment

(d) information regarding known products, processes, services or systems

and implementations pursuant to Article 7, first paragraph, point (b);

and implementations *as well as projected pricing, anticipated sales volume, and any other relevant market data* pursuant to Article 7, first paragraph, point (b);

Or. en

Amendment 309

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 5 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(f) non-confidential information on FRAND determinations pursuant to Article 11; **deleted**

Or. en

Amendment 310

Emmanuel Maurel

Proposal for a regulation

Article 5 – paragraph 2 – point g

Text proposed by the Commission

Amendment

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

Or. fr

Amendment 311

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 5 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) information on aggregate royalties **deleted**

pursuant to Articles 15, 16 and 17;

Or. en

Justification

See art 15-17

Amendment 312

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 5 – paragraph 2 – point h

Text proposed by the Commission

Amendment

(h) expert opinions referred to in Article 18; **deleted**

Or. en

Justification

See art 18

Amendment 313

Emmanuel Maurel

Proposal for a regulation

Article 5 – paragraph 2 – point h

Text proposed by the Commission

Amendment

h) expert opinions referred to in Article 18;

h) binding expert opinions referred to in Article 18;

Or. fr

Amendment 314

Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation

Article 5 – paragraph 2 – point j

Text proposed by the Commission

Amendment

(j) SEPs selected for essentiality checks pursuant to Article 29, the reasoned opinions or the final reasoned opinions pursuant to Article 33; **deleted**

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 315

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 5 – paragraph 2 – point j

Text proposed by the Commission

Amendment

(j) SEPs selected for essentiality checks pursuant to Article 29, the reasoned opinions or the final reasoned opinions pursuant to Article 33; **deleted**

Or. en

Amendment 316

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 5 – paragraph 2 – point k

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 317
Geoffroy Didier

Proposal for a regulation
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 318
Patrick Breyer

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) may be subject to the payment of a fee.

3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) **shall be free by principle. It** may be subject to the payment of a fee **on a case-by-case basis.**

The information made accessible shall not be subject to licensing terms, so that it can be used freely.

Or. en

Amendment 319
Emmanuel Maurel

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) may be subject to the payment of a fee.

Amendment

3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) may be subject to the payment of a **reasonable fee, as set out in Article 63.**

Or. fr

Amendment 320
Gilles Lebreton

Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission

4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge subject to registration with the competence centre.

Amendment

4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge subject to registration with the competence centre. **Academic institutions shall also have access to this information free of charge subject to registration with the competence centres.**

Or. fr

Amendment 321
Patrick Breyer

Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission

4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge **subject to registration with the competence centre.**

Amendment

4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge.

Or. en

Justification

Prior registration should not be an access condition for public authorities.

Amendment 322

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. When a party requests that data and documents of the database be kept confidential, that party shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. The competence centre may disclose that non-confidential version.

Amendment

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

Or. en

Amendment 323

Emmanuel Maurel

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

5. Upon request, the competence centre shall issue registration certificates or certified copies of the data and documents in the register or the database. The registration certificates and certified copies may be subject to the payment of a fee.

Amendment

5. Upon request, the competence centre shall issue registration certificates or certified copies of the data and documents in the register or the database. The registration certificates and certified copies may be subject to the payment of a ***reasonable*** fee.

Or. fr

Amendment 324

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

Any holder of a patent which is essential to a standard for which FRAND commitments have been made in one or more Member States shall provide to the competence centre the following information:

Or. en

Amendment 325

Geoffroy Didier

Proposal for a regulation

Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 326

Emmanuel Maurel

Proposal for a regulation

Article 7 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

extent such information is known to the SEP holder.

extent such information is known to the SEP holder. *in this regard, components or modules which may be incorporated into other products, processes, services or systems constitute in themselves ‘products, processes, services or systems’ in so far as the subject matter of the SEP may be incorporated into or intended to be applied to those components or modules.*

Or. fr

Amendment 327
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 328
Geoffroy Didier

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

Text proposed by the Commission

(b) *where available, its standard terms and conditions for SEP licensing, including its royalty and discount policies, within 7 months from the opening of the*

Amendment

deleted

registration for the relevant standard and implementation by the competence centre.

Or. en

Justification

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

Amendment 329
Patrick Breyer

Proposal for a regulation
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The competence centre shall liaise with the relevant patent offices and standards development organisations to verify the robustness of the information provided by the SEP holder.

Or. en

Amendment 330
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 8

Text proposed by the Commission

Amendment

Article 8

deleted

Information pertaining to essentiality

A SEP holder shall provide to the competence centre the following information to be included in the database and referenced in the register:

(a) a final decision on essentiality for a registered SEP made by a competent court of a Member State within 6 months from the publication of such decision.

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

Or. en

Amendment 331

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

A SEP holder shall provide to the competence centre the following information to be included in the database and referenced in the register:

Amendment

Any holder of a patent which is essential to a standard for which FRAND commitments have been made in one or more Member States shall provide to the competence centre the following information to be included in the database and referenced in the register:

Or. en

Amendment 332

Patrick Breyer

Proposal for a regulation

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) a final decision on essentiality for a registered SEP made by a competent court of a Member State within 6 months from the publication of such decision.

Amendment

(a) a final decision on essentiality for a registered SEP made by a competent court of a Member State within 3 months from the publication of such decision.

Amendment 333

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) a final decision on essentiality for a registered SEP made by a competent court of a Member State within **6 months from the publication of such decision.**

Amendment

(a) a final decision on essentiality for a registered SEP made by a competent court of a Member State within **two weeks after the final judgement.**

Amendment 334

Geoffroy Didier

Proposal for a regulation

Article 8 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 335

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 8 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

See art 4(b). Not only before, but also after the start of the new system, essentiality checks conducted by independent entities should be taken into account to avoid a duplication of work and costs.

Amendment 336

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 8 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 337

Emmanuel Maurel

Proposal for a regulation

Article 8 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 338
Geoffroy Didier

Proposal for a regulation
Article 8 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 339
Geoffroy Didier

Proposal for a regulation
Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Information to be provided by patent

pools

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

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

Or. en

Justification

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

Amendment 340
Geoffroy Didier

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

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

Or. en

Amendment 341
Patrick Breyer

Proposal for a regulation
Article 9 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) standards identified as 'open standards';

Amendment 342

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 9 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) process for evaluating SEPs; deleted

Or. en

Justification

See art 4(b). Essentiality check done by patent pools are often considered a trade secret, whose disclosure would limit the effectiveness of the patent pool.

Amendment 343

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 9 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) roster of evaluators having residence in the Union; deleted

Or. en

Justification

See art 4(b). To ensure the safety of the technical evaluators of patent pools, who provide the essentiality checks, it is necessary to keep their names confidential.

Amendment 344

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 9 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) list of evaluated SEPs and list of SEPs being licensed; **deleted**

Or. en

Justification

See art 4(b). Disclosure of a list of evaluated SEPs and a list of SEPs being licensed would mean that the patent pool would have to act in breach of confidence and against the contractual obligations governing the patent pool.

Amendment 345
Emmanuel Maurel

Proposal for a regulation
Article 9 – paragraph 1 – point g

Text proposed by the Commission

Amendment

g) list of products, services and processes that may be licensed through the patent pool or the entity;

g) list of products, services and processes that may be licensed through the patent pool or the entity; ***in this regard, components or modules which may be incorporated into other products, processes, services or systems constitute in themselves ‘products, processes, services or systems’ in so far as the subject matter of the SEP may be incorporated into or intended to be applied to those components or modules.***

Or. fr

Amendment 346
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 9 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) list of products, services and

(g) list of products, services and

processes that may be licensed through the patent pool *or the entity*;

processes that may be licensed through the patent pool;

Or. en

Amendment 347

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 9 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) royalties and discount policy per product category;

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

Or. en

Amendment 348

Patrick Breyer

Proposal for a regulation

Article 9 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) royalties and discount ***policy*** per product category;

(h) royalties, ***royalty-free*** and discount ***policies*** per product category;

Or. en

Amendment 349

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The competence centre shall verify

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

Or. en

Amendment 350

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Competent courts of Member States shall notify the competence centre within **two weeks after the final judgement** concerning SEPs on:

Or. en

Amendment 351

Geoffroy Didier

Proposal for a regulation

Article 11

Text proposed by the Commission

Article 11

Information on FRAND determinations

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

Amendment

deleted

information on the name of the parties, and on specific licensing rates determined.

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

Or. en

Justification

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

Amendment 352 Kosma Zlotowski

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 353 Patrick Breyer

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

1. The competence centre shall store in the database all the data provided by stakeholders, as well as opinions and reports of evaluators and conciliators.

Amendment

1. The competence centre shall store in the database all the data provided by stakeholders, ***including all relevant data to be provided by the standards development organisations***, as well as opinions and reports of evaluators and conciliators.

Or. en

Amendment 354
Emmanuel Maurel

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

1. The competence centre shall store in the database all the data provided by stakeholders, as well as opinions and reports of evaluators and conciliators.

Amendment

1. The competence centre shall store in the database all the data provided by stakeholders, as well as ***binding and justified*** opinions and ***as well as*** reports of evaluators and conciliators.

Or. fr

Amendment 355
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 13 – paragraph 2 – point a

Text proposed by the Commission

(a) administering the registrations of SEPs, ***essentiality checks*** and conciliation proceedings pursuant to this Regulation;

Amendment

(a) administering the registrations of SEPs and conciliation proceedings pursuant to this Regulation;

Or. en

Amendment 356
Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation
Article 13 – paragraph 2 – point a

Text proposed by the Commission

(a) administering the registrations of SEPs, *essentiality checks* and conciliation proceedings pursuant to this Regulation;

Amendment

(a) administering the registrations of SEPs and conciliation proceedings pursuant to this Regulation;

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 357
Patrick Breyer

Proposal for a regulation
Article 13 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) informing the public and all interested parties of the existence and quality of standards, with easily accessible research tools and reasonably understandable search results;

Or. en

Amendment 358
Patrick Breyer

Proposal for a regulation
Article 13 – paragraph 3

Text proposed by the Commission

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

Amendment

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

third country jurisdictions *and* alternative dispute resolution bodies.

third country jurisdictions *from WIPO and other* alternative dispute resolution bodies.

Or. en

Amendment 359
Patrick Breyer

Proposal for a regulation
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Enhanced cooperation with the European Patent Office, national patent offices and Standards Development Organisations

In performing its tasks under this Regulation, the competence centre shall proceed to regular checks with the European Patent Office, national patent offices and Standards Development Organisations in order to establish a maximum level of legal certainty.

The format and frequency of such verification procedures shall be determined by delegated acts.

Or. en

Amendment 360
Geoffroy Didier

Proposal for a regulation
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Duty of good faith

SEP holders and implementers must behave in good faith, before, during and after licenses negotiations. SEP

implementers who use standardized technology must proactively seek to take a license from the SEP holder who owns the technology they use.

Or. en

Justification

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

Amendment 361

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Chapter 2 – title

Text proposed by the Commission

Amendment

Notification of a standard ***and an aggregate royalty***

Notification of a standard

Or. en

Amendment 362

Geoffroy Didier

Proposal for a regulation

Article 14 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 363
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 364
Emmanuel Maurel

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. Such notification shall be made within 30 days of the publication of the latest technical specification.

2. Such notification shall be made **(a) within 90 days of the entry into force of this Regulation for standards already adopted, (b)** within 30 days of the publication of the latest technical specification **adopted after the entry into force of this Regulation.**

Or. fr

Amendment 365
Geoffroy Didier

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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

Amendment 366 Emmanuel Maurel

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. In the absence of the notification under paragraph (1), any holder of a SEP in force in one or more Member State shall notify individually, no later than 90 days from the publication of the latest technical specification, to the competence centre the information referred to in paragraph (1).

Amendment

3. In the absence of the notification under paragraph (1), any holder of a SEP in force in one or more Member State shall notify individually: ***(a) the standards already adopted within a maximum period of 150 days from the entry into force of this Regulation; (b) within a maximum period of 90 day***, no later than 90 days from the publication of the latest technical specification, to the competence centre the information referred to in paragraph (1).

Or. fr

Amendment 367 Emmanuel Maurel

Proposal for a regulation Article 15

Text proposed by the Commission

Article 15

Notification of an aggregate royalty to the competence centre

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

Amendment

deleted

covering a standard.

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

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

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

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

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

Or. fr

Amendment 368

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Notification of an aggregate royalty to the competence centre

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

120 days after:

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

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

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

Or. en

Justification

The proposed Regulation believes that companies taking licenses for patents that are deemed essential to an open standard need more information about aggregate royalties to facilitate license negotiations with patent owners. There is however, no evidence to support this claim. The Commission would set the aggregate, or total, royalty that should be paid to the SEP holder to license all SEPs for a given standard and in doing so, solve ‘one of the key issues’ in SEP licensing negotiations. This is however, not supported in the Commission’s own study.[1] Determining the aggregated royalty is normally done by a SEP holder and SEP licensor, and in case that bilateral process fails, determined by national courts on a case-by-case basis. To determine that an aggregated royalty would be set collectively, would risk a breach of competition law principles. The difficulties that arise when trying to determine the aggregated royalties is difficult and therefore, should remain with the experts working for the EU courts of law.[1] European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Baron, J., Essentiality checks for potential SEPs – Framework for assessing the impact of different policy options, Publications Office of the European Union, 2023, <https://data.europa.eu/doi/10.2873/002897>

Amendment 369
Geoffroy Didier

Proposal for a regulation
Article 15

Text proposed by the Commission

Amendment

Article 15

deleted

Notification of an aggregate royalty to the competence centre

1. Holders of SEPs in force in one or more Member States for which FRAND

commitments have been made may jointly notify the competence centre the aggregate royalty for the SEPs covering a standard.

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

(a) the commercial name of the standard;

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

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

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

(e) the estimated percentage of SEPs they own collectively from all SEPs for the standard;

(f) the implementations known to the SEP holders referred to in point (c);

(g) the global aggregate royalty, unless the notifying parties specify that the aggregate royalty is not global;

(h) any period for which the aggregate royalty referred to in paragraph (1) is valid.

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

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

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

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

Or. en

Justification

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

Amendment 370

Patrick Breyer

Proposal for a regulation

Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Holders **and implementers** of SEPs in force in one or more Member States **related to a standard identified under Article 1(4)** for which FRAND commitments have been made may jointly notify the competence centre **of** the aggregate royalty for the SEPs covering a standard.

Or. en

Amendment 371

Patrick Breyer

Proposal for a regulation

Article 15 – paragraph 2 – point c

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 372
Patrick Breyer

Proposal for a regulation
Article 15 – paragraph 2 – point f

Text proposed by the Commission

(f) the implementations known to the SEP holders referred to in point (c);

Amendment

(f) the implementations known to the SEP holders ***and/or implementers*** referred to in point (c);

Or. en

Amendment 373
Emmanuel Maurel

Proposal for a regulation
Article 16

Text proposed by the Commission

Article 16

Revision of aggregate royalty

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

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

Amendment

deleted

Or. fr

Amendment 374
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Revision of aggregate royalty

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

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

Or. en

Justification

See art 15

**Amendment 375
Geoffroy Didier**

**Proposal for a regulation
Article 16**

Text proposed by the Commission

Amendment

Article 16

deleted

Revision of aggregate royalty

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

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

Or. en

Justification

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

Amendment 376

Patrick Breyer

Proposal for a regulation

Article 16 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 377

Emmanuel Maurel

Proposal for a regulation

Article 17

Text proposed by the Commission

Article 17

Process for facilitating agreements on aggregate royalty determinations

1. Holders of SEPs in force in one or more Member States representing at least 20 % of all SEPs of a standard may request the competence centre to appoint

Amendment

deleted

a conciliator from the roster of conciliators to mediate the discussions for a joint submission of an aggregate royalty.

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

3. The request shall contain the following information:

a) commercial name of the standard;

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

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

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

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

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

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

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

information submitted in confidence.

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

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

Or. fr

Amendment 378

Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation

Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Process for facilitating agreements on aggregate royalty determinations

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

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

3. The request shall contain the following information:

(a) the commercial name of the standard;

(b) the date of publication of the latest

technical specification or the date of the first sale of new implementation on the Union market;

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

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

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

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

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

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

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

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

Or. en

Justification

See art 15

Amendment 379
Geoffroy Didier

Proposal for a regulation
Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Process for facilitating agreements on aggregate royalty determinations

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

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3. The request shall contain the following information:

(a) the commercial name of the standard;

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

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

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

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

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

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

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

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

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

Or. en

Amendment 380
Patrick Breyer

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Holders of SEPs in force in one or more Member States representing at least 20 % of all SEPs of a standard, ***or implementers seeking to implement the standard***, may request the competence centre to appoint a conciliator ***or a panel of conciliators according to Article 39***, from

the roster of conciliators to mediate the discussions for a joint submission of an aggregate royalty.

Or. en

Amendment 381

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 382

Patrick Breyer

Proposal for a regulation

Article 17 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 383

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 17 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 384
Patrick Breyer

Proposal for a regulation
Article 17 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 385
Timo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 17 – paragraph 6

Text proposed by the Commission

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

Amendment

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

understanding of the substance of the information submitted in confidence.

to permit a reasonable understanding of the substance of the information submitted in confidence.

Or. en

Amendment 386

Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation

Article 17 – paragraph 7

Text proposed by the Commission

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

Amendment

7. Where the SEP holders ***referred to in paragraph (3)*** fail to make a joint notification within 6 months from the appointment of the conciliator, the conciliator shall terminate the process.

Or. en

Amendment 387

Patrick Breyer

Proposal for a regulation

Article 17 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 388

Geoffroy Didier

Proposal for a regulation

Article 18

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

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