



2023/0133(COD)

31.10.2023

AMENDMENTS

389 - 780

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 389

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

Proposal for a regulation

Article 18

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Justification

See art 15

Amendment 390

Adrián Vázquez Lázara

Proposal for a regulation

Article 18 – title

Text proposed by the Commission

Amendment

Non-binding expert opinion *on aggregate royalty*

Determination of an aggregate royalty by a non-binding expert opinion

Or. en

Amendment 391

Emmanuel Maurel

Proposal for a regulation

Article 18 – title

Text proposed by the Commission

Amendment

Non-binding expert opinion on aggregate royalty

Binding expert opinion on aggregate royalty

Or. fr

Amendment 392
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission

1. A SEP holder or an implementer may request the competence centre for a **non-binding** expert opinion on a global aggregate royalty.

Amendment

1. A SEP holder or an implementer may request the competence centre for a **binding** expert opinion on a global aggregate royalty.

Or. fr

Amendment 393
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 18 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the standard has been included in the Delegated Act pursuant to Article 1(4).

Or. en

Amendment 394
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 18 – paragraph 4

Text proposed by the Commission

Amendment

4. The competence centre shall notify the relevant standard development organisation and all **known** stakeholders of the request. It shall publish the request on EUIPO's website and invite stakeholders to express interest in participating in the process within 30 days from the day when the request was published.

4. The competence centre shall notify the relevant standard development organisation and all **relevant** stakeholders of the request. It shall publish the request on EUIPO's website and invite stakeholders to express interest in participating in the process within 30 days from the day when the request was published.

Amendment 395
Kosma Zlotowski

Proposal for a regulation
Article 18 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 396
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 18 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 397

Adrián Vázquez Lázara

Proposal for a regulation

Article 18 – paragraph 6

Text proposed by the Commission

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

Amendment

6. If the requests for participation include **any combination of five** SEP holders **or** implementers, the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the appropriate background from the relevant field of technology.

Or. en

Amendment 398

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

Proposal for a regulation

Article 18 – paragraph 6

Text proposed by the Commission

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

Amendment

6. If the requests for participation include **5** SEP holders **or** implementers, or at least **3 SMEs**, , the competence centre shall appoint a panel of three conciliators selected from the roster of conciliators with the appropriate background from the relevant field of technology.

Or. en

Amendment 399
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 400
Kosma Zlotowski

Proposal for a regulation
Article 18 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 401
Marion Walsmann

Proposal for a regulation
Article 18 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 402
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 18 – paragraph 8 – introductory part

Text proposed by the Commission

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

Amendment

8. Following the appointment, the panel shall request the **interested parties, including** SEP holders, **implementers and other stakeholders** to, within one month:

Or. en

Amendment 403
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 8 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 404

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

Proposal for a regulation

Article 18 – paragraph 8 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 405

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

Proposal for a regulation

Article 18 – paragraph 8 – point b a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 406

Adrián Vázquez Lázara

Proposal for a regulation

Article 18 – paragraph 8 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Submit proof and documentation that could aid the panel in establishing an aggregate royalty.

Or. en

Amendment 407

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

Proposal for a regulation

Article 18 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. The panel shall permit participants to submit responses to the submissions provided for in paragraph 8.

Or. en

Amendment 408

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

Proposal for a regulation

Article 18 – paragraph 9 – point a

Text proposed by the Commission

Amendment

(a) to suspend the procedure for the expert opinion on aggregate royalty for an initial period of no longer than 6 months, ***which can be further extended on the basis of a duly justified request by one of the participating SEP holders,*** or

(a) to suspend the procedure for the expert opinion on aggregate royalty for an initial period of no longer than 6 months, or

Or. en

Amendment 409

Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 9 – point a

Text proposed by the Commission

(a) to suspend the procedure for **the expert opinion on aggregate royalty for** an initial period of no longer than 6 months, which can be further extended on the basis of a duly justified request by one of the participating SEP holders, or

Amendment

(a) to suspend the procedure for an initial period of no longer than 6 months, which can be further extended on the basis of a duly justified request by one of the participating SEP holders, or

Or. fr

Amendment 410
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 9 – point a

Text proposed by the Commission

(a) to suspend the procedure for the expert opinion on aggregate royalty for an initial period of no longer than 6 months, which can be further extended on the basis of a duly justified request by one of the participating **SEP holders**, or

Amendment

(a) to suspend the procedure for the expert opinion on aggregate royalty for an initial period of no longer than 6 months, which can be further extended on the basis of a duly justified request by one of the participating **stakeholders**, or

Or. fr

Amendment 411
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 9 – point b

Text proposed by the Commission

(b) to provide the expert opinion.

Amendment

(b) to provide the **binding** expert opinion.

Or. fr

Amendment 412
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 10

Text proposed by the Commission

10. The panel shall provide the expert opinion within 8 months of the end of the suspension period pursuant to paragraph 8(a) or of the decision referred to in paragraph 8(b). The opinion shall be supported by at least two of the three conciliators.

Amendment

10. The panel shall provide the **binding** expert opinion within 8 months of the end of the suspension period pursuant to paragraph 8(a) or of the decision referred to in paragraph 8(b). The **binding** opinion shall be supported by at least two of the three conciliators.

Or. fr

Amendment 413
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 18 – paragraph 10

Text proposed by the Commission

10. The panel shall provide the expert opinion within 8 months of the end of the suspension period pursuant to paragraph **8(a)** or of the decision referred to in paragraph **8(b)**. The opinion shall be supported by at least two of the three conciliators.

Amendment

10. The panel shall provide the expert opinion within 8 months of the end of the suspension period pursuant to paragraph **9(a)** or of the decision referred to in paragraph **9(b)**. The opinion shall be supported by at least two of the three conciliators.

Or. en

Amendment 414
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 18 – paragraph 11

Text proposed by the Commission

11. ***The*** expert opinion shall include a

Amendment

11. ***The*** expert opinion shall include a

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

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

Or. en

Amendment 415
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 11

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 416
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 12

Text proposed by the Commission

12. The expert opinion shall include an analysis of the value chain concerned and the potential impact of the aggregate royalty on the innovation incentives **of both SEP holders and** stakeholders in the

Amendment

12. The **binding** expert opinion shall include an analysis of the value chain concerned and the potential impact of the aggregate royalty on the innovation incentives, **in particular for** stakeholders

value chain where licensing is to take place.

in the value chain where licensing is to take place.

Or. fr

Amendment 417
Emmanuel Maurel

Proposal for a regulation
Article 18 – paragraph 13

Text proposed by the Commission

13. The competence centre shall publish the expert opinion and notify the participants of that publication.

Amendment

13. The competence centre shall publish the **binding** expert opinion and notify the participants of that publication.

Or. fr

Amendment 418
Geoffroy Didier

Proposal for a regulation
Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 419
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 19 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

1. The competence centre shall create an entry in the register for a standard for which FRAND commitments have been made within 60 days

Or. en

Justification

See art 15

Amendment 420
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 421
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 422
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 423
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. The competence centre shall publish a notice on the EUIPO website informing stakeholders that an entry in the register has been made **and refer to the publications referred to in paragraph (1)**. The competence centre shall notify known SEP holders individually by electronic means and the relevant standard development organisation of the notice in this paragraph.

2. The competence centre shall publish a notice on the EUIPO website informing stakeholders that an entry in the register has been made. The competence centre shall notify known SEP holders individually by electronic means and the relevant standard development organisation of the notice in this paragraph.

Or. en

Amendment 424
Angelika Niebler

Proposal for a regulation
Article 20 – paragraph 5

Text proposed by the Commission

5. A SEP holder shall update the information in the register and database to reflect relevant changes in relation to its registered SEP by notifying the competence centre ***within 6 months from the change occurring.***

Amendment

5. A SEP holder shall update the information in the register and database ***yearly*** to reflect relevant changes in relation to its registered SEP by notifying the competence centre.

Or. en

Amendment 425

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 20 – paragraph 6

Text proposed by the Commission

6. The request for registration will only be accepted following the payment of the registration fee by the SEP holder. The Commission shall determine the registration fee in the implementing act issued based on Art. 63(5). The registration fee shall include, in case of medium and large enterprises, the expected costs ***and fees of the essentiality check for SEPs selected*** pursuant to Article 29(1).

Amendment

6. The request for registration will only be accepted following the payment of the registration fee by the SEP holder. The Commission shall determine the registration fee in the implementing act issued based on Art. 63(5). The registration fee shall include, in case of medium and large enterprises, the expected costs pursuant to Article 29(1).

Or. en

Amendment 426

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 22

Text proposed by the Commission

Article 22

Examination of the conditions of registration

Amendment

deleted

- 1. A sample of SEP registrations shall be checked annually for completeness and correctness.**
- 2. The EUIPO shall adopt a methodology for selecting a sample of SEP registrations for checks.**
- 3. Where the registration does not contain the information in accordance with Articles 4 and 5 or contains incomplete or inaccurate information, the competence centre shall request the SEP holder to provide the complete and accurate information within the set time limit of no less than 2 months.**
- 4. If the SEP holder fails to provide the correct and complete information, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied.**
- 5. A SEP holder whose SEP has been suspended from the register pursuant to paragraph (4) and considers that the finding of the competence centre is incorrect may apply before the Boards of Appeal of the EUIPO for a decision on the matter. The application shall be made within 2 months from the suspension. Within 2 months from the application, the Boards of Appeal of the EUIPO shall either reject the application or request the competence centre to correct its finding and inform the requesting person.**
- 6. Any completing or correcting information on a SEP pursuant to this article shall be made free of charge.**

Or. en

Amendment 427
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 22 – paragraph 1

Text proposed by the Commission

1. *A sample of* SEP registrations **shall** be checked annually for completeness and correctness.

Amendment

1. SEP registrations **may** be checked annually for completeness and correctness, **if the SEP holder agrees to do so.**

Or. en

Amendment 428
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 22 – paragraph 3

Text proposed by the Commission

3. Where the registration does not contain the information in accordance with Articles 4 and 5 or contains incomplete or inaccurate information, the competence centre **shall** request the SEP holder to provide the complete and accurate information within **the set time limit of no less than** 2 months.

Amendment

3. Where the registration does not contain the information in accordance with Articles 4 and 5 or contains incomplete or inaccurate information, the competence centre **can** request the SEP holder to provide the complete and accurate information within 2 months.

Or. en

Amendment 429
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

Contrary to the principle of legal certainty, because a suspended patent would become unenforceable. This would run opposite to the goals of Articles 47 and 52(1) of the EU Charter of Fundamental Rights, as well as Article 41(2) of the WTO TRIPs Agreement.

Amendment 430
Geoffroy Didier

Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 431
Emmanuel Maurel

Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission

Amendment

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

4. If the SEP holder fails to provide the correct and complete information, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied. *The registration shall be removed if the SEP holder fails to react within 12 months of the date of suspension from the*

register.

Or. fr

Amendment 432

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

Proposal for a regulation

Article 22 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 433

Geoffroy Didier

Proposal for a regulation

Article 22 – paragraph 5

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 434

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

Proposal for a regulation

Article 22 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Contrary to the principle of legal certainty, because a suspended patent would become unenforceable. This would run opposite to the goals of Articles 47 and 52(1) of the EU Charter of Fundamental Rights, as well as Article 41(2) of the WTO TRIPs Agreement.

Amendment 435

Emmanuel Maurel

Proposal for a regulation

Article 23 – paragraph 1

Text proposed by the Commission

Amendment

1. A SEP holder may request a

1. A SEP holder may request a

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correction of its SEP registration or of the information contained in the database by filing an appropriate request to the competence centre, *except as provided for in paragraph (2)*.

correction of its SEP registration or of the information contained in the database by filing an appropriate request to the competence centre *when the SEP is subject to an examination of essentiality in accordance with Article 31, until the publication of the result of that examination of essentiality*.

Or. fr

Amendment 436
Emmanuel Maurel

Proposal for a regulation
Article 23 – paragraph 4 – point c a (new)

Text proposed by the Commission

Amendment

(ca) (d): a negative result of an examination of essentiality in accordance with Articles 32(5) and 33(1)

Or. fr

Amendment 437
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 23 – paragraph 5

Text proposed by the Commission

Amendment

5. If the SEP holder fails to correct the entry in the register or the information submitted for the database within the given time limit, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied.

deleted

Or. en

Justification

Contrary to the principle of legal certainty, because a suspended patent would become unenforceable. This would run opposite to the goals of Articles 47 and 52(1) of the EU Charter of Fundamental Rights, as well as Article 41(2) of the WTO TRIPs Agreement.

Amendment 438
Geoffroy Didier

Proposal for a regulation
Article 23 – paragraph 5

Text proposed by the Commission

Amendment

5. If the SEP holder fails to correct the entry in the register or the information submitted for the database within the given time limit, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied. **deleted**

Or. en

Justification

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

Amendment 439
Emmanuel Maurel

Proposal for a regulation
Article 23 – paragraph 5

Text proposed by the Commission

Amendment

5. If the SEP holder fails to correct the entry in the register or the information submitted for the database within the given time limit, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy

5. If the SEP holder fails to correct the entry in the register or the information submitted for the database within the given time limit, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied. *The registration shall be*

is remedied.

removed if the SEP holder takes no action following the suspension of the registration.

Or. fr

Amendment 440
Geoffroy Didier

Proposal for a regulation
Article 23 – paragraph 6

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 441
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 23 – paragraph 6

Text proposed by the Commission

Amendment

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

Or. en

Justification

Contrary to the principle of legal certainty, because a suspended patent would become unenforceable. This would run opposite to the goals of Articles 47 and 52(1) of the EU Charter of Fundamental Rights, as well as Article 41(2) of the WTO TRIPs Agreement.

Amendment 442

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 23 – paragraph 7

Text proposed by the Commission

Amendment

7. The treatment of requests for correction pursuant to This article by the competence centre shall be suspended from the selection of the SEP for essentiality check pursuant to Article 29 until the publication of the result of the essentiality check in the register and the database pursuant to Article 33(1). *deleted*

Or. en

Amendment 443

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

Proposal for a regulation

Article 24

Text proposed by the Commission

Amendment

Article 24

deleted

Effects of absence of registration or suspension of registration of SEPs

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

23(6).

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

Or. en

Justification

The non-observance should not be allowed to encourage the compliance with an administrative procedure. This would run opposite to the goals of Articles 17(2) of the EU Charter of Fundamental Rights.

Amendment 444
Geoffroy Didier

Proposal for a regulation
Article 24

Text proposed by the Commission

Amendment

Article 24

deleted

Effects of absence of registration or suspension of registration of SEPs

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

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

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

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

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

Or. en

Justification

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

Amendment 445
Angelika Niebler

Proposal for a regulation
Article 24

Text proposed by the Commission

Amendment

Article 24

deleted

Effects of absence of registration or suspension of registration of SEPs

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

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

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

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

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

Or. en

Amendment 446

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

Proposal for a regulation

Article 24 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 447

Patrick Breyer

Proposal for a regulation

Article 24 – paragraph 1

Text proposed by the Commission

Amendment

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

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

The effect on the enforcement of the concerned SEP shall be determined by the Unified Patent Court.

Or. en

Amendment 448

Patrick Breyer

Proposal for a regulation
Article 24 – paragraph 2

Text proposed by the Commission

Amendment

2. A SEP holder that has not registered its SEPs within the time-limit set out in Article 20(3) shall not be entitled to receive royalties or seek damages for infringement of such SEPs in relation to the implementation of the standard for which registration is required, from the time-limit set out in Article 20(3) until its registration in the register. **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). The same justification applies for the following paragraphs of Article 24 that we propose to delete.

Amendment 449
Patrick Breyer

Proposal for a regulation
Article 24 – paragraph 3

Text proposed by the Commission

Amendment

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

Or. en

Amendment 450

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

Proposal for a regulation

Article 24 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 451

Patrick Breyer

Proposal for a regulation

Article 24 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 452

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

Proposal for a regulation
Article 24 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 453
Patrick Breyer

Proposal for a regulation
Article 24 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 454
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 24 – paragraph 5

Text proposed by the Commission

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

Amendment

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

admissibility of the action.

of the decision on admissibility of the action *pursuant to paragraph 1.*

Or. en

Amendment 455

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 25 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) as a consequence of a negative result from the essentiality check pursuant to Article 31(5) and Article 33(1). **deleted**

Or. en

Amendment 456

Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation

Article 25 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) as a consequence of a negative result from the essentiality check pursuant to Article 31(5) and Article 33(1). **deleted**

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 457

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 25 – paragraph 2

Text proposed by the Commission

2. Such a request may be made at any time, ***except from the selection of the SEP for essentiality check pursuant to Article 29 until the publication of the result of the essentiality check in the register and database pursuant to Article 33(1).***

Amendment

2. Such a request may be made at any time.

Or. en

Amendment 458
Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation
Article 25 – paragraph 2

Text proposed by the Commission

2. Such a request may be made at any time, ***except from the selection of the SEP for essentiality check pursuant to Article 29 until the publication of the result of the essentiality check in the register and database pursuant to Article 33(1).***

Amendment

2. Such a request may be made at any time.

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 459
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 25 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competence centre shall maintain and make publicly available a

record of all SEPs removed from the register and the database.

Or. en

Amendment 460

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Title IV

Text proposed by the Commission

Amendment

IV *Evaluators and* Conciliators

IV Conciliators

Or. en

Amendment 461

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 26 – title

Text proposed by the Commission

Amendment

Evaluators and conciliators

Conciliators

Or. en

Amendment 462

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 26 – paragraph 1

Text proposed by the Commission

Amendment

**1. An evaluator shall conduct
essentiality checks.**

deleted

Or. en

Amendment 463
Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation
Article 26 – paragraph 1

Text proposed by the Commission

Amendment

1. *An evaluator shall conduct essentiality checks.* **deleted**

Or. en

Justification

For consistency with new technical conciliation procedure.

Amendment 464
Emmanuel Maurel

Proposal for a regulation
Article 26 – paragraph 1

Text proposed by the Commission

Amendment

1. An evaluator shall conduct essentiality checks.
1. An evaluator shall conduct essentiality checks, ***the result of which shall be binding on the SEP holder.***

Or. fr

Amendment 465
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. A conciliator shall ***conduct the following tasks:***
2. A conciliator shall ***serve in a FRAND determination.***

Or. en

Justification

See art 15

Amendment 466

Geoffroy Didier

Proposal for a regulation

Article 26 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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

2. A conciliator shall:

Or. en

Amendment 467

Emmanuel Maurel

Proposal for a regulation

Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Amendment 468

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

Proposal for a regulation

Article 26 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 469
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 470
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 471
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 472
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 473
Emmanuel Maurel

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

Text proposed by the Commission

Amendment

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

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

Or. fr

Amendment 474
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 475
Adrián Vázquez Lázara

Proposal for a regulation
Article 26 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) mediate between parties in the technical conciliation procedure;

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure.

Amendment 476
Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission

Amendment

3. The *evaluators and* conciliators shall adhere to a code of conduct.

3. The conciliators shall **have the requisite expertise and experience, be unbiased and independent and** adhere to a code of conduct.

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure. Further amendment in line with the JURI draft report.

Amendment 477
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission

Amendment

3. The *evaluators and* conciliators shall adhere to a code of conduct.

3. The conciliators shall adhere to a code of conduct.

Amendment 478
Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation
Article 26 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure. Peer evaluation no longer foreseen in the regulation.

Amendment 479
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 26 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Amendment 480
Geoffroy Didier

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

4a. When setting up and managing the roster of experts pursuant to Article 3(b), the Competence Centre shall comply with the following requirements: (a) Before appointing an expert, the Competence Centre shall carry out a thorough evaluation of past affiliations in order to identify any potential conflicts of interest. (c) The Competence Centre shall ensure that every individual appointed to the roster has the necessary skills to perform the required tasks. In particular, the experts shall have the following qualifications at minimum:

- Qualification as a European Patent Attorney according to the requirements set out by EPI, including the European qualification examination.

- Substantial experience of at least 10 years in the patent industry and dispute resolution in Europe.

- Demonstrated understanding of FRAND commitments and thorough knowledge of standards development organisations.

- Solid technical background in relevant technology fields (telecommunications, electronics).

Or. en

Justification

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

Amendment 481

Catharina Rinzema, Bart Groothuis

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

Text proposed by the Commission

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

Amendment

5. By [OJ: please insert the date = **24** months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in **Article 68(2)**, lay down the practical and operational arrangements concerning:

Or. en

Justification

See art 15

Amendment 482
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 483
Emmanuel Maurel

Proposal for a regulation

Article 26 – paragraph 5 – introductory part

Text proposed by the Commission

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

Amendment

5. By [OJ: please insert the date = **12** months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in , lay down the practical and operational arrangements concerning:

Or. fr

Amendment 484

Geoffroy Didier

Proposal for a regulation

Article 26 – paragraph 5 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 485

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

Proposal for a regulation

Article 26 – paragraph 5 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 486

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 26 – paragraph 5 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 487

Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation

Article 26 – paragraph 5 – point a

Text proposed by the Commission

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

Amendment

(a) the *requirement for* conciliators, including a Code of Conduct;

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure.

Amendment 488

Adrián Vázquez Lázara

Proposal for a regulation

Article 26 – paragraph 5 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure.

Amendment 489

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

Proposal for a regulation

Article 26 – paragraph 5 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

See art 15

Amendment 490

Geoffroy Didier

Proposal for a regulation

Article 26 – paragraph 5 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 491

Geoffroy Didier

Proposal for a regulation

Article 27 – paragraph 1

Text proposed by the Commission

Amendment

1. The competence centre shall

1. The competence centre shall

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

conduct a procedure of selecting candidates based on the requirements established in Article 26(5).

Or. en

Amendment 492
Adrián Vázquez Lázara

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The competence centre shall establish a roster of suitable candidates for *technical conciliators and other* conciliators. There *shall* be different rosters of conciliators depending on the technical area of their specialisation or expertise *and the qualification required for the procedure being conducted under this Regulation.*

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure. The qualification of the technical conciliator is not the same as the one expected from conciliators that will perform the FRAND determination procedure (these conciliators would require economic and negotiation skills and deep licensing experience, among other skills).

Amendment 493
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission

2. The competence centre shall establish a roster of *suitable* candidates for

Amendment

2. The competence centre shall establish a roster of *qualified, impartial*

evaluators or conciliators. ***There may be*** different rosters of evaluators and conciliators depending on the technical area of their specialisation or expertise.

candidates for evaluators or conciliators ***with sufficient experience. The competence centre may decide to establish*** different rosters of evaluators and conciliators depending on the technical area of their specialisation or expertise.

Or. en

Amendment 494
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 495
Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation
Article 27 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure. The procedures set under this regulation shall only take place once the set up of the competence centre is completed. Invitation of external experts without the proper scrutiny could undermine the goals of the Regulation, e.g. consistency and rigour.

Amendment 496 **Geoffroy Didier**

Proposal for a regulation **Article 27 – paragraph 3**

Text proposed by the Commission

Amendment

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

Or. en

Amendment 497 **Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques**

Proposal for a regulation **Article 27 – paragraph 3**

Text proposed by the Commission

Amendment

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

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

Amendment 498
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 27 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 499
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 27 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The competence centre shall publish the list of rosters of evaluators and conciliators.

Or. en

Amendment 500
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Title V

Text proposed by the Commission

Amendment

Essentiality checks of standard essential patents

deleted

Or. en

Amendment 501

Adrián Vázquez Lázara

Proposal for a regulation

Title V

Text proposed by the Commission

Amendment

Essentiality checks of standard essential patents

Technical conciliation procedure

Or. en

Amendment 502

Adrián Vázquez Lázara, Catharina Rinzema

Proposal for a regulation

Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

General requirement for essentiality checks

1. The competence centre shall administer a system of essentiality checks, ensuring that they are conducted in an objective and impartial manner and that confidentiality of the information obtained is safeguarded

2. The essentiality check shall be conducted by an evaluator selected pursuant to Article 27. Evaluators shall conduct essentiality checks of registered SEPs for the standard for which they are

registered.

3. Essentiality checks shall not be done on more than one SEP from the respective patent family.

4. The lack of an essentiality check or an ongoing essentiality check shall not preclude licensing negotiations or any court or administrative procedure in relation to a registered SEP.

5. The evaluator shall summarise the result of the essentiality check and the reasons for it in a reasoned opinion, or, in case of peer evaluation, in a final reasoned opinion, which shall not be legally binding.

6. The result of the essentiality check conducted and the reasoned opinion of the evaluator or the final reasoned opinion of the peer evaluator may be used as evidence before stakeholders, patent pools, public authorities, courts or arbitrators.

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure.

Amendment 503

Adrián Vázquez Lázara

Proposal for a regulation

Article 28 – title

Text proposed by the Commission

Amendment

General requirement for essentiality checks

Technical conciliation procedure

Or. en

Amendment 504

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

Proposal for a regulation

Article 28 – paragraph 1

Text proposed by the Commission

1. The competence centre shall administer a system of essentiality checks, ensuring that they are conducted in **an** objective and impartial manner and that confidentiality of the information obtained is safeguarded

Amendment

1. The competence centre shall administer a system of essentiality checks, ensuring that they are conducted in **a transparent**, objective and impartial manner and that confidentiality of the information obtained is safeguarded.

Or. en

Amendment 505

Geoffroy Didier

Proposal for a regulation

Article 28 – paragraph 3

Text proposed by the Commission

3. Essentiality checks shall not be done on more than one SEP from the respective patent family.

Amendment

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

Or. en

Justification

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

Amendment 506

Emmanuel Maurel

Proposal for a regulation
Article 28 – paragraph 5

Text proposed by the Commission

5. The evaluator shall summarise the result of the essentiality check and the reasons for it in a reasoned opinion, or, in case of peer evaluation, in a final reasoned opinion, which shall **not** be legally binding.

Amendment

5. The evaluator shall summarise the result of the essentiality check and the reasons for it in a reasoned opinion, or, in case of peer evaluation, in a final reasoned opinion, which shall be legally binding **on the SEP holder**.

Or. fr

Amendment 507
Emmanuel Maurel

Proposal for a regulation
Article 28 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. A SEP holder who believes that the evaluator's final reasoned opinion is incorrect may appeal to the Boards of Appeal of the EUIPO within two months of the notification of the evaluation. The Boards of Appeal of the EUIPO shall rule on the essentiality of the SEP and notify the SEP holder of its binding decision.

Or. fr

Amendment 508
Adrián Vázquez Lázara

Proposal for a regulation
Article 28 a (new)

Text proposed by the Commission

Amendment

Article 28a

1. The competence centre shall set up and administer a technical conciliation procedure to support the parties in

dealing with technical aspects typically covered during SEP licensing.

2. The competence centre shall appoint a technical conciliator from the roster of conciliators to mediate the procedure.

3. The initiation of the technical conciliation procedure shall be mandatory upon the request of an SME that is engaged in SEP licensing, either as a SEP holder or as a SEP implementer.

4. Upon initiation of the technical conciliation procedure, the parties shall execute a mutual Non-Disclosure Agreement, which shall be provided by the competence centre.

5. The parties shall submit their arguments and documents for the technical discussions. In accordance with customary industry practice, the SEP holder shall provide the other party and the technical conciliator a relevant sample of claim charts for the portfolio of SEP patent families for which a license is being offered

6. Where the SEP holder is an SME, the competence centre shall provide assistance for the technical evaluation and exercise of its relevant SEP families.

7. The parties shall be allowed to be assisted by external technical advisors during the procedure.

8. The technical conciliator shall propose and agree with the parties on the schedule, but the technical conciliation procedure shall not exceed a duration of 5 months.

9. The appointed technical conciliator shall mediate between the parties on the technical aspects with the aim to help facilitating the execution of a SEP license.

10. At the end of the technical conciliation procedure, the technical conciliator shall prepare a report establishing the key points of the

procedure, the main elements brought by the parties and provide a recommendation. The report shall remain confidential pursuant to the mutual NDA signed by the parties, provided, however, that it may be utilized during the FRAND determination procedure of Title VI or, in the event the parties fail to agree on a SEP license during such determination, in legal proceeding related to the subject matter.

11. The technical conciliation procedure should be available as a separate procedure. However, upon request of one of the parties, the procedure could be combined with the FRAND determination procedure of Title VI. In the event both procedures are combined, the overall timeline for the merged procedure shall not exceed the 9 months duration stipulated in Article 37(1).

12. The technical conciliator procedure should be available for non-SMEs upon mutual agreement where the parties believe the procedure would be helpful to facilitate technical discussions.

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 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 the parties 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. The procedure aims to incentivize good faith negotiation and facilitate a good understanding of 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 in further discussions to conclude the SEP license.

Amendment 509
Adrián Vázquez Lázara

Proposal for a regulation
Article 29

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 510
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 29 – paragraph 1

Text proposed by the Commission

Amendment

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

1. The competence centre shall select annually a sample of registered SEPs from different patent families from each SEP holder and with regard to each specific standard in the register for essentiality checks. Registered SEPs of micro and small enterprises shall be excluded from the annual sampling process, ***unless they are a patent assertion entity or directly or indirectly controlled by a legal person that does not satisfy the definition of a micro or small enterprise.*** The checks shall be conducted based on a methodology that ensures the establishment of a fair and statistically valid selection that can produce sufficiently accurate results about the essentiality rate in all registered SEPs of a SEP holder with regard to each specific standard in the register. By [OJ: please insert the date = 18 months from entry into force of this regulation] the Commission shall, by means of an implementing act, determine the detailed methodology. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Amendment 511
Emmanuel Maurel

Proposal for a regulation
Article 29 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The competence centre shall select annually a sample of registered SEPs from different patent families from each SEP holder and with regard to each specific standard in the register for essentiality checks. Registered SEPs of micro and small enterprises shall be excluded from the annual sampling process. The checks shall be conducted based on a methodology that ensures the establishment of a fair and statistically valid selection that can produce sufficiently accurate results about the essentiality rate in all registered SEPs of a SEP holder with regard to each specific standard in the register. By [OJ: please insert the date = **12** months from entry into force of this regulation] the Commission shall, by means of an implementing act, determine the detailed methodology. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Or. fr

Amendment 512
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 29 – paragraph 1

Text proposed by the Commission

1. The competence centre shall select annually a sample of registered SEPs from

Amendment

1. The competence centre shall select annually a sample of registered SEPs from

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

different patent families from each SEP holder and with regard to each specific standard in the register for essentiality checks. Registered SEPs of micro and small enterprises shall be excluded from the annual sampling process. The checks shall be conducted based on a methodology that ensures the establishment of a fair and statistically valid selection that can produce sufficiently accurate results about the essentiality rate in all registered SEPs of a SEP holder with regard to each specific standard in the register. By [OJ: please insert the date = **24** months from entry into force of this regulation] the Commission shall, by means of an implementing act, determine the detailed methodology. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Or. en

Amendment 513
Geoffroy Didier

Proposal for a regulation
Article 29 – paragraph 5

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 514
Geoffroy Didier

Proposal for a regulation
Article 29 – paragraph 6

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 515

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

Proposal for a regulation

Article 29 – paragraph 6

Text proposed by the Commission

Amendment

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

Or. en

Justification

SEP implementers could abuse this provision to collectively challenge the registered SEPs, which could lead to delays at the EUIPO.

Amendment 516

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

Proposal for a regulation
Article 29 – paragraph 11

Text proposed by the Commission

Amendment

11. The party that requests the review of the examination of the essentiality check or peer evaluation and re-appointment of the evaluator and considers that the finding of the competence centre is incorrect may apply before the Boards of Appeal of the EUIPO for a decision on the matter. The application shall be made within 2 months from the finding of the competence centre. The Boards of Appeal of the EUIPO shall either reject the application or request the competence centre to appoint a new evaluator and inform the requesting person and, where relevant, the SEP holder **deleted**

Or. en

Justification

Decisions bearing legal effect can only be taken by the Member States' civil courts dealing with infringement and validity litigation, as well as the UPC.

Amendment 517
Adrián Vázquez Lázara

Proposal for a regulation
Article 30

Text proposed by the Commission

Amendment

Article 30 **deleted**

Observations by stakeholders

1. Within 90 days following the publication of the list of registered SEPs selected for sampling, any stakeholder may submit to the competence centre written observations concerning the essentiality of the selected SEPs.

2. *The observations referred to in paragraph (1) shall be communicated to the SEP holder who may comment on them within the time limit established by the competence centre.*

3. *The competence centre shall provide the observations and the responses by the SEP holder to the evaluator following the expiry of the set time limits.*

Or. en

Amendment 518

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

Proposal for a regulation

Article 30 – paragraph 1

Text proposed by the Commission

1. Within 90 days following the publication of the list of registered SEPs selected for sampling, any stakeholder may submit to the competence centre written observations concerning the essentiality of the selected SEPs.

Amendment

1. Within 90 days following the publication of the list of registered SEPs selected for sampling, any stakeholder may submit to the competence centre written observations *and evidence* concerning the essentiality of the selected SEPs.

Or. en

Amendment 519

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

Proposal for a regulation

Article 30 – paragraph 3

Text proposed by the Commission

3. The competence centre shall provide the observations and the responses by the SEP holder to the evaluator following the expiry of the set time limits.

Amendment

3. The competence centre shall provide the observations, *evidence* and the responses by the SEP holder to the evaluator following the expiry of the set time limits.

Amendment 520
Adrián Vázquez Lázara

Proposal for a regulation
Article 31

Text proposed by the Commission

Amendment

Article 31

deleted

***Examination of the essentiality of a
registered SEP***

- 1. The examination of essentiality shall be conducted following procedure that ensures sufficient time, rigorousness and high-quality.***
- 2. The evaluator may invite the SEP holder concerned to file observations, within a period to be fixed by the evaluator.***
- 3. Where an evaluator has reasons to believe that the SEP may not be essential to the standard, the competence centre shall inform the SEP holder of any such reasons and specify a period within which the SEP holder may submit its observations, or submit an amended claim chart.***
- 4. The evaluator shall duly consider any information provided by the SEP holder.***
- 5. The evaluator shall issue his reasoned opinion to the competence centre within 6 months from its appointment. The reasoned opinion shall include the name of the SEP holder and of the evaluator, the SEP subject to the essentiality check, the relevant standard, a summary of the examination procedure, the result of the essentiality check and the reasons on which that result is based.***
- 6. The competence centre shall notify the reasoned opinion to the SEP holder.***

Amendment 521

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

Proposal for a regulation

Article 31 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The evaluator may invite the SEP holder, ***implementers and other stakeholders*** concerned to file observations ***and evidence***, within a period to be fixed by the evaluator.

Amendment 522

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

Proposal for a regulation

Article 31 – paragraph 3

Text proposed by the Commission

3. Where an evaluator has reasons to believe that the SEP may not be essential to the standard, the competence centre shall inform the SEP holder of any such reasons and specify a period within which the SEP holder may submit its observations, or submit an amended claim chart.

Amendment

3. Where an evaluator has reasons to believe that the SEP may not be essential to the standard, the competence centre shall inform the SEP holder, ***implementers and other stakeholders which have provided observations or evidence*** of any such reasons and specify a period within which the SEP holder may submit its observations, or submit an amended claim chart.

Amendment 523

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

Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission

4. The evaluator shall duly consider any information provided by the SEP holder.

Amendment

4. The evaluator shall duly consider any information provided by the SEP holder, ***implementers and other stakeholders***.

Or. en

Amendment 524

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

Proposal for a regulation
Article 31 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The competence centre shall notify the reasoned opinion to the SEP holder, ***and implementers and other stakeholders which have provided observations or evidence***.

Or. en

Amendment 525

Adrián Vázquez Lázara

Proposal for a regulation
Article 32

Text proposed by the Commission

Article 32
Peer evaluation

1. Where the competence centre has informed the SEP holder pursuant to Article 31(3), the SEP holder may request peer evaluation before the expiry of the period to submit its observations pursuant to Article 31(3).

Amendment

deleted

2. ***If the SEP holder requests a peer evaluation, the competence centre shall appoint a peer evaluator.***
3. ***The peer evaluator shall duly consider all the information submitted by the SEP holder, the reasons of the initial evaluator why the SEP may not be essential to the standard and any amended claim chart or additional observations provided by the SEP holder.***
4. ***In case the peer evaluation confirmed the preliminary conclusions of the evaluator that the evaluated SEP may not be essential to the standard for which it was registered, the peer evaluator shall inform the competence centre and provide the reasons for this opinion. The competence centre shall inform the SEP holder and invite the SEP holder to submit its observations.***
5. ***The peer evaluator shall duly consider the observations of the SEP holder and issue a final reasoned opinion to the competence centre within 3 months from its appointment. The final reasoned opinion shall include the name of the SEP holder, of the evaluator and of the peer evaluator, the SEP subject to the essentiality check, the relevant standard, a summary of the examination and peer evaluation procedure, the preliminary conclusion of the evaluator, the result of the peer evaluation and the reasons on which that result is based.***
6. ***The competence centre shall notify the final reasoned opinion to the SEP holder.***
7. ***The results of the peer evaluation shall serve to improve the essentiality check process and ensure consistency.***

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation

procedure.

Amendment 526

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

Proposal for a regulation

Article 32 – paragraph 1

Text proposed by the Commission

1. Where the competence centre has informed the SEP holder pursuant to Article 31(3), the SEP holder may request peer evaluation before the expiry of the period to submit its observations pursuant to Article 31(3).

Amendment

1. Where the competence centre has informed the SEP holder, ***implementers and other stakeholders which have provided observations or evidence*** pursuant to Article 31(3), the SEP holder may request peer evaluation before the expiry of the period to submit its observations pursuant to Article 31(3).

Or. en

Amendment 527

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

Proposal for a regulation

Article 32 – paragraph 3

Text proposed by the Commission

3. The peer evaluator shall duly consider all the information submitted by the SEP holder, the reasons of the initial evaluator why the SEP may not be essential to the standard and any amended claim chart or additional observations provided by the SEP holder.

Amendment

3. The peer evaluator shall duly consider all the information submitted by the SEP holder, ***implementers and other stakeholders which have provided observations or evidence***, the reasons of the initial evaluator why the SEP may not be essential to the standard and any amended claim chart or additional observations provided by the SEP holder, ***implementers and other stakeholders***.

Or. en

Amendment 528

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

Proposal for a regulation

Article 32 – paragraph 4

Text proposed by the Commission

4. In case the peer evaluation confirmed the preliminary conclusions of the evaluator that the evaluated SEP may not be essential to the standard for which it was registered, the peer evaluator shall inform the competence centre and provide the reasons for this opinion. The competence centre shall inform the SEP holder and invite *the SEP holder* to submit *its* observations.

Amendment

4. In case the peer evaluation confirmed the preliminary conclusions of the evaluator that the evaluated SEP may not be essential to the standard for which it was registered, the peer evaluator shall inform the competence centre and provide the reasons for this opinion. The competence centre shall inform the SEP holder, *implementers and other stakeholders which have provided observations or evidence* and invite *them* to submit *their* observations.

Or. en

Amendment 529

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

Proposal for a regulation

Article 32 – paragraph 5

Text proposed by the Commission

5. The peer evaluator shall duly consider the observations of the SEP holder and issue a final reasoned opinion to the competence centre within 3 months from its appointment. The final reasoned opinion shall include the name of the SEP holder, of the evaluator and of the peer evaluator, the SEP subject to the essentiality check, the relevant standard, a summary of the examination and peer evaluation procedure, the preliminary conclusion of the evaluator, the result of the peer evaluation and the reasons on which that result is based.

Amendment

5. The peer evaluator shall duly consider the observations of the SEP holder, *implementers and other stakeholders which have provided observations or evidence* and issue a final reasoned opinion to the competence centre within 3 months from its appointment. The final reasoned opinion shall include the name of the SEP holder, *of involved implementers and other stakeholders*, of the evaluator and of the peer evaluator, the SEP subject to the essentiality check, the relevant standard, a summary of the examination and peer evaluation procedure, the preliminary conclusion of the evaluator, the result of the peer

evaluation and the reasons on which that result is based.

Or. en

Amendment 530

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

Proposal for a regulation

Article 32 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 531

Adrián Vázquez Lázara

Proposal for a regulation

Article 33

Text proposed by the Commission

Article 33

Publication of the results of the essentiality checks

1. The competence centre shall enter the result of the essentiality check or of the peer evaluation in the register and the reasoned opinion and final reasoned opinion in the database. The result of the essentiality check under this Regulation shall be valid for all SEPs from the same patent family.

2. The competence centre shall publish in the register the percentage of sampled SEPs per SEP holder and per specific registered standard that passed

Amendment

deleted

successfully the essentiality test.

3. Where the publication of the results contains an error attributable to the competence centre, the competence centre shall of its own motion or at the request of the SEP holder registrant correct the error and publish the correction.

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure.

Amendment 532
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 533
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 34 – paragraph 1 – point a

Text proposed by the Commission

(a) SEP holder, prior to **any initiation of** a SEP infringement claim before a

Amendment

(a) SEP holder, prior to **pursuing** a SEP infringement claim before a

competent court of a Member State;

competent court of a Member State;

Or. en

Amendment 534

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

Proposal for a regulation

Article 34 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) an implementer of a SEP prior to any request for the determination or assessment of FRAND terms and conditions of a SEP licence before a competent court of a Member State.

(b) an implementer of a SEP prior to ***pursuing*** any request for the determination or assessment of FRAND terms and conditions of a SEP licence before a competent court of a Member State.

Or. en

Amendment 535

Geoffroy Didier

Proposal for a regulation

Article 34 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) The FRAND determination shall not apply to existing licensing agreement during their term and their renewal.

Or. en

Amendment 536

Geoffroy Didier

Proposal for a regulation

Article 34 – paragraph 3

Text proposed by the Commission

Amendment

3. The FRAND determination may be

3. The FRAND determination may be

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

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

Or. en

Amendment 537

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

Proposal for a regulation Article 34 – paragraph 4

Text proposed by the Commission

Amendment

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

deleted

Justification

Fair, Reasonable and Non-Discriminatory (FRAND) licensing aims to balance the interests of SEP owners and SEP implementers. 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, 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. This means that the parties can use existing alternative dispute resolution procedures of bodies specialized in patents, such as the Patent Mediation and Arbitration Centre of the Unified Patent Court, and the WIPO Arbitration and Mediation Center, or go to a national court. National courts do need to take into account the decision made in CJEU Huawei v ZTE (C-170/13), where the Court of Justice ruled when a SEP holder can file an action for a prohibitory injunction against a patent user, without violating Article 102 TFEU. Currently, no evidence exists that this practice leads to a distortion in the EU single market. In fact, the FRAND determination proposal would create a non-binding result that forces patent holders to choose between either entirely giving up their rights to have a court adjudicate a dispute over FRAND terms or being locked out of European courts for a minimum of ten months. Instead of a court, the system would coerce patent holders into an arbitration-like system with limited due process rights and no right of appeal. Instead, the procedure for FRAND determination should remain a dispute between two parties to be dealt with in mediation centers or, national courts.

Amendment 538 **Geoffroy Didier**

Proposal for a regulation **Article 34 – paragraph 4**

Text proposed by the Commission

4. The ***obligation to initiate*** FRAND determination pursuant to paragraph 1 prior to the court proceedings is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction ***of a financial nature against the alleged infringer. The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP. Where national law provides that the provisional***

Amendment

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

injunction of a financial nature can only be requested where a case is pending on the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Or. en

Justification

FRAND is by nature a process to facilitate licensing negotiations. The FRAND determination process should only occur when licensing negotiations are underway between SEP holders and implementers. Existing negotiations are the sign that a functioning market exists, and that parties are likely to negotiate FRAND conditions more easily. This approach optimizes the alignment of royalty rates with market realities. Moreover, the mandatory nature of the determination implies that parties seldom engage in voluntary cooperation and FRAND negotiation on good terms, when it is in fact the norm – litigation on FRAND matters is a rare occurrence. It is preferable to allow parties to choose when and how to engage in the FRAND determination process on a voluntary basis, to foster goodwill and mutually beneficial outcomes. The FRAND determination should proceed in parallel with any court proceedings in order to respect the sovereignty of national jurisdictions.

Amendment 539 **Emmanuel Maurel**

Proposal for a regulation **Article 34 – paragraph 4**

Text proposed by the Commission

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

Amendment

4. The *opening of a* FRAND determination *procedure in accordance with paragraph 1 shall prevent the SEP holder from requesting an injunction, provisional or final, in connection with the SEPs concerned. This shall apply to injunctions of a financial nature as well as injunctions that would impact the*

the *alleged infringer*. The *provisional injunction* shall *exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP*. Where *national law provides that the provisional injunction of a financial nature can only be requested where a case is pending on the merits*, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

marketing of the implementer's products or involve their recall or the seizure or delivery of the implementer's goods.

Or. fr

Amendment 540
Angelika Niebler

Proposal for a regulation
Article 34 – paragraph 4

Text proposed by the Commission

4. The obligation to initiate FRAND determination pursuant to paragraph 1 ***prior to the court proceedings*** is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction of a financial nature against the alleged infringer. The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP. ***Where national law provides that the provisional injunction of a financial nature can only be requested where a case is pending on***

Amendment

4. The obligation to initiate FRAND determination pursuant to paragraph 1 is without prejudice to the possibility for either party to request, pending the FRAND determination, the competent court of a Member State to issue a provisional injunction of a financial nature against the alleged infringer. The provisional injunction shall exclude the seizure of property of the alleged infringer and the seizure or delivery up of the products suspected of infringing a SEP.

the merits, either party may bring a case on the merits before the competent court of a Member State for that purpose. However, the parties shall request the competent court of a Member State to suspend the proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

Or. en

Amendment 541

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

Proposal for a regulation Article 34 – paragraph 4

Text proposed by the Commission

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

Amendment

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

the competent court of a Member *States* shall consider that a procedure for FRAND determination is ongoing.

Or. en

Amendment 542

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

Proposal for a regulation

Article 34 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 543

Angelika Niebler

Proposal for a regulation

Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

Or. en

Amendment 544

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

Proposal for a regulation

Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

Or. en

Justification

See art 34(4)

Amendment 545

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

Proposal for a regulation

Article 34 – paragraph 5

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 546

Emmanuel Maurel

Proposal for a regulation

Article 36 – paragraph 2 – introductory part

Text proposed by the Commission

2. Where the request to initiate a FRAND determination is made by a SEP holder, in addition to the information listed in paragraph (1), ***it shall contain*** the following information:

Amendment

2. Where the request to initiate a FRAND determination is made by a SEP holder, ***it shall contain***, in addition to the information listed in paragraph (1), the following information:

Or. fr

Amendment 547

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

**Proposal for a regulation
Article 37 – paragraph 1**

Text proposed by the Commission

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

Amendment

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

Or. en

**Amendment 548
Angelika Niebler**

**Proposal for a regulation
Article 37 – paragraph 2**

Text proposed by the Commission

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

Amendment

deleted

Amendment 549

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

**Proposal for a regulation
Article 37 – paragraph 2**

Text proposed by the Commission

Amendment

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

Or. en

Justification

The FRAND determination procedure should run in parallel with any court proceedings, see art 34(4).

Amendment 550

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

**Proposal for a regulation
Article 38 – paragraph 1**

Text proposed by the Commission

Amendment

1. The competence centre shall notify the request to the responding party within 7 days and shall inform the requesting party thereof.

1. The competence centre shall notify the request to the responding party within 7 days, **including the information submitted pursuant to Article 36**, and shall inform the requesting party thereof.

Or. en

Amendment 551

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

**Proposal for a regulation
Article 38 – paragraph 2**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 552

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 553

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

2. The responding party shall notify

Amendment

2. The responding party shall notify

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

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

Or. en

Justification

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

Amendment 554

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 555

Patrick Breyer

Proposal for a regulation

Article 38 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Contractual negotiations should remain mutual, without the EUIPO competence centre imposing a decision going beyond the conciliation powers that it receives from this Regulation.

Amendment 556
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 557
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 558

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

Proposal for a regulation

Article 38 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 559

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 3 – point a

Text proposed by the Commission

(a) the competence centre shall notify the requesting party thereof and invite it

Amendment

deleted

to indicate within seven days whether it requests the continuation of the FRAND determination and whether it commits to comply with the outcome of the FRAND determination;

Or. en

Amendment 560

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

Proposal for a regulation

Article 38 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 561

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

Proposal for a regulation

Article 38 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 562
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 563
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 564
Geoffroy Didier

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

Text proposed by the Commission

(b) **where the requesting party**

Amendment

deleted

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

Or. en

Amendment 565

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

Proposal for a regulation

Article 38 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 566

Angelika Niebler

Proposal for a regulation

Article 38 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

subject matter.

Or. en

Amendment 567

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

Proposal for a regulation

Article 38 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 568

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

Proposal for a regulation

Article 38 – paragraph 3 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 569

Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 570
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 571
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

4. Where the responding party agrees to the FRAND determination, the following shall apply:

Or. en

Amendment 572

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

Proposal for a regulation

Article 38 – paragraph 4 – introductory part

Text proposed by the Commission

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

Amendment

4. Where the responding party agrees to the FRAND determination pursuant to paragraph (2), the following shall apply:

Or. en

Amendment 573

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 4 – introductory part

Text proposed by the Commission

4. Where the responding party agrees to the FRAND determination and **commits to comply with its outcome pursuant to paragraph (2), including where such**

Amendment

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

commitment is contingent upon the commitment of the requesting party to comply with the outcome of the FRAND determination, the following shall apply:

Or. en

Amendment 574

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 38 – paragraph 4 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 575

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

Proposal for a regulation

Article 38 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

deleted

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

Or. en

Amendment 576
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 577
Patrick Breyer

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

Text proposed by the Commission

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

Amendment

(a) the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days;

parties;

Or. en

Amendment 578

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

Proposal for a regulation

Article 38 – paragraph 4 – point a

Text proposed by the Commission

Amendment

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

(a) the competence centre shall notify the requesting party thereof and request to inform the competence centre within seven days;

Or. en

Amendment 579

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 580

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

Proposal for a regulation

Article 38 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 581

Patrick Breyer

Proposal for a regulation

Article 38 – paragraph 4 – point b

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 582

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

Proposal for a regulation

Article 38 – paragraph 4 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 583

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

Proposal for a regulation

Article 38 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 584

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 4 – point c

Text proposed by the Commission

Amendment

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

Or. en

**Amendment 585
Geoffroy Didier**

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

**Amendment 586
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders**

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

Text proposed by the Commission

Amendment

(d) where the responding party fails to *deleted*

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

Or. en

Amendment 587

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

Proposal for a regulation

Article 38 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 588

Geoffroy Didier

Proposal for a regulation

Article 38 – paragraph 5

Text proposed by the Commission

Amendment

5. Where either party commits to comply with the outcome of the FRAND determination, while the other party fails to do so within the applicable time limits, the competence centre shall adopt a notice of commitment to the FRAND determination and notify the parties within 5 days from the expiry of the time-limit to provide the commitment. The

deleted

notice of commitment shall include the names of the parties, the subject-matter of the FRAND determination, a summary of the procedure and information on the commitment provided or on the failure to provide commitment for each party.

Or. en

Amendment 589

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

**Proposal for a regulation
Article 38 – paragraph 5**

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 590

Patrick Breyer

**Proposal for a regulation
Article 38 – paragraph 5**

Text proposed by the Commission

Amendment

5. Where either party commits to comply with the outcome of the FRAND

deleted

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

Or. en

Amendment 591

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

Proposal for a regulation Article 38 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 592

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

Proposal for a regulation
Article 38 – paragraph 6

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Both parties need to agree to participate.

Amendment 593
Geoffroy Didier

Proposal for a regulation
Article 38 – paragraph 6

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The Regulation covers European patents in force in one or more Member States that are essential and for which a FRAND commitment has been made. The European Union has

neither jurisdiction, nor competence, in respect of patent rights granted by non-EU states.

Amendment 594
Patrick Breyer

Proposal for a regulation
Article 38 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 595
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 39 – title

Text proposed by the Commission

Selection of conciliators

Amendment

Selection ***of the panel*** of conciliators

Or. en

Amendment 596
Patrick Breyer

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), or the request to continue in accordance with Article 38(5), the competence centre shall **appoint a panel of 3 conciliators** propose at least 3 candidates for the FRAND determination from the roster of conciliators referred to Article 27(2). The parties or party shall select one of the proposed candidates as a conciliator for the FRAND determination. ***The selection of conciliators shall begin by each party selecting one conciliator, and the two selected conciliators selecting a third conciliator. If a party wishes to nominate a qualified conciliator outside the roster of conciliators referred to in Article 27(2), such a conciliator may be selected providing she/he meets the criteria for qualification of conciliators established by the competence centre. If one or both parties to the FRAND determination fails to select a conciliator within the specified time period, the selection(s) shall be made by the competence centre.***

Or. en

Amendment 597

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 39 – paragraph 1

Text proposed by the Commission

1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5)***, the competence centre shall propose at least 3 candidates for the FRAND determination from the roster of

Amendment

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

conciliators referred to Article 27(2). The parties *or party* shall select one of the proposed candidates as a conciliator for the FRAND determination.

of the proposed candidates as a conciliator for the FRAND determination.

Or. en

Justification

Both parties need to agree to participate.

Amendment 598
Geoffroy Didier

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 599
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission

1. Following the *reply to* the FRAND determination *by the responding party* in accordance with Article 38(2), *or the request to continue in accordance with*

Amendment

1. Following the *continuation of* the FRAND determination in accordance with Article 38, *the requesting and responding parties shall each nominate one*

Article 38(5), *the competence centre shall propose at least 3 candidates* for the FRAND determination from the roster of conciliators referred to Article 27(2). *The parties or party shall select one of the proposed candidates as a conciliator for the FRAND determination.*

conciliator from the roster of conciliators referred to in Article 27(2) to the panel of conciliators. Both conciliators shall jointly agree on one further conciliator for the FRAND determination from the roster of conciliators referred to *in* Article 27(2).

Or. en

Amendment 600
Patrick Breyer

Proposal for a regulation
Article 39 – paragraph 2

Text proposed by the Commission

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

Amendment

2. *The parties may agree to have a single conciliator conduct the FRAND determination, in which case the competence centre shall propose at least 3 candidates from the roster of conciliators referred to in Article 27(2) and the parties shall select one of the proposed candidates as a conciliator for the FRAND determination. Alternatively, the parties may jointly agree to a conciliator that is not on the roster and such conciliator shall be appointed by the competence centre providing she/he meets the criteria for qualification of conciliators established by the competence centre. If* the parties do not agree on a conciliator, the competence centre shall select one candidate from the roster of conciliators referred to in Article 27(2).

Or. en

Amendment 601
Geoffroy Didier

Proposal for a regulation
Article 39 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 602

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

Proposal for a regulation Article 39 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 603

Emmanuel Maurel

Proposal for a regulation Article 40 – title

Text proposed by the Commission

Amendment

Appointment of conciliators

Or. fr

Amendment 604

Patrick Breyer

Proposal for a regulation Article 40 – paragraph 1

Text proposed by the Commission

1. The selected ***candidate*** shall communicate to the competence centre the acceptance to take up the task of a conciliator for the FRAND determination, which shall notify the communication of acceptance to the parties.

Amendment

1. The selected ***candidates*** shall communicate to the competence centre the acceptance to take up the task of a conciliator for the FRAND determination, which shall notify the communication of acceptance to the parties.

Or. en

Amendment 605
Patrick Breyer

Proposal for a regulation
Article 40 – paragraph 2

Text proposed by the Commission

2. The day following the notification of the acceptance to the parties, the ***conciliator*** is appointed, and the competence centre shall refer the case to ***him/her***.

Amendment

2. The day following the notification of the acceptance to the parties, the ***panel of conciliators*** is appointed, and the competence centre shall refer the case to ***the panel***.

Or. en

Amendment 606
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 40 – paragraph 2

Text proposed by the Commission

2. The day following the notification of the acceptance to the parties, the ***conciliator*** is appointed, and the competence centre shall refer the case to ***him/her***.

Amendment

2. The day following the notification of the acceptance to the parties, the ***panel of conciliators*** is appointed, and the competence centre shall refer the case to ***it***.

Or. en

Amendment 607
Patrick Breyer

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

1. After the case is referred to the **conciliator** in accordance with Article 40(2), **he/she** shall examine whether the request contains the information required under Article 36 in accordance with the Rules of procedure.

Amendment

1. After the case is referred to the **panel of conciliators** in accordance with Article 40(2), **the panel** shall examine whether the request contains the information required under Article 36 in accordance with the Rules of procedure.

Or. en

Amendment 608
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 42 – paragraph 1

Text proposed by the Commission

1. After the case is referred to the **conciliator** in accordance with Article 40(2), **he/she** shall examine whether the request contains the information required under Article 36 in accordance with the Rules of procedure.

Amendment

1. After the case is referred to the **panel of conciliators** in accordance with Article 40(2), **it** shall examine whether the request contains the information required under Article 36 in accordance with the Rules of procedure.

Or. en

Amendment 609
Geoffroy Didier

Proposal for a regulation
Article 42 – paragraph 2

Text proposed by the Commission

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

Amendment

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

determination the conduct as well as the schedule of procedure.

Or. en

Amendment 610

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

Proposal for a regulation

Article 42 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 611

Patrick Breyer

Proposal for a regulation

Article 42 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 612

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 42 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 613

Patrick Breyer

Proposal for a regulation

Article 43 – paragraph 1

Text proposed by the Commission

The **conciliator** shall invite each party to file written submissions setting out its arguments concerning the determination of the applicable FRAND terms and conditions, including supporting documentation and evidence, and set appropriate time limits.

Amendment

The **panel of conciliators** shall invite each party to file written submissions setting out its arguments concerning the determination of the applicable FRAND terms and conditions, including supporting documentation and evidence, and set appropriate time limits.

Or. en

Amendment 614

Patrick Breyer

Proposal for a regulation

Article 44 – paragraph 1

Text proposed by the Commission

1. A party may submit an objection stating that the **conciliator** is unable to make a FRAND determination on legal grounds, such as a previous binding

Amendment

1. A party may submit an objection stating that the **panel of conciliators** is unable to make a FRAND determination on legal grounds, such as a previous

FRAND determination or agreement between the parties, no later than *in* the first written submission. The other party shall be given opportunity to submit its observations.

binding FRAND determination or agreement between the parties, no later than *one month following* the first written submission. The other party shall be given opportunity to submit its observations.

Or. en

Amendment 615

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

Proposal for a regulation

Article 44 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 616

Geoffroy Didier

Proposal for a regulation

Article 44 – paragraph 1

Text proposed by the Commission

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

Amendment

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

observations.

Or. en

Amendment 617

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

Proposal for a regulation

Article 44 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 618

Patrick Breyer

Proposal for a regulation

Article 44 – paragraph 2

Text proposed by the Commission

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

Amendment

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

conditions.

FRAND terms and conditions.

Or. en

Amendment 619
Patrick Breyer

Proposal for a regulation
Article 44 – paragraph 3

Text proposed by the Commission

3. If the *conciliator* decides that the objection is founded, it shall terminate the FRAND determination and shall draw up a report stating the reasons of the decision.

Amendment

3. If the *panel of conciliators* decides that the objection is founded, it shall terminate the FRAND determination and shall draw up a report stating the reasons of the decision.

Or. en

Amendment 620
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 44 – paragraph 3

Text proposed by the Commission

3. If the *conciliator* decides that the objection is founded, it shall terminate the FRAND determination and shall draw up a report stating the reasons of the decision.

Amendment

3. If the *panel of conciliators* decides that the objection is founded, it shall terminate the FRAND determination and shall draw up a report stating the reasons of the decision.

Or. en

Amendment 621
Patrick Breyer

Proposal for a regulation
Article 45 – paragraph 1

Text proposed by the Commission

1. The **conciliator** shall assist the parties in an independent and impartial manner in their endeavour to reach a determination of FRAND terms and conditions.

Amendment

1. The **panel of conciliators** shall assist the parties in an independent and impartial manner in their endeavour to reach a determination of FRAND terms and conditions.

Or. en

Amendment 622

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

**Proposal for a regulation
Article 45 – paragraph 1**

Text proposed by the Commission

1. The **conciliator** shall assist the parties in an independent and impartial manner in their endeavour to reach a determination of FRAND terms and conditions.

Amendment

1. The **panel of conciliators** shall assist the parties in an independent and impartial manner in their endeavour to reach a determination of FRAND terms and conditions.

Or. en

Amendment 623

Catharina Rinzema, Bart Groothuis

**Proposal for a regulation
Article 45 – paragraph 2**

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 624

Geoffroy Didier

Proposal for a regulation

Article 45 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 625

Patrick Breyer

Proposal for a regulation

Article 45 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 626

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

Proposal for a regulation

Article 45 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The **panel of conciliators** may invite the parties or the party requesting the continuation of the FRAND determination to meet with **it** or may communicate with **it** orally or in writing.

Or. en

Amendment 627
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 628
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 45 – paragraph 3

Text proposed by the Commission

3. The parties **or the party requesting the continuation of the FRAND determination** shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her

Amendment

3. The parties shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations

requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.

Or. en

Justification

Both parties need to agree to participate.

Amendment 629

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

**Proposal for a regulation
Article 45 – paragraph 3**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 630

Patrick Breyer

**Proposal for a regulation
Article 45 – paragraph 3**

Text proposed by the Commission

3. The parties or the party requesting the continuation of the FRAND determination shall cooperate in good faith

Amendment

3. The parties or the party requesting the continuation of the FRAND determination shall cooperate in good faith

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

with the *panel of conciliators* and, in particular, shall attend the meetings, comply with *the panel's* requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the *panel* to hear witnesses and experts whom the *panel* might call.

Or. en

Amendment 631
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 632
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 45 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Amendment 633
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 45 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 634
Geoffroy Didier

Proposal for a regulation
Article 45 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 635
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 45 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 636

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

Proposal for a regulation

Article 46 – paragraph 1 – point a

Text proposed by the Commission

(a) fails to comply with any request of the **conciliator**, Rules of procedure or schedule of procedure referred to in Article 42(2),

Amendment

(a) fails to comply with any request of the **panel of conciliators**, rules of procedure or schedule of procedure referred to in Article 42(2), **or**

Or. en

Amendment 637

Patrick Breyer

Proposal for a regulation

Article 46 – paragraph 1 – point a

Text proposed by the Commission

(a) fails to comply with any request of the **conciliator**, Rules of procedure or schedule of procedure referred to in Article 42(2),

Amendment

(a) fails to comply with any request of the **panel of conciliators**, Rules of procedure or schedule of procedure referred to in Article 42(2),

Or. en

Amendment 638

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

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 639

Geoffroy Didier

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 640

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

Proposal for a regulation

Article 46 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 641

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

Proposal for a regulation

Article 46 – paragraph 1 – concluding part

Text proposed by the Commission

Amendment

the *conciliator* shall inform both parties thereof.

the *panel of conciliators* shall inform both parties thereof.

Or. en

Amendment 642

Patrick Breyer

Proposal for a regulation

Article 46 – paragraph 1 – concluding part

Text proposed by the Commission

Amendment

the *conciliator* shall inform both parties thereof.

the *panel of conciliators* shall inform both parties thereof.

Or. en

Amendment 643

Patrick Breyer

Proposal for a regulation

Article 46 – paragraph 2 – introductory part

Text proposed by the Commission

2. Having received the notification of the **conciliator**, the complying party may ask the **conciliator** to take one of the following actions:

Amendment

2. Having received the notification of the **panel of conciliators about the failure of the concerned party**, the complying party may ask the **panel** to take one of the following actions:

Or. en

Amendment 644

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

Proposal for a regulation

Article 46 – paragraph 2 – introductory part

Text proposed by the Commission

2. Having received the notification of the **conciliator**, the complying party may ask the **conciliator** to take one of the following actions:

Amendment

2. Having received the notification of the **panel of conciliators**, the complying party may ask the **panel of conciliators** to take one of the following actions:

Or. en

Amendment 645

Geoffroy Didier

Proposal for a regulation

Article 46 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

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

(b) do not commit to or withdraw its commitment to comply with its outcome, then the conciliator shall inform the Competence Center and such implementer shall be added to a public list

of “unwilling licensees” by the Competence Centre.

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

Or. en

Justification

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

Amendment 646

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

**Proposal for a regulation
Article 46 – paragraph 3**

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Both parties need to agree to participate.

Amendment 647

Geoffroy Didier

Proposal for a regulation
Article 46 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

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

Amendment 648

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

Proposal for a regulation
Article 46 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 649
Patrick Breyer

Proposal for a regulation
Article 46 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 650
Emmanuel Maurel

Proposal for a regulation
Article 47 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where a parallel proceeding has been initiated before or during the FRAND determination by a party, the conciliator, or where he/she has not been appointed, the competence centre, shall terminate the FRAND determination upon the request of any other party. ***If the other party chooses to pursue the proceeding, the resulting FRAND determination shall be binding throughout the EU, notwithstanding parallel proceedings in the third country.***

Or. fr

Amendment 651
Patrick Breyer

Proposal for a regulation
Article 47 – paragraph 2

Text proposed by the Commission

2. Where a parallel proceeding has been initiated before or during the FRAND

Amendment

2. Where a parallel proceeding ***relating to the concerned SEP*** has been

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

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

Or. en

Justification

A parallel proceedings may not necessarily be triggered by one of the parties involved, but by anyone else concerned in the world. If this is the case, the (EU) judicial phase, if relevant, should kick off.

Amendment 652

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

Proposal for a regulation Article 47 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where a parallel proceeding has been initiated before or during the FRAND determination by a party, the **panel of conciliators**, or where **it** has not been appointed, the competence centre, shall terminate the FRAND determination upon the request of any other party **with the consent of the other party**.

Or. en

Amendment 653

Catharina Rinzema, Bart Groothuis

Proposal for a regulation Article 47 – paragraph 2

Text proposed by the Commission

2. Where a parallel proceeding has been initiated before or during the FRAND determination by a party, the conciliator, or

Amendment

2. Where a parallel proceeding has been initiated before or during the FRAND determination by a party, the conciliator, or

where he/she has not been appointed, the competence centre, shall terminate the FRAND determination upon the request of any *other* party.

where he/she has not been appointed, the competence centre, shall terminate the FRAND determination upon the request of any party.

Or. en

Amendment 654

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

Proposal for a regulation

Article 48 – paragraph 1

Text proposed by the Commission

1. Without prejudice to the protection of confidentiality in accordance with Article 54(3) at any time during the FRAND determination, at the request of a party or on its own motion, the *conciliator* may request the production of documents or other evidence.

Amendment

1. Without prejudice to the protection of confidentiality in accordance with Article 54(3) at any time during the FRAND determination, at the request of a party or on its own motion, the *panel of conciliators* may request the production of documents or other evidence.

Or. en

Amendment 655

Patrick Breyer

Proposal for a regulation

Article 48 – paragraph 1

Text proposed by the Commission

1. Without prejudice to the protection of confidentiality in accordance with Article 54(3) at any time during the FRAND determination, at the request of a party or on its own motion, the *conciliator* may request the production of documents or other evidence.

Amendment

1. Without prejudice to the protection of confidentiality in accordance with Article 54(3) at any time during the FRAND determination, at the request of a party or on its own motion, the *panel of conciliators* may request the production of documents or other evidence.

Or. en

Amendment 656

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

Proposal for a regulation

Article 48 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 657

Patrick Breyer

Proposal for a regulation

Article 48 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 658

Patrick Breyer

Proposal for a regulation
Article 49

Text proposed by the Commission

The **conciliator** may hear witnesses and experts requested by either party provided that the evidence is necessary for the FRAND determination and that there is time to consider such evidence.

Amendment

The **panel of conciliators** may hear witnesses and experts requested by either party provided that the evidence is necessary for the FRAND determination and that there is time to consider such evidence.

Or. en

Amendment 659

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

Proposal for a regulation
Article 49

Text proposed by the Commission

The **conciliator** may hear witnesses and experts requested by either party provided that the evidence is necessary for the FRAND determination and that there is time to consider such evidence.

Amendment

The **panel of conciliators** may hear witnesses and experts requested by either party provided that the evidence is necessary for the FRAND determination and that there is time to consider such evidence.

Or. en

Amendment 660

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

Proposal for a regulation
Article 50 – paragraph 1

Text proposed by the Commission

1. At any time during the FRAND determination, the **conciliator** or a party on its own motion or by invitation of the **conciliator** may submit proposals for a determination of FRAND terms and conditions

Amendment

1. At any time during the FRAND determination, the **panel of conciliators** or a party on its own motion or by invitation of the **panel of conciliators** may submit proposals for a determination of FRAND terms and conditions.

Amendment 661
Patrick Breyer

Proposal for a regulation
Article 50 – paragraph 1

Text proposed by the Commission

1. At any time during the FRAND determination, the **conciliator** or a party on its own motion or by invitation of the **conciliator** may submit proposals for a determination of FRAND terms and conditions

Amendment

1. At any time during the FRAND determination, the **panel of conciliators** or a party on its own motion or by invitation of the **panel** may submit proposals for a determination of FRAND terms and conditions

Amendment 662
Emmanuel Maurel

Proposal for a regulation
Article 50 – paragraph 2

Text proposed by the Commission

2. If the requesting party has submitted a written proposal for FRAND terms and conditions in its written submission, the responding party shall be given opportunity to comment on it and/or submit a written counter-proposal in its reply.

Amendment

2. If the requesting party has submitted a written proposal for FRAND terms and conditions in its written submission, the responding party shall be given opportunity to comment on it and/or submit a written counter-proposal in its reply ***within 30 days of the date of the written proposal of the requesting party.***

Amendment 663
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 50 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

See art 18

Amendment 664
Geoffroy Didier

Proposal for a regulation
Article 50 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

For consistency with the deletion of the aggregate royalty mechanism.

Amendment 665

Patrick Breyer

Proposal for a regulation

Article 50 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 666

Emmanuel Maurel

Proposal for a regulation

Article 50 – paragraph 3

Text proposed by the Commission

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

Amendment

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

referred to in Article 18 or, in case of absence of such an opinion request additional information and hear experts or stakeholders.

opinion referred to in Article 18 or, in case of absence of such an opinion request additional information and hear experts or stakeholders.

Or. fr

Amendment 667

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

Proposal for a regulation

Article 51 – title

Text proposed by the Commission

Recommendation of a determination of FRAND terms and conditions by the *conciliator*

Amendment

Recommendation of a determination of FRAND terms and conditions by the *panel of conciliators*

Or. en

Amendment 668

Patrick Breyer

Proposal for a regulation

Article 51 – title

Text proposed by the Commission

Recommendation of a determination of FRAND terms and conditions by the *conciliator*

Amendment

Recommendation of a determination of FRAND terms and conditions by the *panel of conciliators*

Or. en

Amendment 669

Patrick Breyer

Proposal for a regulation

Article 51 – paragraph 1

Text proposed by the Commission

The **conciliator** shall notify the parties a written recommendation of a determination of FRAND terms and conditions at the latest 5 months before the time limit referred to in Article 37.

Amendment

The **panel of conciliators** shall notify the parties a written recommendation of a determination of FRAND terms and conditions at the latest 5 months before the time limit referred to in Article 37.

Or. en

Amendment 670

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

**Proposal for a regulation
Article 51 – paragraph 1**

Text proposed by the Commission

The **conciliator** shall notify the parties a written recommendation of a determination of FRAND terms and conditions at the latest 5 months before the time limit referred to in Article 37.

Amendment

The **panel of conciliators** shall notify the parties a written recommendation of a determination of FRAND terms and conditions at the latest 5 months before the time limit referred to in Article 37.

Or. en

Amendment 671

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

**Proposal for a regulation
Article 52 – paragraph 1**

Text proposed by the Commission

Following the notification of the written recommendation of FRAND terms and conditions by the **conciliator**, either party shall submit a detailed and reasoned proposal for a determination of FRAND terms and conditions. If a party has already submitted a proposal for the determination of FRAND terms and conditions, revised versions shall be submitted, if necessary, taking into account the recommendation of

Amendment

Following the notification of the written recommendation of FRAND terms and conditions by the **panel of conciliators**, either party shall submit a detailed and reasoned proposal for a determination of FRAND terms and conditions. If a party has already submitted a proposal for the determination of FRAND terms and conditions, revised versions shall be submitted, if necessary, taking into account

the *conciliator*.

the recommendation of the *panel of conciliators*.

Or. en

Amendment 672
Patrick Breyer

Proposal for a regulation
Article 52 – paragraph 1

Text proposed by the Commission

Following the notification of the written recommendation of FRAND terms and conditions by the *conciliator*, either party shall submit a detailed and reasoned proposal for a determination of FRAND terms and conditions. If a party has already submitted a proposal for the determination of FRAND terms and conditions, revised versions shall be submitted, if necessary, taking into account the recommendation of the *conciliator*.

Amendment

Following the notification of the written recommendation of FRAND terms and conditions by the *panel of conciliators*, either party shall submit a detailed and reasoned proposal for a determination of FRAND terms and conditions. If a party has already submitted a proposal for the determination of FRAND terms and conditions, revised versions shall be submitted, if necessary, taking into account the recommendation of the *panel*.

Or. en

Amendment 673
Patrick Breyer

Proposal for a regulation
Article 53 – paragraph 1

Text proposed by the Commission

If the *conciliator* considers it necessary or if a party so requests, an oral hearing shall be held within 20 days after the submission of reasoned proposals for determination of FRAND terms and conditions.

Amendment

If the *panel of conciliators* considers it necessary or if a party so requests, an oral hearing shall be held within 20 days after the submission of reasoned proposals for determination of FRAND terms and conditions.

Or. en

Amendment 674

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

Proposal for a regulation

Article 53 – paragraph 1

Text proposed by the Commission

If the *conciliator* considers it necessary or if a party so requests, an oral hearing shall be held within 20 days after the submission of reasoned proposals for determination of FRAND terms and conditions.

Amendment

If the *panel of conciliators* considers it necessary or if a party so requests, an oral hearing shall be held within 20 days after the submission of reasoned proposals for determination of FRAND terms and conditions.

Or. en

Amendment 675

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

Proposal for a regulation

Article 54 – paragraph 1

Text proposed by the Commission

1. When the *conciliator* receives information for the purposes of FRAND determination from a party, it shall disclose it to the other party so that the other party has the opportunity to present any explanation.

Amendment

1. When the *panel of conciliators* receives information for the purposes of FRAND determination from a party, it shall disclose it to the other party so that the other party has the opportunity to present any explanation.

Or. en

Amendment 676

Patrick Breyer

Proposal for a regulation

Article 54 – paragraph 1

Text proposed by the Commission

1. When the *conciliator* receives information for the purposes of FRAND determination from a party, it shall disclose

Amendment

1. When the *panel of conciliators* receives information for the purposes of FRAND determination from a party, it

it to the other party so that the other party has the opportunity to present any explanation.

shall disclose it to the other party so that the other party has the opportunity to present any explanation.

Or. en

Amendment 677
Patrick Breyer

Proposal for a regulation
Article 54 – paragraph 1

Text proposed by the Commission

1. When the *conciliator* receives information for the purposes of FRAND determination from a party, it shall disclose it to the other party so that the other party has the opportunity to present any explanation.

Amendment

1. When the *panel of conciliators* receives information for the purposes of FRAND determination from a party, it shall disclose it to the other party so that the other party has the opportunity to present any explanation.

Or. en

Amendment 678
Patrick Breyer

Proposal for a regulation
Article 54 – paragraph 2

Text proposed by the Commission

2. A party may request the *conciliator* that specific information in a submitted document is kept confidential.

Amendment

2. A party may request the *panel of conciliators* that specific information in a submitted document is kept confidential. ***Rules governing the protection of confidential information shall be established such that a party's confidential information may be shared with outside counsel and experts for the other party, provided appropriate undertakings are signed by such experts and outside counsel to ensure that the information will be maintained as confidential.***

Amendment 679

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

Proposal for a regulation

Article 54 – paragraph 2

Text proposed by the Commission

2. A party may request the *conciliator* that specific information in a submitted document is kept confidential.

Amendment

2. A party may request the *panel of conciliators* that specific information in a submitted document is kept confidential.

Amendment 680

Patrick Breyer

Proposal for a regulation

Article 54 – paragraph 3

Text proposed by the Commission

3. When a party requests the information in a document it had submitted to be kept confidential, the *conciliator* shall not disclose that information to the other *party*. The party invoking confidentiality shall also 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. This non-confidential version shall be disclosed to the other party.

Amendment

3. When a party requests the information in a document it had submitted to be kept confidential, the *panel of conciliators* shall not disclose that information *only* to the other *party's outside counsel and outside experts who have signed an appropriate confidentiality obligation*. The party invoking confidentiality shall also 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. This non-confidential version shall be disclosed to the other party.

Amendment 681

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

Proposal for a regulation

Article 54 – paragraph 3

Text proposed by the Commission

3. When a party requests the information in a document it had submitted to be kept confidential, the **conciliator** shall not disclose that information to the other party. The party invoking confidentiality shall also 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. This non-confidential version shall be disclosed to the other party.

Amendment

3. When a party requests the information in a document it had submitted to be kept confidential, the **panel of conciliators** shall not disclose that information to the other party. The party invoking confidentiality shall also 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. This non-confidential version shall be disclosed to the other party.

Or. en

Amendment 682

Patrick Breyer

Proposal for a regulation

Article 55 – title

Text proposed by the Commission

Reasoned proposal for a determination of FRAND terms and conditions by the **conciliator**

Amendment

Reasoned proposal for a determination of FRAND terms and conditions by the **panel of conciliators**

Or. en

Amendment 683

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

Proposal for a regulation

Article 55 – title

Text proposed by the Commission

Reasoned proposal for a determination of FRAND terms and conditions by the **conciliator**

Amendment

Reasoned proposal for a determination of FRAND terms and conditions by the **panel of conciliators**

Or. en

Amendment 684
Geoffroy Didier

Proposal for a regulation
Article 55 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 685
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 55 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

Both parties need to agree to participate.

Amendment 686

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

Proposal for a regulation

Article 55 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 687

Patrick Breyer

Proposal for a regulation

Article 55 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 688
Geoffroy Didier

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 689
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Both parties need to agree to participate.

Amendment 690
Patrick Breyer

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 691
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 692
Emmanuel Maurel

Proposal for a regulation
Article 55 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 693
Emmanuel Maurel

Proposal for a regulation
Article 55 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The conciliator shall promptly notify the parties that its proposal, after reformulation where applicable, is now final and constitutes a binding decision for the parties as regards the FRAND terms and conditions to be applied.

Or. fr

Amendment 694
Emmanuel Maurel

Proposal for a regulation
Article 55 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The SEP holders or an implementer who consider the binding

determination by the conciliator of the FRAND terms and conditions to be incorrect may appeal to the Boards of Appeal of the EUIPO. The application must be made within two months of the publication of the conciliator's decision. The Boards of Appeal of the EUIPO shall determine the FRAND terms and conditions in a reasoned decision, which shall be binding on the SEP holders and the implementer. The decision shall be notified to the SEP holders and the implementer.

Or. fr

Amendment 695
Geoffroy Didier

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 696
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

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

Text proposed by the Commission

1. In addition to the termination of the FRAND determination for reasons provided for Article **38(4)**, Article 44(3),

Amendment

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

Article **45(5)**, Article 46(2), point (b), **Article 46(3)** and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

Article **45(4)**, Article 46(2), point (b), and Article 47(2), the FRAND determination shall be terminated in any of the following ways:

Or. en

Amendment 697

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

Proposal for a regulation

Article 56 – paragraph 1 – point b

Text proposed by the Commission

(b) a written declaration is signed by the parties accepting the reasoned proposal for a determination of FRAND terms and conditions by the **conciliator** referred to in Article 55;

Amendment

(b) a written declaration is signed by the parties accepting the reasoned proposal for a determination of FRAND terms and conditions by the **panel of conciliators** referred to in Article 55;

Or. en

Amendment 698

Patrick Breyer

Proposal for a regulation

Article 56 – paragraph 1 – point b

Text proposed by the Commission

(b) a written declaration is signed by the parties accepting the reasoned proposal for a determination of FRAND terms and conditions by the **conciliator** referred to in Article 55;

Amendment

(b) a written declaration is signed by the parties accepting the reasoned proposal for a determination of FRAND terms and conditions by the **panel of conciliators** referred to in Article 55;

Or. en

Amendment 699

Emmanuel Maurel

Proposal for a regulation
Article 56 – paragraph 1 – point c

Text proposed by the Commission

Amendment

c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the conciliator referred to in Article 55;

deleted

Or. fr

Amendment 700
Patrick Breyer

Proposal for a regulation
Article 56 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the *conciliator* referred to in Article 55;

(c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the *panel of conciliators* referred to in Article 55;

Or. en

Amendment 701
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 56 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the *conciliator* referred to in Article 55;

(c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the *panel of conciliators* referred to in Article 55;

Or. en

Amendment 702
Emmanuel Maurel

Proposal for a regulation
Article 56 – paragraph 1 – point d

Text proposed by the Commission

Amendment

d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the conciliator referred to in Article 55. **deleted**

Or. fr

Amendment 703
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 56 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the **conciliator** referred to in Article 55.

(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the **panel of conciliators** referred to in Article 55.

Or. en

Amendment 704
Patrick Breyer

Proposal for a regulation
Article 56 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the **conciliator** referred to in Article 55.

(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the **panel of conciliators** referred to in Article 55.

Amendment 705
Catharina Rinzema, Bart Groothuis

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 706
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 707
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

Proposal for a regulation
Article 56 – paragraph 4

Text proposed by the Commission

Amendment

4. A competent court of a Member ***deleted***

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

Or. en

Justification

EU courts are the only institutions that can determine the existence of an infringement of FRAND terms. They can therefore not be delayed by an administrative, not legally binding, FRAND determination procedure that is done by the EUIPO.

Amendment 708 **Geoffroy Didier**

Proposal for a regulation **Article 56 – paragraph 4**

Text proposed by the Commission

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

Amendment

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

parallel with any FRAND determination.

Or. en

Justification

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

Amendment 709

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

Proposal for a regulation

Article 56 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 710

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

Proposal for a regulation
Article 56 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 711
Geoffroy Didier

Proposal for a regulation
Article 56 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 712
Emmanuel Maurel

Proposal for a regulation
Article 57 – title

Text proposed by the Commission

Amendment

Rapport

Publication and use of the FRAND determination

Or. fr

Amendment 713
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 1

Text proposed by the Commission

Amendment

1. *The conciliator shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).*

deleted

Or. fr

Amendment 714

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

Proposal for a regulation
Article 57 – paragraph 1

Text proposed by the Commission

Amendment

1. The *conciliator* shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).

1. The *panel of conciliators* shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).

Or. en

Amendment 715

Patrick Breyer

Proposal for a regulation
Article 57 – paragraph 1

Text proposed by the Commission

Amendment

1. The *conciliator* shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).

1. The *panel of conciliators* shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).

Amendment 716
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The report shall include the following: *deleted*

Or. fr

Amendment 717
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 2 – point a

Text proposed by the Commission

Amendment

a) the names of the parties; *deleted*

Or. fr

Amendment 718
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 2 – point b

Text proposed by the Commission

Amendment

b) a confidential assessment of the FRAND determination; *deleted*

Or. fr

Amendment 719
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 2 – point c

Text proposed by the Commission

Amendment

c) *confidential summary of the main issues of disagreement;* *deleted*

Or. fr

Amendment 720
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 2 – point d

Text proposed by the Commission

Amendment

d) *a non-confidential methodology and the assessment of the determination of FRAND terms and conditions by the conciliator.* *deleted*

Or. fr

Amendment 721
Patrick Breyer

Proposal for a regulation
Article 57 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) a non-confidential methodology and the assessment of the determination of FRAND terms and conditions by *the* conciliator.

(d) a non-confidential methodology and the assessment of the determination of FRAND terms and conditions by *each* conciliator *on the panel of conciliators*.

Or. en

Amendment 722
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 3

Text proposed by the Commission

3. The **confidential report** shall be **available** only to the parties and to the competence centre. The competence centre shall publish **the non-confidential report** in the database.

Amendment

3. The **final proposal of the conciliator determining the FRAND terms and conditions and, where applicable, the decision of the Boards of Appeal** shall be **accessible** only to the parties and to the competence centre. The competence centre shall publish non-confidential **versions** in the database.

Or. fr

Amendment 723
Emmanuel Maurel

Proposal for a regulation
Article 57 – paragraph 4

Text proposed by the Commission

4. Either party to the FRAND determination may file the **report** in any proceedings before a competent court of a Member State against the other party to the FRAND determination, notwithstanding any procedural bar.

Amendment

4. Either party to the FRAND determination may file the **final proposal of the conciliator determining the FRAND terms and conditions and, where applicable, the decision of the Boards of Appeal** in any proceedings before a competent court of a Member State against the other party to the FRAND determination, notwithstanding any procedural bar.

Or. fr

Amendment 724
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 58 – paragraph 1

Text proposed by the Commission

1. Except the methodology and the assessment of the FRAND determination by the *conciliator* referred to in Article 57(2), point (d), the competence centre shall keep confidential the determination of FRAND terms and conditions, any proposals for determination of FRAND terms and conditions submitted during the procedure and any documentary or other evidence disclosed during the FRAND determination which is not publicly available, unless otherwise provided by the parties.

Amendment

1. Except the methodology and the assessment of the FRAND determination by the *panel of conciliators* referred to in Article 57(2), point (d), the competence centre shall keep confidential the determination of FRAND terms and conditions, any proposals for determination of FRAND terms and conditions submitted during the procedure and any documentary or other evidence disclosed during the FRAND determination which is not publicly available, unless otherwise provided by the parties.

Or. en

Amendment 725
Emmanuel Maurel

Proposal for a regulation
Article 58 – paragraph 2

Text proposed by the Commission

2. Notwithstanding paragraph (1), the competence centre may include information concerning the FRAND determination in any aggregate statistical data that it publishes concerning its activities, *provided that such information does not allow identification the parties or the particular circumstances of the dispute to be identified.*

Amendment

2. Notwithstanding paragraph (1), the competence centre may include information concerning the FRAND determination in any aggregate statistical data that it publishes concerning its activities.

Or. fr

Amendment 726
Kosma Zlotowski

Proposal for a regulation
Article 60 – paragraph 1

Text proposed by the Commission

1. Time limits shall be laid down in terms of full years, months, weeks or days. Calculation shall start on the day following the day on which the relevant event occurred.

Amendment

1. Time limits shall be laid down in terms of full years, months, weeks or days. Calculation shall start on the day following the day on which the relevant event occurred.

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

Or. en

Amendment 727
Geoffroy Didier

Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

SEP holders or implementers.

Or. en

Amendment 728

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 61 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The competence centre shall offer training, **guidance** and support on SEP related matters for micro, small and medium-size enterprises free of charge. ***To offer these trainings, the competence centre can work together with the Commission, national patent offices and governmental schemes.***

Or. en

Amendment 729

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 61 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The competence centre will maintain a list all the relevant existing patent pools for the various standards and facilitate establishing contacts between those patent pools and SMEs.

Or. en

Justification

See art 4(b)

Amendment 730
Geoffroy Didier

Proposal for a regulation
Article 61 – paragraph 2

Text proposed by the Commission

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

Amendment

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

3. The competence center shall require each SEP Holder with a Registered SEP to report annually:

(a) all license agreements concluded with SMEs;

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

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

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

Or. en

Justification

The agreement with WIPO in paragraph (1) is adopted from Option 1 in the Impact

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

Amendment 731

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

Proposal for a regulation

Article 61 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 732

Geoffroy Didier

Proposal for a regulation

Article 61 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 733

Geoffroy Didier

**Proposal for a regulation
Article 61 a (new)**

Text proposed by the Commission

Amendment

Article 61a

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

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

Amendment 734
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 61 a (new)

Text proposed by the Commission

Amendment

Article 61a

Judicial and financial support

- 1. Competent courts of Member States and the Unified Patent Court shall ensure that the court fees do not exceed the fee of registering a patent.***
- 2. A relevant part of the patent application fee shall contribute to an insurance to ensure that the relevant natural and legal persons receive, under certain conditions, free of charge judicial support, such as a legal representative during court proceedings.***

Amendment 735
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 62 – paragraph 1

Text proposed by the Commission

Amendment

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

1. When negotiating a SEP licence with micro, small and medium-sized enterprises, SEP holders shall ***offer*** them FRAND terms and conditions that ***take account of the economic capacity of the*** micro, small and medium-sized ***enterprises in line with their obligation to ensure that the terms and conditions are fair, reasonable and non-discriminatory.***

Amendment 736
Kosma Zlotowski

Proposal for a regulation
Article 62 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 737
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 62 – paragraph 2

Text proposed by the Commission

2. ***If*** a SEP holder ***offers more favourable FRAND terms and conditions to micro, small and medium-sized enterprises, or*** concludes a SEP licence that includes more favourable terms and conditions, pursuant to paragraph (1), such FRAND terms and conditions shall not be considered in a FRAND determination, unless the FRAND determination is conducted solely with regard to FRAND terms and conditions for another micro, small or medium-sized enterprise.

Amendment

2. ***When*** a SEP holder concludes a SEP licence that includes more favourable terms and conditions ***than those offered to companies that are not a micro, small or medium-sized enterprise*** pursuant to paragraph (1), such FRAND terms and conditions shall not be considered in a FRAND determination, unless the FRAND determination is conducted solely with regard to FRAND terms and conditions for another micro, small or medium-sized enterprise.

Amendment 738
Kosma Zlotowski

Proposal for a regulation
Article 62 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 739
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 62 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where a SEP holder can demonstrate that the FRAND terms and conditions offered to one or more micro, small or medium-sized enterprises are more favourable than FRAND terms and conditions offered to companies that are not a micro, small or medium-sized enterprise, they shall not be subject to the obligations of Title IV of this Regulation in relation to the SEP license offered to these micro, small or medium-sized enterprises.

Or. en

Amendment 740

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

Proposal for a regulation

Article 63 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Or. en

Justification

See art 17

Amendment 741

Geoffroy Didier

Proposal for a regulation

Article 63 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 742

Geoffroy Didier

Proposal for a regulation

Article 63 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 743

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

Proposal for a regulation

Article 63 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Justification

See art 18

Amendment 744

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 63 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) for the essentiality check carried out by the evaluator in accordance with Article 31 and by the peer evaluator in accordance with Article 32; *deleted*

Or. en

Amendment 745

Adrián Vázquez Lázara

Proposal for a regulation

Article 63 – paragraph 2 – point c

Text proposed by the Commission

(c) for the *essentiality check carried out by the evaluator* in accordance with Article 31 *and by the peer evaluator in accordance with Article 32*;

Amendment

(c) for the *technical conciliation procedure* in accordance with Article 28;

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure (new Article 28).

Amendment 746

Geoffroy Didier

Proposal for a regulation

Article 63 – paragraph 3 – point a

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

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

Amendment 747

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

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 748
Geoffroy Didier

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

Text proposed by the Commission

Amendment

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

Or. en

Justification

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

Amendment 749
Catharina Rinzema, Bart Groothuis, Annie Schreijer-Pierik, Antonius Manders

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

Text proposed by the Commission

Amendment

(b) the fees referred to in paragraph **deleted**

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

Or. en

Amendment 750

Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation

Article 63 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(c) the fees referred to in paragraph (2), point (c) by the SEP holder that requested an essentiality check pursuant to Article 29(5) or peer evaluation pursuant to Article 32(1) and the implementer that requested an essentiality check pursuant to Article 29(6);

deleted

Or. en

Amendment 751

Adrián Vázquez Lázara

Proposal for a regulation

Article 63 – paragraph 3 – point c

Text proposed by the Commission

Amendment

*(c) the fees referred to in paragraph (2), point (c) by the **SEP holder that requested an essentiality check pursuant to Article 29(5) or peer evaluation pursuant to Article 32(1) and the implementer that requested an essentiality check pursuant to Article 29(6);***

*(c) (c) the fees referred to in paragraph (2), point (c), **shall be divided equally** by the **parties that participated the procedure. If SMEs are involved, the competence centre shall consider offering the procedure for free or for a reduced fee for such SMEs.***

Or. en

Justification

For consistency with deletion of essentiality checks and the new technical conciliation procedure (new Article 28).

Amendment 752 **Emmanuel Maurel**

Proposal for a regulation **Article 63 – paragraph 5**

Text proposed by the Commission

5. By [OJ: please insert the date = **18** months from entry into force of this Regulation], the Commission shall adopt an implementing act determining the amounts of the fees referred to in Article 63, the arrangement concerning the payment methods related to the rules set out in paragraph (3) and paragraph (4) of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Amendment

5. By [OJ: please insert the date = **12** months from entry into force of this Regulation], the Commission shall adopt an implementing act determining the amounts of the fees referred to in Article 63, the arrangement concerning the payment methods related to the rules set out in paragraph (3) and paragraph (4) of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Or. fr

Amendment 753 **Geoffroy Didier**

Proposal for a regulation **Article 64 – paragraph 2**

Text proposed by the Commission

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

Amendment

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

Amendment 754
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 64 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

See art 15

Amendment 755
Tiemo Wölken, Ibán García Del Blanco, René Repasi, Maria-Manuel Leitão-Marques

Proposal for a regulation
Article 66

Text proposed by the Commission

Article 66

Opening registration for an existing standard

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

Amendment

deleted

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

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

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

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

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

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

Or. en

Amendment 756

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

Proposal for a regulation

Article 66

Text proposed by the Commission

Amendment

Article 66

deleted

Opening registration for an existing standard

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

2. Until [OJ: please insert the date = 28 months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the

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

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

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

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

Or. en

See art 1(1a)

Amendment 757
Geoffroy Didier

Proposal for a regulation
Article 66

Text proposed by the Commission

Amendment

Article 66

deleted

Opening registration for an existing standard

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

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

3. Until [OJ: please insert the date =

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

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

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

Or. en

Justification

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

Amendment 758
Emmanuel Maurel

Proposal for a regulation
Article 66 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Until [OJ: please insert the date = **24** months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation ('existing standards'), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

Or. fr

Amendment 759
Emmanuel Maurel

Proposal for a regulation
Article 66 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Until [OJ: please insert the date = **24** months from entry into force of this regulation] implementers of a standard, standard published before the entry into force of this Regulation, for which FRAND commitments have been made may notify pursuant to Article 14(4) the competence centre of any of the existing standards or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The procedures, notification and publication requirements set out in this Regulation

apply mutatis mutandis.

apply mutatis mutandis.

Or. fr

Amendment 760
Emmanuel Maurel

Proposal for a regulation
Article 66 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Until [OJ: please insert the date = **24** months from entry into force of this regulation] a SEP holder or an implementer may request an expert opinion pursuant to Article 18 regarding SEPs essential to an existing standard or parts thereof, that will be determined in the delegated act in accordance with paragraph (4). The requirements and procedures set out in Article 18 apply mutatis mutandis.

Or. fr

Amendment 761
Emmanuel Maurel

Proposal for a regulation
Article 66 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

delegated act shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those existing standards. The delegated act shall be adopted within [OJ: please insert the date = 18 months from entry into force of this regulation].

Or. fr

Amendment 762
Geoffroy Didier

Proposal for a regulation
Article 66 b (new)

Text proposed by the Commission

Amendment

Article 66b

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

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

Or. en

Justification

European Union competence and jurisdiction is limited to European patents. The Union does not have jurisdiction in respect of patent rights granted by non-EU states. Furthermore, the Regulation is premised on the understanding that there are concerns about SEP licensing generally and in particular about SEP licensing in future IoT industries. However current evidence is inconclusive (see the "Empirical Assessment"). Better Regulation requires that any intervention in markets be evidence based. The Regulation should therefore apply where significant difficulties or inefficiencies are indeed observed but not otherwise. Applying the current regulation retroactively as per point Art 1.2.(b) to standards already adopted before

the entry into force of this regulation would create massive legal uncertainty in relation to existing rights, both for SEP owners and implementers who have already concluded contracts granting them the right to use those SEPs

Amendment 763

Patrick Breyer

Proposal for a regulation

Article 67 – paragraph 2

Text proposed by the Commission

2. The power to adopt a delegated act referred to in Articles 1(4), 4(5) and 66(4) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. The power to adopt a delegated act referred to in Articles 1(4), 4(5), **13.a (new)** and 66(4) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or. en

Justification

We propose a new article 13(a) on the Enhanced cooperation with the European Patent Office, national patent offices and Standards Development Organisations.

Amendment 764

Catharina Rinzema, Bart Groothuis

Proposal for a regulation

Article 67 – paragraph 2

Text proposed by the Commission

2. The power to adopt a delegated act referred to in Articles **1(4), 4(5) and 66(4)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment

2. The power to adopt a delegated act referred to in Articles **1(2, 4) and 4(5)** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Or. en

Amendment 765
Patrick Breyer

Proposal for a regulation
Article 67 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Articles 1(4), 4(5) and 66(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Articles 1(4), 4(5), **13.a (new)** and 66(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 766
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 67 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Articles **1(4), 4(5) and 66(4)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Articles **1(2, 4) and 4(5)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 767
Patrick Breyer

Proposal for a regulation
Article 67 – paragraph 6

Text proposed by the Commission

6. A delegated act adopted pursuant to Articles 1(4), 4(5) and 66(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Amendment

6. A delegated act adopted pursuant to Articles 1(4), 4(5), **13.a (new)** and 66(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Or. en

Amendment 768
Catharina Rinzema, Bart Groothuis

Proposal for a regulation
Article 67 – paragraph 6

Text proposed by the Commission

6. A delegated act adopted pursuant to Articles **1(4), 4(5) and 66(4)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Amendment

6. A delegated act adopted pursuant to Articles **1(2, 4) and 4(5)** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Or. en

Amendment 769
Patrick Breyer

Proposal for a regulation
Article 70 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 770
Kosma Zlotowski

Proposal for a regulation
Article 70 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 771
Gilles Lebreton

Proposal for a regulation
Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. By ... [OJ: please insert the date =

4 years from entry into force of this regulation], the Commission shall evaluate the impact of the essentiality check system, the aggregate royalties determination system and the FRAND determination system, in particular on the competitiveness of EU SEP holders on a global level and on innovation in the EU.

Or. fr

Amendment 772
Kosma Złotowski

Proposal for a regulation
Article 70 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 773
Patrick Breyer

Proposal for a regulation
Article 70 – paragraph 2

Text proposed by the Commission

2. By [OJ: please insert the date = **8** years from entry into force of this regulation], and every **five** years thereafter, the Commission shall evaluate the implementation of this Regulation. The

Amendment

2. By [OJ: please insert the date = **5** years from entry into force of this regulation], and every **three** years thereafter, the Commission shall evaluate the implementation of this Regulation. The

evaluation shall assess the operation of this Regulation, in particular the impact, effectiveness and efficiency of the competence centre and its working methods.

evaluation shall assess the operation of this Regulation, in particular the impact, effectiveness and efficiency of the competence centre and its working methods.

Or. en

Amendment 774
Emmanuel Maurel

Proposal for a regulation
Article 70 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. fr

Amendment 775
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 72 – paragraph 1

Text proposed by the Commission

1. This Regulation shall enter into force ***on the twentieth day following that of its publication in the Official Journal of the European Union.***

Amendment

1. This Regulation shall ***only*** enter into force ***after:***

Or. en

Amendment 776
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 72 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) the Commission has beyond reasonable doubt shown that the functioning of the current system causes major disruption in the internal market, and therefore justifying the measures proposed in this Regulation; and

Or. en

Amendment 777
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 72 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) the European Patent Office has been consulted and following this consultation this Regulation has been amended accordingly; and

Or. en

Amendment 778
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 72 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

(c) the Unified Patent Court has been consulted and following this consultation this Regulation has been amended accordingly.

Amendment 779
Antonius Manders, Annie Schreijer-Pierik

Proposal for a regulation
Article 72 – paragraph 1 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Or. en

Amendment 780
Emmanuel Maurel

Proposal for a regulation
Article 72 – paragraph 2

Text proposed by the Commission

Amendment

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

2. It shall apply from ... [OP: please insert the date = **12** months after the date of entry into force of this Regulation].

Or. fr