DRAFT REPORT


Committee on Legal Affairs

Rapporteur: Marion Walsmann
**Symbols for procedures**

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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**Amendments to a draft act**

**Amendments by Parliament set out in two columns**

Deletions are indicated in *bold italics* in the left-hand column. Replacements are indicated in *bold italics* in both columns. New text is indicated in *bold italics* in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

**Amendments by Parliament in the form of a consolidated text**

New text is highlighted in *bold italics*. Deletions are indicated using either the * symbol or strikeout. Replacements are indicated by highlighting the new text in *bold italics* and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2023)0232),
– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0147/2023),
– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
– having regard to the opinion of the European Economic and Social Committee of 20 September 2023,
– having regard to Rule 59 of its Rules of Procedure,
– having regard to the opinions of the Committee on International Trade and the Committee on the Internal Market and Consumer Protection,
– having regard to the report of the Committee on Legal Affairs (A9-0000/2023),

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Recital 2

1 Not yet published in the Official Journal.
(2) This Regulation aims at improving the licensing of SEPs, by addressing the causes of inefficient licensing such as insufficient transparency with regard to SEPs, fair, reasonable and non-discriminatory (FRAND) terms and conditions and licensing in the value chain, and limited use of dispute resolution procedures for resolving FRAND disputes. All these together reduce the overall fairness and efficiency of the system and result in excess administrative and transactional costs. By improving the licensing of SEPs, the Regulation aims to incentivise participation by European firms in the standard development process and the broad implementation of such standardised technologies, particularly in Internet of Things (IoT) industries. Therefore, this Regulation pursues objectives that are complementary to, but different from that of protecting undistorted competition, guaranteed by Articles 101 and 102 TFEU. This Regulation should also be without prejudice to national competition rules.

Amendment 2
Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

(2a) Good faith negotiations between parties willing to participate occur in many FRAND cases, but in other cases SEPs are still subject to litigation. Union SEP holders and SEP implementers should benefit from the mechanisms introduced by this Regulation. Those

Amendment
mechanisms are intended to end, on the one hand, situations in which SEP implementers delay and refuse to take FRAND licences and, on the other hand, situations in which SEP holders enforce non-FRAND royalties because of the threat of injunction and the lack of transparency.

Amendment 3
Proposal for a regulation
Recital 3

Text proposed by the Commission

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

Amendment

(3) SEPs are patents that protect technology that is incorporated in a standard. SEPs are ‘essential’ in the sense that implementation of the standard requires use of the inventions covered by SEPs. The success of a standard depends on its wide implementation and as such every stakeholder should be allowed to use a standard. To ensure wide implementation and accessibility of standards, standard development organisations demand the SEP holders that participate in standard development to commit to license those patents on FRAND terms and conditions to implementers that chose to use the standard. The FRAND commitment is a voluntary contractual commitment given by the SEP holder for the benefit of third parties, and it should be respected as such also by subsequent SEP holders. This Regulation should apply to patents that have been declared to be essential to a standard that has been published by a standard development organisation, to which the SEP holder has made a commitment to license its SEPs on fair, reasonable and non-discriminatory (FRAND) terms and conditions and that is not subject to a royalty-free intellectual
Amendment 4

Proposal for a regulation
Recital 4

Text proposed by the Commission

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

Amendment

(4) There are well established commercial relationships and licensing practices for certain use cases of standards with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel use cases – sometimes of the same standards or subsets thereof - with less mature markets, more diffuse and less consolidated implementer communities, for which unpredictability of royalty and other licensing conditions and the prospect of complex patent assessments and valuations and related litigation weigh more heavily on the incentives to deploy standardised technologies in innovative products. Therefore, in order to ensure a proportionate and well targeted response, certain procedures under this Regulation, namely the aggregate royalty determination and the compulsory FRAND determination prior to litigation, should not be applied to identified use cases in which there is sufficient evidence that SEP licensing negotiations on FRAND terms and conditions do not give rise to significant difficulties or inefficiencies.
Amendment 5
Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Patent pools, as industry-led joint patent licensing solutions, are beneficial to the market and companies across the SEP licensing spectrum, including both SEP holders and SEP implementers. They are a predictable and fair option for licensing patented technologies essential for a standard, since they allow agreement to be reached on a widely acceptable set of licensing terms and conditions between companies from across the world. Since patent pools deal with SEPs, they should also commit to FRAND terms and conditions, and they should provide full transparency with regard to the patents that are covered by their portfolio, ideally licence them to all interested licensees regardless of their position in the value chain and preferably include all the SEPs relevant to the standard.

Or. en

Amendment 6
Proposal for a regulation
Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) While competition scrutiny of patent pools already took place, uncertainty about the compatibility of licensee negotiation groups (‘LNGs’) formed by SEP implementers still remains. LNGs can streamline the negotiation process, thereby reducing the administrative burden and ensuring that the licensing terms and conditions are more uniform and equitable for all
participating SEP implementers. LNGs benefit SMEs in particular. The Commission should therefore examine the competitive impact of LNGs and analyse which conditions they should fulfil in order to comply with competition law while avoiding the risk of offering ‘hold-out’ options to participating SEP implementers.

Amendment 7

Proposal for a regulation
Recital 12

Text proposed by the Commission

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

Amendment

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

Amendment 8

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) The competence centre should set

Amendment

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

Or. en

Justification

For the sake of clarity, this recital has been amended and split into three different recitals.

Amendment 9

Proposal for a regulation
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The competence centre should also set up and administer an electronic database with a more extensive and comprehensive dataset to which access could be subject to the payment of a fee.
Amendment 10
Proposal for a regulation
Recital 13 b (new)

Text proposed by the Commission

(13b) In order to raise awareness and facilitate SEP licensing for SMEs, the competence centre should offer assistance to SMEs. The setting up and administering a system for essentiality checks and processes for aggregate royalty determination and FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis, including through the use of new technologies. In line with this objective, the competence centre should establish training procedures for evaluators of essentiality and conciliators for providing opinions on aggregate royalty as well as on FRAND determination and should encourage consistency in their practices.

Amendment

Or. en

Amendment 11
Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) Knowledge of the potential total royalty for all SEPs covering a standard (aggregate royalty) applicable to the implementations of that standard is important for the assessment of the royalty amount for a product, which plays a significant role for the manufacturer’s cost determinations. It also helps SEP holder to

Amendment

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

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

holder to plan expected return on investment. The publication of the expected aggregate royalty and the standard licensing terms and conditions for a particular standard would facilitate SEP licensing and reduce the cost of SEP licensing. Thus, SEP implementers and SEP holders would benefit from making public the information on total royalty rates (aggregate royalty) and the standard FRAND terms and conditions of licensing.

Amendment 12
Proposal for a regulation
Recital 16

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

For the sake of clarity this recital has been amended and split into two.

Amendment 13

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) SEP holders and/or SEP implementers should be able to request the competence centre for a non-binding expert opinion by an independent third party on an aggregate royalty. When such a request is made, the competence centre should appoint a panel of conciliators and
administer a process in which all interested stakeholders are invited to participate. After receiving information from all of the participants, the panel should provide a non-binding expert opinion for an aggregate royalty. The expert opinion on the aggregate royalty should contain a non-confidential analysis of the expected impact of the aggregate royalty on the SEP holders and the stakeholders in the value chain. In this respect, it would be important to consider factors such as, efficiency of SEP licensing, including insights from any customary rules or practices for licensing of intellectual property in the value chain and cross-licensing, and impact on incentives to innovate of SEP holders and different stakeholders in the value chain.

Or. en

Amendment 14
Proposal for a regulation
Recital 27

Text proposed by the Commission

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

Amendment

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

Or. en
Amendment 15
Proposal for a regulation
Recital 29

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

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

Or. en

Amendment 16
Proposal for a regulation
Recital 32

Text proposed by the Commission
(32) The FRAND determination should simplify and speed up negotiations concerning FRAND terms and reduce costs. The EUIPO should administer the procedure. The competence centre should create a roster of conciliators that satisfy established competence and independence criteria, as well as a repository of non-confidential reports (the confidential version of the reports will be accessible only by the parties and the conciliators). The conciliators should be neutral persons with extensive experience in dispute

Amendment
(32) The FRAND determination should simplify and speed up negotiations concerning FRAND terms and conditions and reduce transaction costs for all stakeholders. The EUIPO should administer the procedure. The competence centre should create a roster of conciliators that satisfy established competence and independence criteria, as well as a repository of non-confidential reports (the confidential version of the reports will be accessible only by the parties and the conciliators). The conciliators should be
resolution and substantial understanding of the economics of licensing on FRAND terms and conditions. \textit{Impartial} persons with extensive experience in dispute resolution and substantial understanding of the economics of licensing on FRAND terms and conditions. \textit{There should be rules and procedures defining conflicts of interests and mechanisms for addressing any such conflicts that might arise.}

Amendment 17
Proposal for a regulation
Recital 34

\textit{Text proposed by the Commission}

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

\textit{Amendment}

(34) Where a party does not reply to the FRAND determination request, the other party should be able to request either the termination or the unilateral continuation of the FRAND determination. Such a party should not be exposed to litigation during the time of the FRAND determination. At the same time, the FRAND determination should be an effective procedure for the parties to \textit{meet on a neutral level, such as before a conciliator, and} reach agreement before litigation or to obtain a determination to be used in further proceedings. Therefore, the party or parties that duly engage in the procedure should be able to benefit from its completion.

\textit{Justification}

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.
Amendment 18
Proposal for a regulation
Recital 35

Text proposed by the Commission

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

Amendment

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

Amendment 19

Proposal for a regulation
Recital 43

Text proposed by the Commission

(43) The FRAND determination is also consistent with the right to an effective remedy and to access to justice as laid down in Article 47 of the Charter of Fundamental Rights of the European Union as the implementer and the SEP holder fully retain that right. In case of failure to register within the prescribed time limit, the exclusion of the right to effective enforcement is limited and necessary and meets objectives of general interest. As confirmed by the CJEU, the provision of a mandatory dispute resolution as a precondition to access to competent courts of Member States is deemed to be compatible with the principle of effective judicial protection. The FRAND determination follows the conditions for mandatory dispute resolution outlined in the CJEU judgments, taking into account the particular characteristics of SEP licensing.

Amendment

(43) The FRAND determination is also consistent with the right to an effective remedy and to access to justice as laid down in Article 47 of the Charter of Fundamental Rights of the European Union as the implementer and the SEP holder fully retain that right. In case of failure to register within the prescribed time limit, the exclusion of the right to effective enforcement is limited and necessary and meets objectives of general interest. As confirmed by the CJEU, the provision of a mandatory dispute resolution as a precondition to access to competent courts of Member States is deemed to be compatible with the principle of effective judicial protection. The FRAND determination follows the conditions for mandatory dispute resolution outlined in the CJEU judgments, taking into account the particular characteristics of SEP licensing. The FRAND determination procedure allows also a deposit of a bond by the alleged infringer as a provisional injunction of a financial nature, which can be requested in order to avoid seriously restricting the alleged infringer’s activity and ensuring that the other party receives the corresponding sum in the event of a claim for damages. Moreover, the FRAND determination does not in any respect impair an SEP
Amendment 20
Proposal for a regulation
Recital 45 a (new)

Text proposed by the Commission

(45a) In order to avoid a possible negative impact for European companies that engage and compete successfully as regards the development of global technologies through standardisation, the Commission should evaluate the impact that the essentiality check system, the aggregate royalties determination and the FRAND determination system have on the competitiveness of Union SEP holders on a global level. Based on the outcome of that evaluation, the Commission should, where necessary, present a legislative proposal in order to adapt the systems.

Or. en
Amendment 21
Proposal for a regulation
Recital 46

Text proposed by the Commission

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

Amendment

(46) SMEs may be involved in SEP licensing both as SEP holders and SEP implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation are likely to facilitate the licensing of their SEP. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings. The SEPs of micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to. SME implementers should likewise benefit from reduced access fees and free support and trainings. SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties. Finally, MSMEs should benefit from a one-stop shop being set up by the competence centre which identifies relevant licensees and licensors for the MSME and advises them, free of charge, on SEPs. Patent assertion entities should not benefit from the exceptions and help from the competence centre provided for in this Regulation.

Or. en

Amendment 22
Proposal for a regulation
Recital 46 a (new)
(46a) The support mechanisms, such as IP vouchers for SMEs, have been effective in assisting SMEs to protect their IP rights. The period of application of those mechanisms should be prolonged beyond 2024.

Amendment 23
Proposal for a regulation
Article 1 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 24
Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies affecting the functioning
of the internal market, Articles 17 and 18 and Article 34(1) shall not apply. The Commission shall, after an appropriate consultation process including all relevant stakeholders, by means of a delegated act adopted in accordance with Article 67, establish a list of such use cases, standards or parts thereof. The Commission shall review that list once a year in order to determine if it needs to be updated.

Amendment 25
Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Where the functioning of the internal market is severely distorted due to significant difficulties or inefficiencies in the licensing of SEPs, this Regulation shall also apply to existing standards. The Commission shall, after an appropriate consultation process including all relevant stakeholders, 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 Article 66(1) or (2), or for which an expert opinion can be requested in accordance with Article 66(3). The Commission shall also determine by means of that delegated act which procedures, notification and publication requirements set out in this Regulation apply to those existing standards. The delegated act shall be adopted by ... [OJ: please insert the date 18 months from entry into force of this regulation]. The Commission shall check once a year if the list needs to be updated.
Justification

Text from Article 66 (4) has been moved to Article 1, since it deals with the scope of application of this Regulation.

Amendment 26

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

Text proposed by the Commission

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

Amendment

(1) ‘standard essential patent’ or ‘SEP’ means any patent that has been declared essential to a standard and is in force in a Member State;

Or. en

Amendment 27

Proposal for a regulation
Article 2 – paragraph 1 – point 3

Text proposed by the Commission

(3) ‘standard’ means a technical specification, adopted by a standard development organisation, for repeated or continuous application, with which compliance is not compulsory;

Amendment

(3) ‘standard’ means a technical specification, adopted by a standard development organisation, for repeated or continuous application;

Or. en

Amendment 28

Proposal for a regulation
Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

(5a) ‘use case’ means a specific scenario where a particular standardised technology or method is applied to fulfil a
given purpose or function of a device or service;

Amendment 29

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

Text proposed by the Commission

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

Amendment

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

Amendment 30

Proposal for a regulation
Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

(7a) ‘significant difficulties or inefficiencies’ means one of the following:

(a) material impediments: circumstances or conditions where the negotiation or implementation of a SEP licensing agreement, including any lack or part thereof, results in a substantive obstacle to the timely and effective deployment, development, distribution or commercialisation of a product, service, or technology;

(b) unreasonable delays: situations in which the duration of licensing negotiations extends beyond customary or reasonable or average timeframes for such negotiations in the industry, resulting in undue postponement of the
conclusion of a licence agreement;
(c) excessive costs: scenarios where the financial burden of negotiating or implementing SEP licensing agreements are notably higher than industry norms or reasonable benchmarks, to the extent that it inhibits or restricts fair returns for SEP holders or market entry or development, or distribution for SEP implementers;
(d) litigation or dispute frequency: situations where SEP licensing negotiations, agreements, or terms are the subject of multiple recurrent or concurrent legal disputes, challenges, or litigations involving more than one SEP holder or SEP implementer;
(e) barriers to innovation: situations where the implementation of a standard, including any lack or limitation thereof, hinders, limits, or curtails technological innovation or advancement, as compared to industry norms or similar standard implementations;

Or. en

Justification

The terms "significant difficulties or inefficiencies" have to be defined since they are decisive for the scope of application in accordance with Article 1 (3) and (4).

Amendment 31

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(10) ‘aggregate royalty’ means the maximum amount of royalty for all patents essential to a standard;</td>
<td>(10) ‘aggregate royalty’ means the total amount of money paid or required to be paid to license all patents essential to a standard;</td>
</tr>
</tbody>
</table>

Or. en
Amendment 32

Proposal for a regulation
Article 2 – paragraph 1 – point 10 a (new)

Text proposed by the Commission
(10a) ‘royalty free’ means available without payment of a royalty or without an agreement to any other consideration, whether monetary or non-monetary;

Or. en

Amendment 33

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

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

Or. en

Justification
Some patent pools are not created by SEP holders but by a third party, those patent pools also have to be covered by this legislation.

Amendment 34

Proposal for a regulation
Article 2 – paragraph 1 – point 13

Text proposed by the Commission
(13) ‘claim chart’ means a presentation of correspondence between the elements (features) of one patent claim and at least one requirement of a standard or

Amendment
(13) ‘claim chart’ means a document identifying correspondence between the elements (features) of one patent claim and at least one requirement of a standard or
Amendment 35
Proposal for a regulation
Article 2 – paragraph 1 – point 16

Text proposed by the Commission

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

Amendment

(16) ‘patent family’ means a collection of patent applications covering the same invention and whose members have the same priorities;

Or. en

Amendment 36
Proposal for a regulation
Article 2 – paragraph 1 – point 17 a (new)

Text proposed by the Commission

(17a) ‘conciliator’ means any person that has been appointed to mediate among parties in establishing an aggregate royalty in accordance with Article 17, to serve on a panel that provides a non-binding opinion on an aggregate royalty in accordance with Article 18 and to serve in the FRAND determination in accordance with Title VI, who is independent and impartial, and does not have any direct or indirect conflict of interest;

Amendment

Or. en
Amendment 37
Proposal for a regulation
Article 2 – paragraph 1 – point 17 b (new)

Text proposed by the Commission

Amendment

(17b) ‘evaluator’ means any person that has been appointed to conduct essentiality checks in accordance with Title V, who is independent and impartial, and does not have any direct or indirect conflict of interest;

Or. en

Amendment 38
Proposal for a regulation
Article 2 – paragraph 1 – point 17 c (new)

Text proposed by the Commission

Amendment

(17c) ‘peer evaluator’ means any person that has been appointed to conduct a peer evaluation, who is independent and impartial, and does not have any direct or indirect conflict of interest;

Or. en

Amendment 39
Proposal for a regulation
Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

Amendment

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

**Amendment 40**

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

- **Text proposed by the Commission**
  - (a) set up and maintain an electronic register and an electronic database for SEPs;

- **Amendment**
  - (a) set up and maintain an electronic register and an electronic database for SEPs *in accordance with Articles 4 and 5*;

**Amendment 41**

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

- **Text proposed by the Commission**
  - (b) set up and manage rosters of evaluators and conciliators;

- **Amendment**
  - (b) set up and manage rosters of evaluators and conciliators *in accordance with Article 27*;
Amendment 42
Proposal for a regulation
Article 3 – paragraph 2 – point c

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

Amendment
(c) set up and administer a system for assessment of the essentiality of SEPs in accordance with Articles 28 to 33;

Or. en

Amendment 43
Proposal for a regulation
Article 3 – paragraph 2 – point d

Text proposed by the Commission
(d) set up and administer the process for the FRAND determination;

Amendment
(d) set up and administer the process for the FRAND determination in accordance with Articles 34 to 58;

Or. en

Amendment 44
Proposal for a regulation
Article 3 – paragraph 2 – point f

Text proposed by the Commission
(f) administer a process for aggregate royalty determination;

Amendment
(f) administer a process for facilitating agreements on and the determination of an aggregate royalty in accordance with Articles 17 and 18;

Or. en
Amendment 45
Proposal for a regulation
Article 3 – paragraph 2 – point g – point i

Text proposed by the Commission

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

Amendment

(i) publishing the results and reasoned opinions of the essentiality checks and non-confidential reports of the FRAND determinations in accordance with Article 33(1) and Article 57(3);

Or. en

Amendment 46
Proposal for a regulation
Article 3 – paragraph 2 – point g – point ii

Text proposed by the Commission

(ii) enabling access to case-law (including alternative dispute resolution) on SEPs, including from third country jurisdictions;

Amendment

(ii) enabling access to case-law (including alternative dispute resolution) on SEPs, including from third country jurisdictions, in accordance with Article 13(3);

Or. en

Amendment 47
Proposal for a regulation
Article 3 – paragraph 2 – point g – point iii

Text proposed by the Commission

(iii) compiling non-confidential information on FRAND determination methodologies and FRAND royalties;

Amendment

(iii) compiling non-confidential information on FRAND determination methodologies and FRAND royalties in accordance with Article 13(4) and (5);

Or. en
Amendment 48

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

Text proposed by the Commission

(iv) enabling access to SEP-related rules of third countries;

Amendment

(iv) enabling access to SEP-related rules of third countries in accordance with Article 12;

Or. en

Amendment 49

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

Text proposed by the Commission

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

Amendment

(h) set up and maintain a one-stop shop for SMEs and provide training, support and general advice on SEPs to SMEs in accordance with Article 61;

Or. en

Amendment 50

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

1. A Union register for SEPs ('the register') shall be set up and maintained in electronic format by the competence centre.

Or. en
Amendment 51
Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

2. **The register shall be maintained in** deleted **electronic format by the competence centre.**

Or. en

Justification

Content included in Art. 4 (1).

Amendment 52
Proposal for a regulation
Article 4 – paragraph 3 – point f

Text proposed by the Commission

(f) if the SEP holder is part of a group of companies, the name, address and contact details of the parent company;

(f) if the SEP holder is an affiliate, subsidiary or part of one or more other companies, the name, address and contact details of the parent company;

Or. en

Amendment 53
Proposal for a regulation
Article 4 – paragraph 3 – point h

Text proposed by the Commission

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

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

Or. en
Amendment 54

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

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

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

Or. en

Amendment 55

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

Text proposed by the Commission
(j) availability for licensing through patent pools, where applicable;

Amendment
(j) availability for licensing through patent pools and the name of the respective patent pool, where applicable;

Or. en

Amendment 56

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

Text proposed by the Commission
(d) information on whether the SEP is expired or invalidated by a final judgment of a competent court of a Member State;

Amendment
(d) information on whether the SEP is expired, invalidated or deemed unenforceable by a final judgment of a competent court of a Member State;

Or. en
Amendment 57
Proposal for a regulation
Article 5 – paragraph 1

**Text proposed by the Commission**

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

**Amendment**

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

Amendment 58
Proposal for a regulation
Article 5 – paragraph 2 – point b

**Text proposed by the Commission**

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

**Amendment**

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

Amendment 59
Proposal for a regulation
Article 5 – paragraph 2 – point c

**Text proposed by the Commission**

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

**Amendment**

(c) publicly available standard terms and conditions for SEP licensing to SMEs pursuant to Article 62(1), if available;
Amendment 60
Proposal for a regulation
Article 5 – paragraph 2 – point d

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

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

Or. en

Amendment 61
Proposal for a regulation
Article 5 – paragraph 3

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

Amendment
3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) shall be available to any third party subject to registration with the competence centre and may be subject to the payment of a fee.

Or. en

Amendment 62
Proposal for a regulation
Article 5 – paragraph 4

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

Amendment
4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge subject to registration with the competence centre. Academic institutions may also request access to the information free of charge. Access to the information shall be subject
to a case-by-case approval by the competence centre.

Amendment 63
Proposal for a regulation
Article 6 – paragraph 1

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

Amendment
1. When a party requests that data and documents of the database be kept confidential, that party shall provide a 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 and provide reasons for the confidentiality. The competence centre may disclose that non-confidential version.

Amendment 64
Proposal for a regulation
Article 8 – title

Text proposed by the Commission

Information pertaining to essentiality

Amendment

Information on essentiality

Amendment 65
Proposal for a regulation
Article 8 – paragraph 1 – point b
(b) any essentiality check prior to [OJ: please insert the date = 24 months from entry into force of this regulation] by an independent evaluator in the context of a pool, identifying the SEP registration number, the identity of the patent pool and its administrator, and the evaluator.

Amendment 66
Proposal for a regulation
Article 9 – paragraph 1 – introductory part

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

Amendment
1. Patent pools shall publish on their websites at least the following **accurate** and **updated** information and inform the competence centre thereof:

Amendment 67
Proposal for a regulation
Article 9 – paragraph 1 – point g

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

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

Justification
The entity is already covered by the new definition of patent pools in Art. 2.
Amendment 68
Proposal for a regulation
Article 9 – paragraph 1 – point h

Text proposed by the Commission

(h) royalties and discount policy per product category;

Amendment

(h) royalties and discount policy per user case;

Or. en

Amendment 69
Proposal for a regulation
Article 9 – paragraph 1 – point i

Text proposed by the Commission

(i) standard licence agreement per product category;

Amendment

(i) standard licence agreement per user case;

Or. en

Amendment 70
Proposal for a regulation
Article 9 – paragraph 1 – point k

Text proposed by the Commission

(k) list of licensees for each product category.

Amendment

(k) list of licensees for each user case.

Or. en

Amendment 71
Proposal for a regulation
Article 9 – paragraph 1 a (new)
(1a) The competence centre shall systematically verify the information submitted by patent pools in accordance with paragraph 1 on a regular basis and at least once a year, based on a methodology it develops for this purpose, ensuring that the verification process is thorough, transparent and consistent. That methodology shall be made available to patent pools and to other stakeholders for the sake of transparency.

Amendment 72

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

(1b) The competence centre shall prepare a report detailing the outcomes of its verification including with regard to patent pools’ compliance with paragraph 1, any discrepancies or missing information identified, and the corrective actions taken or recommended. That report shall be submitted to the Commission within one month following the completion of each verification cycle.

Amendment 73

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

(b) infringement proceedings;
Amendment 74

Proposal for a regulation
Article 12 – paragraph 2

Text proposed by the Commission

2. Any person may provide the competence centre with such information as well as information on updates, corrections and public consultations. The competence centre shall publish that information in the database.

Amendment

2. Any person may provide the competence centre with such information as well as information on updates, corrections and public consultations. The competence centre shall publish that information in the database after verifying its accuracy.

Amendment 75

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

Text proposed by the Commission

(da) facilitating assessments of SEP licensing practices and their impact on the internal market, innovation, and access to standardised technology.

Amendment

(da) facilitating assessments of SEP licensing practices and their impact on the internal market, innovation, and access to standardised technology.

Amendment 76

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

Text proposed by the Commission

1. Holders of a patent in force in one or more Member States which is essential to a standard for which FRAND commitments have been made shall notify

Amendment

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

Amendment 77
Proposal for a regulation
Article 14 – paragraph 5

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

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

Amendment 78
Proposal for a regulation
Article 15 – paragraph 1

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

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

Or. en
Amendment 79

Proposal for a regulation
Article 17 – title

Text proposed by the Commission
Process for facilitating agreements on aggregate royalty determinations

Amendment
Process for facilitating agreements between SEP holders on aggregate royalty

Or. en

Amendment 80

Proposal for a regulation
Article 17 – paragraph 3 – point e

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

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

Or. en

Amendment 81

Proposal for a regulation
Article 18 – title

Text proposed by the Commission
Non-binding expert opinion on aggregate royalty

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

Or. en

Amendment 82

Proposal for a regulation
Article 18 – paragraph 4
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.

Amendment 83
Proposal for a regulation
Article 18 – paragraph 8 a (new)

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 84
Proposal for a regulation
Article 18 – paragraph 9 – introductory part

9. The panel shall duly consider the submissions provided for in paragraph 8 and decide:

9. The panel shall duly consider the submissions and responses provided for in paragraphs 8 and 8a and decide:
Amendment 85
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 **grant a suspension of** the procedure for the expert opinion on aggregate royalty for an initial period of no longer than 6 months, which can be further extended **for another period of 3 months** on the basis of a duly justified request by one of the participating SEP holders, or

Or. en

Amendment 86
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** 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. **Any divergent views and the reasons underlying them** shall be specified in an annex to the expert opinion.

Or. en

Amendment 87
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

Amendment

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

information provided in accordance with Article 4(3), point (c), and database to reflect relevant changes in relation to its registered SEP by notifying the competence centre within 6 months from the change occurring.

Justification

SEP holders update the technical specifications according to Article 4 paragraph 3 (c) very often. They should not be faced with additional administrative burden if there is no added value for transparency.

Amendment 88

Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

3. The competence centre shall notify the request to the SEP holder and invite the SEP holder to correct the entry in the register or the information submitted for the database, where relevant within a time limit no less than 2 months.

Amendment

3. The competence centre shall notify the request made in accordance with paragraph 2 to the SEP holder and invite the SEP holder to request a correction of the entry in the register or the information submitted for the database, where relevant within a time limit no less than 2 months.

Or. en

Amendment 89

Proposal for a regulation
Article 23 – paragraph 4 – introductory part

Text proposed by the Commission

4. The competence centre shall notify the SEP holder and invite the SEP holder to correct the entry in the register or the information submitted for the database, where relevant within a time limit no less than 2 months, when the competence

Amendment

4. The competence centre shall notify the SEP holder and invite the SEP holder to request a correction of the entry in the register or the information submitted for the database, where relevant within a time limit no less than 2 months, when the
centre is informed by a competent court of a Member State pursuant to Article 10(1) or a patent office or any third party of:

compentence centre is informed by a competent court of a Member State pursuant to Article 10(1) or a patent office or any third party of:

Amendment 90

Proposal for a regulation
Article 23 – paragraph 8

Text proposed by the Commission

8. The competence centre may correct any linguistic errors or errors of transcription and manifest oversights or technical errors attributable to it in the register and in the database of its own motion.

Amendment

8. The competence centre shall correct any linguistic errors or errors of transcription and manifest oversights or technical errors attributable to it in the register and in the database of its own motion.

Amendment 91

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 92

Proposal for a regulation
Article 27 – paragraph 2
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

Such candidates shall be impartial, sufficiently qualified, have substantial experience in the patent industry and preferably come from national, Union or international institutions. There may be different rosters of evaluators and conciliators depending on the technical area of their specialisation or expertise.

Amendment 93

Proposal for a regulation
Article 29 – paragraph 1

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

Amendment

1. The competence centre shall select annually a sample of registered SEPs from different patent families from each SEP holder and with regard to each specific standard in the register for essentiality checks. Registered SEPs of micro and small enterprises shall be excluded from the annual sampling process, unless they are a patent assertion entity or a subsidiary, affiliate, or owned or directly or indirectly controlled by another natural or legal person that is not a MSME itself. 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).

Justification

This addition is necessary in order to make sure shell companies and patent assertion entities cannot benefit from this exclusion.

Amendment 94
Proposal for a regulation
Article 29 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 95
Proposal for a regulation
Article 29 – paragraph 4 a (new)

Text proposed by the Commission

4a. If an evaluator has sufficient reason to believe that a prior essentiality check conducted under Article 8, point (b), might be inaccurate, the evaluator

Amendment

4a. If an evaluator has sufficient reason to believe that a prior essentiality check conducted under Article 8, point (b), might be inaccurate, the evaluator
shall have the authority to review the result of that previous check. If, after the review, the evaluator concludes that the prior essentiality check result was inaccurate, he/she shall conduct a fresh essentiality check for the specific SEP in question.

Amendment 96

Proposal for a regulation
Article 38 – paragraph 2

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

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

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 97

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

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:

Or. en

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 98

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

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 99

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

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
in relation to the same subject matter; subject matter;

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 100

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:

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 101

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

(a) the competence centre shall notify the requesting party thereof;
the FRAND determination shall continue and the outcome shall be binding for both parties;

Or. en

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 102
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.

Or. en

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 103
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

deleted
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.

Justification

The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 104

Proposal for a regulation
Article 44 – paragraph 3

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>3. If the conciliator decides that the objection is founded, he/she shall terminate the FRAND determination and shall draw up a report stating the reasons of the decision.</td>
</tr>
</tbody>
</table>

Amendment 105

Proposal for a regulation
Article 46 – paragraph 1 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) fails to comply with any request of the conciliator, Rules of procedure or schedule of procedure referred to in Article</td>
<td>(a) fails to comply with Article 45(3) or any request of the conciliator, Rules of procedure or schedule of procedure</td>
</tr>
</tbody>
</table>
42(2), referred to in Article 42(2),

Amendment 106
Proposal for a regulation
Article 46 – paragraph 1 – point b

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

Amendment
deleted

Justification
The parties should be able to wait until the outcome of the FRAND determination procedure in order to decide if they want to be bound by the result.

Amendment 107
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 the other party.

Amendment 108
Proposal for a regulation
Article 48 – paragraph 2
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.

2. The conciliator may examine publicly available information and the competence centre’s register, database and confidential and non-confidential reports of other FRAND determinations, aggregate royalty determinations and results of essentiality checks, as well as non-confidential documents and information produced by or submitted to the competence centre.

Amendment 109
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.

Amendment 110
Proposal for a regulation
Article 61 – title
Amendment 111

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 set up and manage a one-stop shop for MSMEs, which shall perform the following tasks free of charge:

(a) help MSMEs to identify which SEPs might be relevant to their product or service and possible licensors, in the event that the MSME is a SEP implementer;

(b) help MSMEs to identify possible licensees and with the help of the European Observatory on infringements of intellectual property rights advise the MSMEs on how to best enforce their SEP rights on European and global level, in the event that the MSME is a SEP holder;

(c) offer training and support on SEP related matters;

The competence centre shall not be held liable for any help provided to MSMEs under this Article.

Amendment 112

Proposal for a regulation
Article 61 – paragraph 3 a (new)
**Text proposed by the Commission**

3a. Paragraphs 1 and 2 shall not apply to patent assertion entities or to MSMEs, which are a subsidiary, affiliate, or owned or directly or indirectly controlled by another natural or legal person that is not a MSME itself.

**Amendment**

Or. en

**Justification**

This addition is necessary in order to exclude shell companies and patent assertion entities from benefitting from the MSMEs provisions.

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**Amendment 113**

Proposal for a regulation
Article 63 – paragraph 4

Text proposed by the Commission

4. The level of the fees shall be reasonable and **shall correspond** to the costs of the services. It shall take into account the situation of micro, small and medium-sized enterprises.

Amendment

4. The level of the fees shall be reasonable and **limited** to the costs of the services. It shall take into account the situation of micro, small and medium-sized enterprises.

Or. en

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**Amendment 114**

Proposal for a regulation
Article 66 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation (‘existing standards’), for which FRAND commitments have been made, may notify
the competence centre pursuant to Articles 14, 15 and 17 of any of the 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. en

Amendment 115

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 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. en

Justification

The text has been moved to Article 1 (5).
Amendment 116
Proposal for a regulation
Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. By ... [OJ: please insert the date = 2 years from entry into force of this regulation] the Commission shall evaluate the impact that the essentiality check system, the aggregate royalties determination and the FRAND determination system have in particular on the competitiveness of the Union SEP holders on a global level and on innovation in the Union.

Or. en

Amendment 117
Proposal for a regulation
Article 70 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 118
Proposal for a regulation
Article 70 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall submit the evaluation reports referred to in paragraphs (1) and (2) together with its conclusions drawn based on those reports to the

4. The Commission shall submit the evaluation reports referred to in paragraphs 1, 1a and 2 together with its conclusions drawn based on those reports to the
European Parliament, to the Council, to the European Economic and Social Committee and to the Management Board of the EUIPO. The evaluation report referred to in paragraph 1a shall be accompanied, where appropriate, by a legislative proposal.
EXPLANATORY STATEMENT

A Standard Essential Patent (SEP) is a patent protecting a technology that has been declared essential for the implementation of a technical standard adopted by a standardisation body. The interplay between patents and standards is important for innovation and growth, as these patents incentivise research and development and enable an adequate return on investment for innovative companies. Standards ensure a broad uptake of interoperable and secure technologies among businesses and consumers. Worldwide, there are around 75,000 SEPs, but these only represent a small share of patents as a whole. Essential technology standards such as 5G and Wi-Fi, photo formats (JPEG), standards for audio and video compression and decompression (e.g. MPEG, HEVC) and more are covered by such patents. SEPs play a crucial role in developments such as the Internet of Things, Industry 4.0, connected vehicles, smart cities and climate change mitigation technologies. The number of SEPs has increased sixfold over the last ten years, which is good news, given that the protection of SEPs is key to enabling innovation that helps the EU to become more sustainable and more digital.

As early as November 2021, in its resolution on an intellectual property action plan to support the EU’s recovery and resilience (EP resolution on the intellectual property action plan), the European Parliament called for a European Commission proposal on SEPs, as SEPs are often the subject of litigation. The lack of transparency and legal certainty was identified as an issue. The licensing of SEPs is often a lengthy and costly exercise for both patent holders and technology implementers.

Ordinary patent holders are free to decide to whom they wish to grant a licence to exploit their innovation. However, SEP holders do not have this complete freedom, as the inclusion of their patented technology in a standard gives them some degree of market power. Therefore, SEP holders are obliged to grant their licences on fair, reasonable and non-discriminatory (FRAND) terms. These FRAND terms have led to a large number of problems, which have also been the subject of court proceedings.

On the one hand, it is near impossible for implementers to find out whether a standard is indeed essential, how many SEPs relate to a given standard, who the corresponding SEP holders are and what the ultimate costs to achieve market entry using the relevant standard will be. Around 84% of SEP implementers are SMEs. For them in particular, the mere threat of a provisional injunction leading to a suspension of production of allegedly infringing products and the probability of legal proceedings may create pressure to agree to a licence at rates that may not be FRAND.

On the other hand, the SEP holder cannot enforce his legitimate interests while the implementer insists on having a licence issued on FRAND terms, with the intention of putting off the obligation to pay royalties for as long as possible. As a result, SEP holders also face lengthy and costly court proceedings, with royalties only being paid at the end of this prolonged procedure.

In order to provide a better factual basis for preventing, resolving and deciding on conflicts relating to FRAND terms, on 27 April 2023, the European Commission submitted a proposal.

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1 European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU’s recovery and resilience (2021/2007(INI)).
with the following new measures:

1. the establishment of an SEP register and a central electronic database for SEPs;

2. SEP essentiality checks;

3. non-binding determination of the aggregate royalty for a standard;

4. the establishment of a time-limited out-of-court dispute resolution mechanism under expert guidance that can be used by SEP holders and implementers when negotiating a FRAND licence.

In general, the rapporteur supports the Commission’s initiative and the proposed measures, as the Commission has acted in accordance with the EP resolution on the intellectual property action plan.

The rapporteur stresses the importance of increasing the proposal’s legal clarity and bridging the interests of SEP holders and implementers. Both actors play a huge role in the European economy and their interests must therefore be taken into account in the context of a well-balanced legislative act. The proposal must increase the transparency of SEPs in order to compensate for the knowledge advantage of SEP holders, yet without limiting their global competitiveness.

More legal clarity

Knowing which use cases of standards fall under the new legislation is massively important for legal clarity. While the rapporteur agrees that the Commission should address this issue through delegated acts, she believes it is crucial that certain criteria be established already now. For this reason, the rapporteur has proposed amendments to this effect, including a definition of ‘significant difficulties or inefficiencies’.

The rapporteur has also incorporated new definitions which make the text easier to understand.

Creation of a competence centre within the EUIPO and registration

The rapporteur considers that establishing a competence centre at the EUIPO is a sensible proposal, given that the European executive agency has a lot of experience in maintaining databases. It is important that this agency is equipped with sufficient staff and funds to carry out the new task efficiently.

Furthermore, the rapporteur notes the importance of clarifying the difference between the register and the database, of ensuring the accuracy of the register and of preventing potential red tape for SEP holders.

Patent Pools

The rapporteur is in favour of patent pools. If managed in a transparent manner, they provide great added value for SEP holders and implementers. It should however be ensured that this transparency is actually reflected in the information provided, including on the website. To support this, the rapporteur has put forward proposals to that effect.
Essentiality checks

In the EP resolution on an intellectual property action plan, the EP called for an independent, neutral and transparent system for third party essentiality checks. The rapporteur welcomes the fact that the European Commission has taken this on board and proposed a system for assessing the essentiality of patents.

It should be noted that evaluators and conciliators in the FRAND determination procedure should possess the necessary and highly specialised expertise and experience while also being independent and impartial.

In addition, evaluators should also be able to review prior essentiality checks if they have doubts as to their accuracy.

Determination of aggregate royalty

The non-binding determination of the aggregate royalty will help stakeholders to set efficient SEP rates.

The rapporteur believes that it should not be possible to unilaterally block this assessment and has therefore proposed amendments to this effect.

Time-limited out-of-court dispute resolution mechanism

In the EP resolution on an intellectual property action plan, the Commission was also asked to provide more clarity on various aspects of FRAND, and to consider possible incentives for more efficient SEP licensing negotiations and reducing litigation. It also took this request on board, proposing a non-binding dispute resolution system, which has the potential to eliminate strategic delays caused by market participants. The rapporteur welcomes the fact that, on the basis of a third party opinion, this market participant can be asked to provide a security in a very timely manner and realistic and effective in scale.

At the same time, the rapporteur believes that while proceedings are still ongoing, the parties should not yet be obliged to make a binding decision on whether or not they should comply with the outcome of the procedure. The parties should be able to make such a decision only after learning the outcome of the dispute resolution mechanism.

In addition, the rapporteur believes that parallel proceedings should only lead to the termination of the dispute resolution mechanism if the other party so wishes. This is to prevent the procedure from being stopped on account of legal action in a third country.

Micro and small and medium enterprises

In some future-oriented SEP sectors, such as the Internet of Things, 85% of companies are MSMEs. MSMEs usually have limited human and financial resources and therefore the rapporteur strengthens the Commission’s proposals in this regard. She proposes the establishment of a one-stop shop for MSMEs within the competence centre. MSMEs that are SEP implementers should be offered free information on what licences they need for their products or services and how to obtain them. MSMEs that are SEP holders should be offered free information on how to better identify potential licensees and how to effectively enforce
their rights. However, this help should only benefit MSMEs whose business models are not solely based on asserting patents.

**Assessment of the new instruments**

These proposed instruments have the potential to make SEP licensing significantly more efficient. They can reduce inefficiencies and transaction costs in licensing, thereby facilitating licensing negotiations, speeding up their outcomes and reducing costly and laborious litigation procedures. This would make the EU single market a more attractive location for industry standard-setting innovation. However, as the proposed measures also have an impact at global level, the rapporteur believes that the impact on the competitiveness of European SEP holders at global level and on innovation in Europe should also be examined in more detail. If the outcome of this review indicates a negative impact, the Commission should propose appropriate amendments where necessary.
ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

IP Europe
InterDigital
Fraunhofer Institut
European Association of Automotive Suppliers (CLEPA)
Philipps
Nokia
Ericsson
ACT The App Association
Qualcomm
Xiami
Volkswagen/ Audi
European Commission DG Grow
Tholos Foundation
Public Interest Patent Law Institute
OpenForum Europe
Fair Standards Alliance
European Patent Office
European Automobile Manufacturers’ Association (ACEA)
BMW
CEN CENELEC
Business Europe
Eurocommerce
Marconi (Avanci platform)
Permanent Representation of Germany
Permanent Representation of Spain
Verband Deutsche Automobilhersteller (VDA)
Continental
CISCO
4IPCouncil
Ingenico
European association of smart energy solution providers (ESMIG)
DOLBY