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Delegations will find attached document COM(2023) 232 final.

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2023/0133 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on standard essential patents and amending Regulation (EU)2017/1001

(Text with EEA relevance)

{SEC(2023) 174 final} - {SWD(2023) 123 final} - {SWD(2023) 124 final} - {SWD(2023) 125 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Standardisation is a key contributor to industrial innovation and competitiveness. Successful standards rest on cutting-edge technologies, which require substantial investments in research and development. Under the rules of many standards development organisations (SDOs), such as the ETSI[1] and the IEEE[2], companies and individuals may patent their technical contributions to a standard. Patents that protect technology essential to a standard are known as standard-essential patents (SEPs). Typically, SDOs require that any person or company wishing to have their patented technology included in a standard commit to licensing the relevant patents to others who may wish to use the standard (firms using/implementing a standard are also known as 'implementers'[3]). These licences must be granted to implementers on fair, reasonable and non-discriminatory (FRAND) terms and conditions. If the patent holder refuses to make such a commitment, their patented technology cannot be included in the standard.

The overall objectives of this proposed initiative are to: (i) ensure that end users, including small businesses and EU consumers benefit from products based on the latest standardised technologies; (ii) make the EU attractive for standards innovation; and (iii) encourage both SEP holders and implementers to innovate in the EU, make and sell products in the EU and be competitive in non-EU markets. The initiative aims to incentivise participation by European firms in the standard development process and the broad implementation of such standardised technologies, particularly in IoT industries.

In this context, the initiative seeks to: (i) make available detailed information on SEPs and existing FRAND terms and conditions to facilitate licensing negotiations; (ii) raise awareness of SEP licensing in the value chain and (iii) provide for an alternative dispute resolution mechanism for setting FRAND terms and conditions.

The Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'[4], called for a comprehensive and balanced approach to SEP licensing to incentivise the contribution of best technology to global standardisation efforts and foster efficient access to standardised technologies. The Commission acknowledged the need for increased transparency and addressed certain aspects of FRAND licensing and SEP enforcement. The Commission's views were supported by Council conclusions 6681/18[5], with the Council stressing the importance of increased transparency.

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1 European Telecommunications Standards Institute.

2 Institute of Electrical and Electronics Engineers.

3 In certain cases, a SEP holders can be an implementer and vice versa – in fact, many companies participating in standards development are vertically integrated and therefore fall under both categories. Thus, it is not fully accurate to divide the world of SEPs into two entirely separate groups – SEP holders and implementers. However, for ease of reference in this impact assessment, those terms will be used to refer to companies that own SEPs (i.e., SEP owner) and those that implement SEPs in their products (i.e., implementer).

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

5 Council conclusions on the enforcement of Intellectual Property Rights, as approved by the Council (Internal Market, Industry, Research and Space) at its meeting on 12 March 2018

On 10 November 2020, by Council conclusions 12339/20[6], the Council invited the Commission to present proposals for future EU IP policy. The Council encouraged the Commission to swiftly present the announced IP action plan, with initiatives to make IP protection more effective and more affordable, especially for small and medium-sized EU enterprises ('SMEs')[7], and to promote the effective sharing of IP, in particular critical assets such as SEPs, while ensuring adequate and fair compensation for technology developers.

On 25 November 2020, the Commission published the intellectual property action plan[8], where it announced its goals of promoting transparency and predictability in SEP licensing, including by improving the SEP licensing system, for the benefit of EU industry and consumers, and in particular SMEs. The action plan noted increases in SEP licensing disputes in the automotive sector and the potential for other IoT sectors to become subject of such disputes as they begin using connectivity and other standards. The plan was supported by Council conclusions of 18 June 2021[9] and by the European Parliament (EP) in its Resolution[10]. The EP acknowledged the need for a strong, balanced and robust IPR system and agreed with the Commission's position that the transparency necessary for fair licensing negotiations depends in large part on the availability of information about the existence, scope and essentiality of SEPs. The EP also asked the Commission to provide more clarity on various aspects of FRAND, and to consider possible incentives for more efficient SEP licensing negotiations and reducing litigation.

In parallel with this initiative, the Commission has updated the Standardisation strategy[11] and is revising the Horizontal guidelines[12]. The new Standardisation strategy, published in February 2022, aims to strengthen the EU's role as global standard-setter, driving international competitiveness and enabling a resilient, green and digital economy. The present SEPs initiative is complementary to the Standardisation strategy and the Horizontal guidelines[13], currently under review.

This initiative is also important in the context of global developments. For example, certain emerging economies are taking a much more aggressive approach in promoting home-grown standards and providing their industries with a competitive edge in terms of market access and technology roll-out.Courts in the UK, US and China have, with their own particular characteristics, also decided that they have jurisdiction to determine global FRAND terms and

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6 Council conclusions on Intellectual property policy and the revision of the industrial designs system in the Union, as adopted at its meeting on 10 November 2020

7 https://single-market-economy.ec.europa.eu/smes/sme-definition_en

8 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Making the most of the EU's innovative potential An intellectual property action plan to support the EU's recovery and resilience of 25 November 2020, COM(2020) 760 final.

9 Council conclusions on intellectual property policy, as approved by the Council (Economic and Financial Affairs) at its meeting on 18 June 2021.

10 European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience (2021/2007(INI))

11 COM(2022) 31 final, 2.2.2022, An EU Strategy on Standardisation. Communication on An EU Strategy on Standardisation - Setting global standards in support of a resilient, green and digital EU single market. COM(2022) 31 final. Brussels 02.02.2022.

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

13 Chapter 7, para 263

conditions in specific cases which may impact the EU industry.[14] Some countries have released[15] or are considering guidelines governing SEP licensing negotiations as well.[16]

- **Consistency with existing policy provisions in the policy area**

Standardisation agreements usually produce significant positive economic effects. The 'potential SEP' holder need to declare to the SDO whether they are willing to license their patents on FRAND terms and conditions when the standard is implemented in products or relevant components thereof. If a patent holder does not provide a FRAND commitment in line with SDO' IPR policy, their SEP contributions may not be included in the standard. However, by including a patented technology in a standard, the SEP holder has a strong economic position vis-à-vis a potential standard implementer, because implementers that want to incorporate standards cannot work around these patents and must either pay for a licence or forego manufacturing of products that use the standard. The more widespread the application of the standard is, the stronger the position of the holder can become, which again might lead to anticompetitive behaviour of the SEP holder.

The Horizontal Guidelines provide guidance for SDOs on how to self-assess compliance with Article 101(1) and Article 101(3) TFEU for standardisation agreements. They set out the following four principles to be considered by SDOs in their self-assessment: (i) participation in the standard-setting is unrestricted; (ii) the procedure for adopting the standard is transparent; (iii) there is no obligation to comply with the standard; (iv) there is effective access to the standard on FRAND terms. In light of this, SDO's IPR policies typically require that participants in standard development disclose the existence of patents (including pending patent applications) that may be or become essential to the relevant standard. In principle, implementers would need a licence from the patent holders to practice the standard. Typically, SEP holders would invite the implementers to take such a licence on FRAND terms and conditions. In its landmark judgment in *Huawei v. ZTE*[17], the Court of Justice of the European Union (CJEU) recognised the right of the SEP holder to seek to enforce its patents in national courts and set out the conditions (steps) that must be fulfilled to prevent an abuse of dominant position by the SEP holder when seeking an injunction. Since a patent confers on its owner the exclusive right to prevent any third party from using the invention without the owner's consent only in the jurisdiction for which it is issued (i.e. Germany, France, the US,

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14 Judgment of the United Kingdom's Supreme Court of 26 August 2020, Unwired Planet v. Huawei, UKSC 2018/0214, [2020] UKSC 37, Decision of the United States District Court for the Central District of California, TCL v Ericsson, Case No 8:14-cv-00341-JVS-DFM with consent of both parties. Chinese Supreme Court's ruling of 19 August 2021, OPPO v Sharp, Zui Gao Fa Zhi Min Xia Zhong No. 517, Order of the Wuhan Intermediate Court of 23 September 2020, Xiaomi v. Interdigital, (2020) E 01 Zhi Min Chu 169 No 1; Order of the Wuhan Intermediate Court, Samsung v Ericsson [2020], Case E 01 Zhi Min Chu No 743.

15 Japanese Patent Office Guide to Licensing Negotiations Involving Standard Essential Patents; South Korean Guidelines on unfair exercise of Intellectual Property Rights; Singapore's Competition & Consumers Commission Guidelines on the treatment of Intellectual Property Rights

16 The United States of America withdrew its Policy Statement on Licensing Negotiations and Remedies for Standards-Essential Patents Subject to F/RAND Commitments and concluded a Memorandum of Understanding with the WIPO Arbitration and Mediation Centre. The UK has launched a process in 2021 on SEPs and innovation, which is ongoing. India's Department of Telecommunications is discussing a proposal to set up a Digicom Intellectual Property Management Board to facilitate IPR licensing and IP management in the telecommunication sector. China has consulted on the draft amendments to the implementing regulations of its Anti Monopoly Law. Japan's Patent Office is revising its guidelines and METI launched a Study Group on Licensing Environment of SEPs.

17 Judgment of the Court of justice of 16 July 2015, Huawei Technologies Co. Ltd v ZTE Corp. and ZTE Deutschland GmbH, C-170/13, ECLI:EU:C:2015:477.

China, etc.), patent disputes are governed by national patent laws and civil proceedings or enforcement laws.[18]

- **Consistency with other Union policies**

The Commission has recently updated its standardisation strategy.[19] The new EU Strategy on Standardisation, published in February 2022, aims to strengthen the EU's global competitiveness, to enable a resilient, green and digital economy and to enshrine democratic values in technology applications while preserving the high-quality output of European standards. This initiative is complementary to the Standardisation Strategy in that it aims to encourage, and reward the continued contribution of cutting-edge technologies to standards by facilitating the licensing of the patented technologies incorporated in the standards.

The initiative is also complementary to the Horizontal guidelines, currently under review. The latter address issues related to the standardisation process and ensure access to the standard on FRAND terms and conditions. The initiative provides tools to facilitate the SEP licensing process after the publication of the standard without taking a position on competition-related issues.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The initiative relates to standards to which a patent holder has contributed a patented technology and for which it has committed to an SDO to license on FRAND terms and conditions. Standards for which patent holders make FRAND commitments are applied cross-border among Member States and globally. SEP licensing is also seldom national. Usually, licensing contracts are global and may take into account certain regional aspects. The international standards in question cover technologies such as 4G, 5G, Wi-Fi, HEVC, AVC, DVB and others that ensure interoperability of products worldwide.

Article 114 TFEU constitutes the appropriate legal basis as the objective is to improve the conditions for the establishment and functioning of the single market. The initiative seeks to ensure the efficiency of SEPs licensing, facilitating lawful access to the standards and promoting wider adoption of standards. There are no specific EU or national rules on SEPs apart from certain specific competition law related guidance or court judgments[20]. In addition, as acknowledged by the CJEU in *Huawei v ZTE*, apart from common rules relating to the grant of a European patent, a European patent remains governed by the national law of each of the Contracting States for which it has been granted as is also the case for national patents.

The CJEU has confirmed[21] that recourse to Article 114 TFEU is possible if the aim is to prevent the emergence of obstacles to trade between Member States resulting from the

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18 Harmonised by Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ('IPRED'), OJ L 157, 30.4.2004, p. 45.

19 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An EU Strategy on Standardisation; Setting global standards in support of a resilient, green and digital EU single market, 2.2.2022, COM(2022) 31 final.

20 Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, pp. 1-72, CELEX: and CJEU case-law., in particular Huawei v. ZTE, Case C-170/13, EU:C:2015:477

21 Judgment of the Court of Justice of 12 December 2006, Germany v. Parliament and Council, C- 380/03, EU:C:2006:772, para. 38 and the case-law cited, and judgment of the Court of Justice of 10 February 2009, Ireland v. Parliament and Council, C- 301/06, EU:C:2009:68, para. 64; see also, to that effect, judgment of the Court of Justice of 2 May 2006, United Kingdom v. Parliament and Council, C-217/04, EU:C:2006:279, paras. 60 to 64.

divergent development of national laws. However, the emergence of such obstacles must be considered likely and the measure in question must be designed to prevent them. Certain courts in Member States, in particular Dutch[22], French[23] and German[24] courts have been considering FRAND-related issues in national litigation based on on the circumstances of the disputes brought before them. Those cases show different approaches (not necessarily different results) with regard to FRAND determination concerning SEPs covering regional or global standards. It is difficult for competent courts in the Member States to handle SEP-related cases and make detailed and consistent FRAND determinations. This is in large part due to the lack of transparency and complexity of the issues that are central to such determinations, such as the essentiality of patents, comparable licences and compliance with FRAND requirements. While the initiative will neither interpret the CJEU case-law nor adopt methodologies for FRAND determination per se, it will establish mechanisms that promote the necessary transparency, increase certainty and reduce the potential for inconsistent rulings. This will be a significant improvement in the courts' abilities to handle SEP disputes.

- **Subsidiarity (for non-exclusive competence)**

Measures taken at national, regional or local level to increase transparency and facilitate licensing of SEPs may not be efficient for the following reasons. First, instead of an EU-wide solution for SEPs, there might be different national solutions for the SEPs on a specific standard. Second, under an EU-wide approach, it will not be necessary to conduct more than a essentiality check per patent family to find that patents are indeed truly essential to a standard. The check would be done based on a single EU-wide methodology. Third, non-centralised alternative dispute resolution processes may come to different results for the same SEP portfolio, opening the door to 'forum shopping' within the EU. An EU-wide approach can help avoid these problems.

- **Proportionality**

The initiative is limited to what is necessary to achieve transparency with regard to SEPs and pricing and provide stakeholders with tools to negotiated SEP licensing agreements. Action at EU level will be efficient and save costs for stakeholders, in particular SEP holders, and for Member States. For example, there could be one register instead of many registers, one essentiality check for the whole EU, one methodology for carrying out such checks, and a streamlined and transparent FRAND determination process. SEP holders and implementers will not have to repeatedly incur the same costs in each EU Member state that has chosen to introduce SEP specific rules.

- **Choice of the instrument**

EU-wide rules on transparency regarding SEPs and FRAND terms would have a harmonising effect within the EU which would facilitate the work of national courts and the future Unified Patent court. The instrument to implement this initiative should be a regulation. A

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22 Court of Appeal of The Hague, judgment of 2 July 2019, Philips v Wiko, Case number : C/09/511922/HA ZA 16-623; Hoge Raad, Judgment of 25 February 2022, Wiko v Philips, Nummer 19/04503, ECLI:NL:HR:2022:294; District Court The Hague, Judgment of 15 December 2021, Vestel v Access Advance, ECLI:NL:RBDHA:2021:14372.

23 Paris Court, order of the pre-trial judge of 6 February 2020, TCT v Philips, RG 19/02085 – Portalis 352J-W-B7D-CPCIX; TJ Paris, 3.3, judgment of 7 December 2021, Xiaomi v Philips and ETSI, RG 20/12558.

24 German Federal Court of Justice ('Bundesgerichtshof – BGH'), judgement of 5 May 2020, Sisvel v. Haier, KZR 36/17, and German Federal Court of Justice, judgment of 24 November 2020, FRAND-Einwand II, KZR 35/17; Order of 24 June 2021, Nokia Technologies v Daimler, C-182/21, EU:C:2021:575 (request for a preliminary ruling from the Landgericht Düsseldorf, removed from the Register).

regulation would be directly applicable, including by empowering an EU agency with the tasks of managing a register of SEPs, and establishing a common FRAND determination procedure that would ensure uniformity across the EU and provide greater legal certainty. These outcomes cannot be achieved by means of a Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

The Commission has conducted a series of webinars[25]. The statistics for the webinars can be summarised as follows: 16 hours of content; by over 60 speakers; over 450 interactions in the Q&A field; over 1 700 impressions on the events; over 800 people in the Commission SEP Teams group; and over 1 000 respondents to the Commission surveys in total.

The call for evidence was published on 14 February 2022 and was open until 9 May 2022. During that period 97 replies and 49 position papers were submitted.

The public consultation took place between 14 February 2022 and 9 May 2022. During that period 74 replies were submitted.

A targeted survey for start-ups and SMEs was published on 28 October 2022 and was closed on 20 November 2022. At the request of a number of stakeholders, the survey was re-opened on 25 November 2022 without a closing date to enable stakeholders keep on responding as the markets on the Internet of Things ('IoT') develop. By the end of 2022, the Commission had received 39 replies.

Discussion with Member States' representatives took place in within the Commission Expert Group on IP Policy and relevant Council working parties.

The positions of the main stakeholders such as SEP holders, implementers, their consultants and experts as well as their representative associations are largely known. For this reason, the public consultation addressed very specific SEP-related issues and sought views on concrete potential actions.

Around half of all respondents assessed the impact of the current SEP licensing framework on SMEs and start-ups as negative, a third thought there was no impact, and around 5 % deemed it positive.

Almost three quarters of respondents would request a licence in order not to infringe a SEP and 60 % to be able to plan production and costs. The main reasons for having/licencing SEP are securing a return on investment on R&D (70 % of answers), followed by use of SEP for defensive/bargaining purposes (60 %) and participation in standardisation process in the future (40 %).

Lack of transparency on the FRAND royalty rate, on SEP landscape (who owns SEPs) and divergent court rulings were named as the key problems by three quarters of all respondents, including all respondents in the groups of those with predominantly implementer-friendly views (implementers). For the group of those with predominantly SEP-holder-friendly views (SEP holders) the main problems were hold-out and anti-suit injunctions.

[25] See webpage https://ec.europa.eu/growth/content/webinar-series-standard-essential-patents_en

Respondents asked for more public information on SEPs as regards ‘patent and application number’ (88 % of all responses), ‘relevant standard, version, section of the standard’ (80 %), ‘contact details of SEP holder’ (80 %), ‘transfer of ownership’ (77 %), ‘licensing programmes’ (76 %) and ‘standard FRAND terms and conditions’ (72 %). Around 60 % of all respondents and 90 % of implementers supported third-party essentiality checks as long as independent experts do them. Only 24 % of SEP holders supported such a solution. A third of all respondents considered that essentiality checks should not have legal consequences.

Around two thirds of all respondents and around 80 % of implementers thought that essentiality assessment might help in assessing a product's SEP exposure and deciding whom to negotiate with, smoothen licensing negotiation and prevent over pricing. More than half of SEP holders disagreed with these impacts but agreed that checks might provide a reliable overview of the share of each SEP holders’ essential patents.

Around three quarters of respondents agreed that fair and reasonable terms and conditions might depend on functionalities of the standard implemented in a product. Around 70 % thought these terms should be independent of the level of licencing.

70 % of all respondents and 100 % of implementers argued that it is important to know the reasonable aggregate royalty rate for a product. Only 20 % of SEP holders shared that view.

Arbitration (53 % of all answers) was deemed more useful than mediation (35 %) for FRAND assessment, especially by SEP holders and academia/authorities/non-governmental organisations.

- **Collection and use of expertise**

The impact assessment relied primarily, but not excusively, on two external studies and the contribution of the SEP Expert Group:

'Baron, J., Arque-Castells, P., Leonard, A., Pohlmann, T., Sergheraert, E., Empirical Assessment of Potential Challenges in SEP Licensing, European Commission, DG GROW, 2023';

'Charles River Associates, Transparency, Predictability, and Efficiency of SSO-based Standardization and SEP Licensing, European Commission, DG GROW, 2016, https://ec.europa.eu/docsroom/documents/48794';

‘Group of Experts on Licensing and Valuation of Standard Essential Patents – Contribution to the Debate on SEPs’ (2021).

The Commission has conducted many studies, the most relevant of which are:

‘European Commission, Joint Research Centre, Bekkers, R., Henkel, J., Tur, E. M., et al., Pilot study for essentiality assessment of standard essential patents, Publications Office of the European Union, 2020';

‘Landscape study of potentially essential patents disclosed to ETSI’, JRC study (2020);

‘Licensing Terms of Standard Essential Patents: A Comprehensive Analysis of Cases’, JRC study (2017);

‘Patents and Standards: A modern framework for IPR-based standardisation’ (2014).

In addition, the Commission reviewed numerous papers and positions submitted by stakeholders, professional articles on the subject and studies conducted on behalf of other authorities. The Commission analysed initiatives on SEPs in non-EU countries. To prepare the impact assessment and the draft regulation, the Commission consulted with leading

experts, judges and academics. Finally, the Commission attended numerous webinars and conferences.

- **Impact assessment**

The Commission conducted an impact assessment and submitted it to the Regulatory Scrutiny Board in February 2023 and received a positive opinion on 17 March 2023 (REF to be added). The final impact assessment takes into account comments contained in that opinion.

In the impact assessment, the Commission considered the following problems: high licensing transaction costs and uncertainty about the SEP royalty burden. Due to lack of sufficient information, implementers cannot assess their SEP exposure far enough in advance to take into account the licensing costs when planning their product business. On the other hand, SEP holders complain about long and expensive negotiations, especially with large implementers.

More specifically, the following causes of these problems were identified. First, there is only limited information on who owns SEPs, and it is not certain that all patents for which licences are sought are really necessary (essential) to implement a standard. Second, there is very little information on SEP licence fees (FRAND royalty), so implementers with little or no expertise or resources find it impossible to assess the reasonableness of a SEP holder's royalty demand. Finally, licensing disputes can be time- and cost-intensive.

Consequently, the initiative aims at facilitating SEP licensing negotiations and lowering transaction costs for both SEP holders and implementers by (i) providing more clarity on who owns SEPs and which SEPs are truly essential; (ii) providing more clarity on FRAND royalty and other terms and conditions, including awareness raising with regard to licensing in the value chain; and (iii) facilitating SEP dispute resolution.

The following options were considered to achieve these objectives (the policy options are built incrementally, each adds new elements to the preceding one):

Option 1: Voluntary guidance. This would involve establishing non-binding guidance on SEP licensing. A competence centre on SEPs created within the European Union Intellectual Property Office (EUIPO) would provide free advice to SMEs on licensing negotiations (including trainings) and monitor the SEP market, conduct studies on SEP licensing and promote alternative dispute resolution.

Option 2: SEP register with essentiality checks. SEP holders seeking to license their SEPs for royalty and to enforce them in the EU would have to register the patents in the SEP register. To ensure the quality of the register, essentiality checks would be conducted by an independent evaluator using a methodology to be determined by the Commission at EU level and a system administered by the EUIPO. Sub-options are: to (i) check all registered patents; or (ii) check a small number of patents pre-selected by SEP holders and a random sample of patents registered by each SEP holder.

Option 3: SEP register with essentiality checks and conciliation (FRAND determination) procedure. Before launching a litigation, parties to SEP licensing dispute would have to go through a mandatory conciliation process. An independent conciliator would seek to help parties reach mutually acceptable licensing terms and conditions. At the end of the process, if the parties fail to reach agreement, the conciliator will issue a non-binding report with recommendations on the FRAND rate (with a confidential and a non-confidential part).

Option 4: Aggregate royalty for SEP. Processes would be established for determining an aggregate royalty (i.e. total maximum price) for using a standard before or shortly after its publication. SEP holders would be expected to agree on such royalty (potentially with the

help of an independent facilitator from the competence centre). Additionally, both implementers and SEP holders could request an expert opinion on the aggregate royalty, where all the interested parties would be able to present their views. Finally, an aggregate royalty could be determined during the conciliation if the parties so request. This aggregate royalty would equally not be binding and would be published in the SEP register.

Option 5: SEP clearing house. Establishment of a one-stop-shop for implementers to acquire SEP licences by depositing an aggregate royalty with the competence centre. SEP holders should inform the centre how to allocate the aggregate royalty among them, failing which they would not be able to collect their royalty payments. They should also sign licence agreements with any implementer who would make a deposit. Any royalties not collected by SEP holders within a year from the deposit would be returned to the implementers.

Option 4 (voluntary guidance, SEP register with essentiality checks, FRAND determination procedure and aggregate royalty determination for SEPs) is the preferred option. The option reduces information asymmetry between a SEP holder and an implementer by providing the latter with information who the relevant SEP holders are, how many SEPs they have registered in the register and what their essentiality rate is (derived from a representative random sample of all registered SEPs) and what the potential [or maximum] total cost of using a standardised technology (aggregate royalty) is. A pre-trial obligatory conciliation is likely to reduce SEP dispute settlement costs to about 1/8 as the conciliator will assist both parties in reaching an agreement. A competence centre will provide objective information, guidance and support to SMEs on SEPs and SEP licensing. Benefits and costs are presented in the table below.

Table 1: Average total approximated annual costs and benefits of the preferred option per affected party and location (EUR million).

		EU	**non-EU**	*Total*
SEP implementers	Costs	-0.77	-0.77	-1.5
	Benefits	12.89	13.03	25.9
	Net	*12.11*	*12.26**	*24.4*
SEP holders	Costs	-8.13	-46.04	-54.2
	Benefits	3.79	21.50	25.3
	Net	*-4.33*	*-24.54*	*-28.9*
Subtotal (net effect for implementers and holders)		*7.8*	*-12.3*	*-4.5*
European or national patent office benefit		29.0		29.0
Total net benefit		*36.8*	*-12.3*	*24.5*

* concerns non-EU implementers with subsidiaries in the EU

Note: numbers rounded which may affect totals

- **Regulatory fitness and simplification**

This initiative is not part of the REFIT simplification effort as there are currently no EU rules on SEPs that could be simplified or made more efficient.

- **Fundamental rights**

The proposal should improve the conduct of business for both SEP holders and implementers, and ultimately other businesses downstream (Article 16 of the Charter).

The proposal respects the intellectual property rights of patent holders (Article 17(2) of the EU Charter of Fundamental Rights), although it includes a restriction on the ability to enforce a SEP that has not been registered within the prescribed time-limits and introduces a requirement to conduct conciliation (FRAND determination) prior to enforcing individual SEPs. Limitations on the exercise of IP rights are allowed under the EU Charter, provided that the proportionality principle is respected. According to settled case-law, fundamental rights can be restricted provided that those restrictions correspond to objectives of general interest pursued by the EU and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference which infringes the very essence of the rights guaranteed[26]. In that respect, the proposal is in the public interest in that it provides a uniform, open and predictable information and outcome on SEPs for the benefit of SEP holders, implementers and end users, at Union level. It aims at dissemination of technology for the mutual advantage of the SEP holders and implementers. Furthermore, the rules concerning the FRAND determination are time-limited and aimed at improving and streamlining the process but are not ultimately binding.[27]

The FRAND determination is also consistent with the right to an effective remedy and to access to justice (Article 47 of the EU Charter) as the implementer and the SEP holder fully retain that right. If the SEP is not registered, the exclusion of the right to effective enforcement is temporary, thus limited, and necessary, and meets objectives of general interest. As confirmed by the CJEU[28], a mandatory dispute resolution as a precondition to access to courts would be 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.

4. BUDGETARY IMPLICATIONS

This proposal would have no impact on the European Union. The SEP system introduced with the initiative will remain fully self-funded, using fees paid by EUIPO competence centre service users. EUIPO is going to finance set up costs (including IT costs) of the competence centre, the SEP register and other services. It is expected to recuperate these set up costs by fees charged when the system is fully operational.

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

27 The conciliation procedure follows the conditions for mandatory recourse to alternative dispute settlement procedures as a condition for the admissibility of an action before the courts, as outlined in the judgment of the Court of Justice of 18 March 2010, Rosalba Alassini v Telecom Italia SpA (C-317/08), Filomena Califano v Wind SpA (C-318/08), Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08), Joined cases C-317/08, C-318/08, C-319/08 and C-320/08, ECLI:EU:C:2010:146, taking into account the specificities of SEP licensing.

28 see footnote above.

The EUIPO estimates that set-up cost of the competence centre and register including IT infrastructure will amount to around EUR 2.4 million and may involve work of up to 12 FTEs. The EUIPO running cost of the new system will require around EUR 2 million annually (excluding services of external experts such as essentiality experts or conciliators). The costs will be higher in the initial year(s) when registration of an estimated number of 72 000 patent families, and essentiality checks for an estimated number of 14 500 SEPs are expected (which are estimated to be the peak of all registrations and essentiality checks). In the subsequent years, the number of registrations and essentiality checks is expected to drop to 10% of the peak numbers. During the operational period, the competence centre would require on average around 30 FTEs in the peak year(s), and around 10 FTEs in the following years. The financial and budgetary impacts of this proposal are presented in the legislative financial statement annexed to this proposal. Detailed calculation of costs are presented in Annex 7.1 of the Impact Assessment.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will use the data collected by the competence centre (EUIPO) to monitor implementation of this proposal and the achievement of its objectives. The monitoring activities would take into account the required implementation period (including the time needed to enact the necessary new implementing legislation based on implementing powers to be conferred to the Commission) and the time needed for market participants to adapt to the new situation. The set of pertinent indicators referred to in Section 9 of the impact assessment would be considered for evaluating the changes.

A first evaluation will be scheduled for 8 years after entry into force of the Regulation (allowing for the fact that the Regulation will start to apply 24 months after entry into force). The implementing acts need to be adopted, and the competence centre needs to be set up organisationally during that time. Subsequent evaluations will be carried out every 5 years.

- **Detailed explanation of the specific provisions of the proposal**

Title I determines the subject matter and the scope of the proposal.

The proposal provides for enhanced transparency with regard to information necessary for SEP licensing; registration of SEPs; procedure for evaluating the essentiality of registered SEPs; and procedure for determination FRAND terms and conditions for a SEP licence.

The proposal applies to SEPs in force in one or more Member States. It concerns standards published by a standard development organisation (SDO) that calls on SEP holders to commit to licensing on fair, reasonable and non-discriminatory (FRAND) terms and conditions. It does not apply to SEPs that are subject to royalty-free intellectual property policy of the SDO that has published the standard. The proposal does not apply to claims of invalidity and infringement of SEPs unrelated to the scope of this Regulation.

Title II of the proposal creates a competence centre within EUIPO to administer databases, a register and the procedures for essentiality checks of SEPs and the FRAND determination. The competence centre will also provide training, support and general advice on SEPs to SMEs and raise awareness of SEP licensing.

Title III This Title includes provisions detailing the process of notifying standards and aggregate royalty, registration of SEPs and expert opinion on aggregate royalty. It also includes provisions concerning the information and data that the competence centre would include in the register and databases. The registration will be subject to a fee.

The SEP registration process is triggered when contributors or implementers notify the competence centre of a standard and/or aggregate rates for a standard and specific implementations of the standard. The competence centre publishes a notice inviting SEP holders to register. SEP holders have 6 months to register. To incentivise timely registration following the 6 months, SEP holders cannot enforce their SEPs until they register. A SEP holder that has not registered within the 6 months may also not seek royalties and damages prior to the registration. This is not only to encourage registration but also to ensure legal certainty for implementers.

The rules take account of the fact that certain SEPs may be granted by a patent office after the 6 month period and certain implementations of a standard may not be known at the time of publication of the standard. A SEP may be removed from the register only where the SEP has expired, has been invalided or found non-essential. The registration can be modified and should be updated by the SEP holder. Any stakeholder can signal that a registration is incorrect or incomplete and needs to be modified.

Contributors or implementers may request an expert opinion on the aggregate royalty, subject to a fee. The competence centre would then appoint a panel of three conciliators to deliver the expert opinion. Any stakeholder can participate in the process and express its views provided that it demonstrates its interest. The expert opinion should also consider potential impacts on the value chain in question. The expert opinion will not be binding but will serve to provide the industry with some guidance in respect of individual SEP licensing negotiations.

In addition to the data provided by the SEP holders in the register and/or the databases on individual SEPs, public licensing arrangements and contact details, the competence centre should collect data on case law worldwide, rules of third countries and public information on FRAND terms and conditions. It should also produce statistics and commission studies. The objective would be to have a one-stop shop for everything a stakeholder needs to know about SEPs and SEP licensing. Most of the information will be available free of charge to the public. Some specific detailed information, for example, on particular SEPs or on reports from FRAND determinations will be available only on registration and for a fee. SMEs will benefit from reduced fees.

Title IV of the proposal contains rules for the selection of candidate evaluators and conciliators to carry out tasks assigned to them in proceedings set out in the proposal. The evaluators or conciliators should not only have the requisite technical competence but should demonstrate that they are independent and no biased. The competence centre should establish a roster of candidates that satisfy all conditions. The competence centre should regularly review the rosters that a sufficient number of qualified candidates is maintained.

Title V of the proposal pertains to essentiality checks of SEPs. Determining whether a patent is essential to a standard is a very difficult technical task. Despite the best efforts of the SEP holders, there may be registered SEPs that are not actually essential to the standard for which they are registered. Essentiality checks are thus very important to ensure the quality of the register and also to prevent any potential abuse, because of a lack of checks on the registered data. Essentiality checks are also important for SEP holders or implementers, who may wish to submit some of their SEPs for such a check to demonstrate essentiality or non-essentiality during negotiations. The essentiality checks will be subject to a fee payable by the SEP holders whose SEPs are checked and by the implementers who request such checks. The lack of an essentiality check should not preclude licensing negotiations or any court or administrative procedure in relation to such SEPs.

Essentiality checks on claimed SEPs entered into the SEP register will be conducted by evaluators who have expertise in the relevant technical field and whose independence is

beyond doubt. Such checks will be made annually on a sampling basis and there will be only one essentiality check per patent family. The checks will be conducted based on methodology that ensures a fair and statistically valid selection capable of producing sufficiently accurate results about the percentage of truly essential patents among each SEP holder's registered SEPs.

If the during the check, the evaluator has reasons to believe that the claimed SEP may not be essential to the standard, she or he should inform the SEP holder through the competence centre of any such reasons and give the SEP holder time to submit its observations. Only after considering the response will the evaluator deliver its final reasoned opinion. The SEP holder would be able to request a peer evaluation before a negative opinion by the evaluator is issued. The results of the peer evaluation should serve to improve the essentiality check process and ensure consistency.

Title VI of the proposal establishes provisions for the determination of FRAND terms and conditions. The FRAND determination must be initiated by the SEP holder or implementer before initiating respective court proceedings in the EU. A FRAND determination may also be initiated by one of the parties voluntarily to resolve disputes related to FRAND terms and conditions.

Where the responding party does not reply to the request, the competence centre will either terminate the procedure or, upon request of the requesting party, continue with the FRAND determination. This may be necessary either to establish that an offer is FRAND or to determine the amount of the security.

If both parties engage in the process, or in case the proceedings are continued with one party only, a conciliator will be appointed. The parties or party, as applicable, will be requested to make submissions and proposals. They can also commit to comply with the outcome of the FRAND determination. The conciliator will assist them in an independent and impartial manner in their endeavour to reach a FRAND rate determination. The conciliator will be empowered to proactively seek information, consult all information available in the register and databases, including the confidential reports of other FRAND determinations and hear any experts, where necessary. The conciliator will make proposal(s) to the parties. The procedure should not last longer than 9 months. If, at the end of the procedure, the parties have not yet settled, the conciliator will make a final proposal, which the parties may or may not accept.

If the parties settle, the conciliator will terminate the procedure without a report. If the parties do not settle at the end of the procedure, the conciliator will terminate the procedure and issue a report on the determination of FRAND terms and conditions. The non-confidential part of that report will contain their last proposal and the methodology the conciliator applied for the determination, and will be available for consultation in the register/database(s).

If a party obstructs the FRAND determination or seeks resolution in other jurisdictions, the conciliator may propose that the other party either terminate or continue with the procedure. The complying party will decide how to proceed depending on its needs.

Title VII of the proposal contains provisions setting out the treatment of micro-enterprises and small and medium-sized enterprises taking into account their specific needs. The competence centre will offer training and provide support on SEP-related matters for micro-enterprises, small and medium-size enterprises free of charge. The costs will be borne by the EUIPO. When negotiating a SEP licence with micro, small and medium-sized enterprises, SEP holders will be required to consider offering them more favourable FRAND terms and conditions.

Title VIII of the proposal contains rules as regards the fees and charges for the services of the competence centre. Those fees should be reasonable and reflect the costs for the service rendered. The Commission will adopt implementing acts to determine the administrative fees, and the fees for expert opinions on aggregate royalty, evaluators and conciliators, the amounts to be charged and the payment method. Fees should be appropriate to the needs of micro, small and medium-sized enterprises.

Title IX of the proposal contains final provisions. The proposed regulation applies to standards published after its date of application. There may also be a need to cover certain important standards such as 4G on which many IoT applications run and for which SEP licencing is inefficient. Such standards shall be determined in a delegated act and may consequently be notified to the competence centre within a limited time-period after the date of application to trigger the registration process. This Title also includes the empowerment of the Commission to adopt delegated and implementing acts and the evaluation and review clause. Finally, the Title contains provisions to amend Regulation (EU) 2017/1001.

2023/0133 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on standard essential patents and amending Regulation (EU)2017/1001

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[29],

Having regard to the opinion of the Committee of the Regions[30],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) On 25 November 2020, the Commission published its intellectual property action plan[31], where it announced its goals of promoting transparency and predictability in licensing of standard essential patents (SEPs), including by improving the SEP licensing system, for the benefit of Union industry and consumers, and in particular small and medium-sized enterprises (SMEs)[32]. The action plan was supported by Council Conclusions of 18 June 2021[33] and by the European Parliament in its Resolution[34]

(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

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29 OJ C , , p. .

30 OJ C , , p. .

31 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Making the most of the EU's innovative potential An intellectual property action plan to support the EU's recovery and resilience of 25 November 2020, COM(2020) 760 final.

32 OJ L 124 of 20.05.2003, p. 36.

33 Council conclusions on intellectual property policy, as approved by the Council (Economic and Financial Affairs) at its meeting on 18 June 2021.

34 European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience (2021/2007(INI)).

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.

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

(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.

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

(6) Because a FRAND commitment should be made for any SEP declared to any standard intended for repeated and continuous application, the meaning of standards should be

broader than in Regulation (EU) No 1025/2012 of the European Parliament and of the Council[35].

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

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

(9) In the Union, standard setting and the application of competition law rules related to FRAND obligation to standard essential patents are guided by the Horizontal Guidelines[36] and the Court of Justice judgment of 16 July 2015 in case C-170/13, *Huawei Technologies Co. Ltd v ZTE Corp. and ZTE Deutschland GmbH*[37]. The Court of Justice recognised the right of a SEP holder to seek to enforce its patents in national courts subject to certain conditions that must be fulfilled to prevent an abuse of dominant position by the SEP holder when seeking an injunction. Since a patent confers on its holder the exclusive right to prevent any third party from using the invention without the holder's consent only in the jurisdiction for which it is issued, the patent disputes are governed by national patent laws and civil proceedings and/or enforcement laws harmonised by Directive 2004/48/EC of the European Parliament and of the Council[38].

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

(11) Any reference to a competent court of a Member State in this Regulation includes the Unified Patent Court where the conditions are met.

(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.

(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

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35 Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12.)

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

37 Judgment of the Court of Justice of 16 July 2015, Huawei Technologies Co. Ltd v ZTE Corp. and ZTE Deutschland GmbH, C-170/13, ECLI:EU:C:2015:477

38 DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45.)

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.

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

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

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

and cross-licensing, and impact on incentives to innovate of SEP holders and different stakeholders in the value chain.

(17) In line with the general principles and objectives of transparency, participation and access to European standardisation, the centralised register should make information regarding the number of SEPs applicable to a standard, the ownership of relevant SEPs, and the parts of the standard covered by the SEPs publicly available. The register and the database will contain information on relevant standards, products, processes, services and systems, which implement the standard, SEPs in force in the EU, standard SEP licensing FRAND terms and conditions or any licensing programmes, collective licensing programmes and essentiality. For SEP holders the register will create transparency with regard to the relevant SEPs, their share of all SEPs declared to the standard and the features of the standard covered by the patents. SEP holders will be in a better position to understand how their portfolios compare with other SEP holders' portfolios. This is important not only for negotiations with implementers but also for the purpose of cross-licensing with other SEP holders. For implementers, the register will provide a trusted source of information on the SEPs, including with regard to the SEP holders from whom the implementer may need to obtain a licence. Making such information available in the register will also help shorten the length of technical discussions during the first stage of the SEP licensing negotiations.

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

(19) In order to ensure transparency of about SEPs, it is appropriate to require from SEP holders to register their patents which are essential to the standard for which the registration is open. SEP holders should register their SEPs within 6 months following the opening of the registration by the competence centre or the grant of the relevant SEPs, whichever is first. In case of timely registration, SEPs holders should be able to collect royalties and claim damages for uses and infringements that happened before the registration.

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

(21) Clauses in licensing agreement that set a royalty for a large number of patents – present or future – should not be affected by the invalidity, non-essentiality, or unenforceability of a small number of those patents when they do not affect the overall amount and enforceability of the royalty or other clauses in such agreements.

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

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

decision or ruling of a competent court of a Member State or found non-essential under this Regulation.

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

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

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

(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.

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

(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.

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

(31) The purpose of the FRAND commitment is to facilitate adoption and use of the standard by making SEPs available to implementers on fair and reasonable terms and

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

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

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

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

(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 injunctionof 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.

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

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

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

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

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

(41) At the conclusion of the procedure, the conciliator should make a proposal recommending FRAND terms and conditions. Either party should have the option to accept or reject the proposal. If the parties do not settle and/or do not accept its proposal, the conciliator should draft a report of the FRAND determination. The report would have a confidential and a non-confidential version. The non-confidential version of the report should contain the proposal for FRAND terms and conditions and the methodology used and should be provided to the competence centre for publication

in order to inform any subsequent FRAND determination between the parties and other stakeholders involved in similar negotiations. The report would thus have a dual purpose to encourage the parties to settle and to provide transparency as to the process and the recommended FRAND terms in cases of disagreement.

(42) The Regulation respects the intellectual property rights of patent owners (Article 17(2) of EU Charter of Fundamental Rights), although it includes a restriction on the ability to enforce a SEP that has not been registered within a certain time-limit and introduces a requirement to conduct a FRAND determination before enforcing individual SEPs. The limitation on the exercise of intellectual property rights is allowed under the EU Charter, provided that the proportionality principle is respected. According to settled case-law, fundamental rights can be restricted provided that those restrictions correspond to objectives of general interest pursued by the Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference which infringes the very essence of the rights guaranteed[39]. In that respect, this Regulation is in the public interest in that it provides a uniform, open and predictable information and outcome on SEPs for the benefit of SEP holder, implementers and end users, at Union level. It aims at dissemination of technology for the mutual advantage of the SEP holders and implementers. Furthermore, the rules concerning the FRAND determination are temporary thus limited and aimed at improving and streamlining the process but are not ultimately binding.[40]

(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[41], 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.

(44) When determining the aggregate royalties and making FRAND determinations the conciliators should take into account in particular any Union acquis and judgments of the Court of Justice pertaining to SEPs as well as guidance issued under this

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

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

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

Regulation, the Horizontal Guidelines[42] and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.[43]Furthermore, the conciliators should consider any expert opinion on the aggregate royalty or in the absence thereof, should request information from the parties before it makes its final proposals well as guidance issued under this Regulation, as well as guidance issued under this Regulation.

(45) SEP licensing may cause friction in the value chains that have so far not been exposed to SEPs. It is, therefore, important that the competence centre raises awareness concerning SEP licensing in the value chain through any of the tools at its disposal. Other factors would include the ability of upstream manufacturers to pass the cost of a SEP licence downstream and any potential impact of existing indemnification clauses within a value chain.

(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.

(47) In order to supplement certain non-essential elements of this Regulation, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of the items to be entered in the register or in respect of determining the relevant existing standards or to identify use cases of standards or parts thereof for which the Commission establishes that there are no significant difficulties or inefficiencies in licensing on FRAND terms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[44]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality

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

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

44 OJ L 123, 12.5.2016, p. 1.

checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.[45]

(49) Regulation (EU) 2017/1001 of the European Parliament and of the Council[46] should be amended to empower EUIPO to take on the tasks under this Regulation. The functions of the Executive Director should also be expanded to include the powers conferred on him under this Regulation. Furthermore, the EUIPO's arbitration and mediation centre should be empowered to set up processes such as the aggregate royalty determination and the FRAND determination.

(50) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council.[47]

(51) As EUIPO, the Commission and stakeholders should be given time to prepare for the implementation and application of this Regulation, its application should be deferred.

(52) Since the objectives of this Regulation to increase transparency with regard to SEP licensing and to provide an efficient mechanism to resolve disagreements on FRAND terms and conditions cannot be sufficiently achieved by the Member States because of multiplication of costs but can rather, by reason of efficiencies and scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

Title I
General Provisions

Article 1

Subject matter and scope

1. This Regulation establishes the following rules on patents essential to a standard ('SEPs'):

   (a) rules providing for enhanced transparency with regard to information necessary for SEP licensing;

   (b) rules on the registration of SEPs;

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

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

47 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39.)

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

(d) a procedure for the amicable settlement of disputes related to fair, reasonable and non-discriminatory nature of terms and conditions ('FRAND determination');

(e) competences for the EUIPO for the fulfilment of the tasks set out in this Regulation.

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,

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

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

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.

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.

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

6. This Regulation shall not apply to claims of invalidity or claims of infringement unrelated to the implementation of a standard notified under this Regulation.

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

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

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

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

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

(4) ‘technical specification’ means a document that prescribes technical requirements to be fulfilled by a product, process, service or system as defined in Article 2 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council[48];

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

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

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

(8) ‘FRAND terms and conditions’ means fair, reasonable and non-discriminatory terms and conditions of licensing SEPs;

(9) ‘FRAND determination’ means a structured procedure for the determination of the FRAND terms and conditions of a SEP licence;

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

(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;

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

(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 recommendation of a standard;

(14) ‘requirement of a standard’ means expression, in the content of a document, that conveys objectively verifiable criteria to be fulfilled and from which no deviation is permitted if conformance with the document is to be claimed;

(15) ‘recommendation of a standard’ means expression, in the content of a document, that conveys a suggested possible choice or course of action deemed to be particularly suitable without necessarily mentioning or excluding others;

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

(17) ‘stakeholder’ means any person that can demonstrate a legitimate interest in SEPs, including a SEP holder, an implementer, an agent for a SEP holder or an implementer, or an association representing the interests of SEP holders and implementers;

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48 Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12.).

(18) ´competence centre' means the EUIPO administrative units that fulfil the tasks entrusted to EUIPO under this Regulation.

Title II
Competence centre

Article 3

Tasks of the competence centre

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

2. The competence centre shall support transparency and FRAND determination in relation to SEPs and shall perform the following tasks:

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

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

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

   (d) set up and administer the process for the FRAND determination;

   (e) provide training to evaluators and conciliators;

   (f) administer a process for aggregate royalty determination;

   (g) enhance transparency and information sharing through:

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

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

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

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

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

   (i) conduct studies and any other necessary activities to support the objectives of this Regulation;

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

3. Using the powers conferred by Article 157 of Regulation (EU) 2017/1001, the Executive Director of the EUIPO shall adopt the internal administrative instructions and shall publish the notices that are necessary for the fulfilment of all the tasks entrusted to the competence centre by this Regulation.

Title III
Information on SEP made available through the competence centre

Chapter 1
General Provisions

Article 4

Register of standard essential patents

1. A Union register for SEPs ('the register') is established.
2. The register shall be maintained in electronic format by the competence centre.
3. The register shall contain the following entries:
   (a) information on relevant standards;
   (b) registered SEPs identification, including the country of registration and patent number;
   (c) the standard version, the technical specification and the specific sections of the technical specification for which the patent is considered essential;
   (d) reference to the terms of the SEP holder's FRAND licensing commitment to the standard development organisation;
   (e) name, address and contact details of the SEP holder;
   (f) if the SEP holder is part of a group of companies, the name, address and contact details of the parent company;
   (g) name, address and contact details of the SEP holder's legal representatives in the Union, where relevant;
   (h) the existence of any public standard terms and conditions, including SEP holder's royalty and discount policies;
   (i) the existence of any public standard terms and conditions for SEP licensing to SMEs;
   (j) availability for licensing through patent pools, where applicable;
   (k) contact details for licensing, including licensing entity;
   (l) the date of registration of the SEP in the register and the registration number.
4. The register shall also contain the following entries, each accompanied by the date of recording of such entry:
   (a) changes in the contact details of entries referred to in paragraph (3), points (e), (f), (g) and (k);
   (b) the grant or transfer of a licence through patent pools, where applicable pursuant to Article 9;
   (c) information on whether an essentiality check or peer evaluation have been performed and reference to the result;

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

(e) particulars regarding proceedings and decisions on SEPs pursuant to Article 10;

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

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

(h) corrections of the SEP, pursuant to Article 23;

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

(j) the correction to or removal from the register of the item referred to in points (b), (e) and (f).

5. The Commission is empowered to adopt delegated acts in accordance with Article 67, amending paragraphs (3) and (4) to determine items other than those referred to in paragraphs (3) and (4) that are to be entered in the Register for the purposes of this Regulation.

6. The competence centre shall collect, organise, make public and store the items referred to in paragraphs (3) and (4), including any personal data for the purposes of this Regulation.

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

Article 5

Electronic database

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

2. The following information in the database shall be accessible to any third party subject to the registration with the competence centre:

(a) patent bibliographic data on the claimed SEP or SEP, including priority date, family members, grant date and expiration date;

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

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

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

(e) information pertaining to essentiality pursuant to Article 8;

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

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

(h) expert opinions referred to in Article 18;

(i) non-confidential reports of the conciliators pursuant to Article 57;

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

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

(l) information on SEP related rules in third countries pursuant to Article 12;

(m) case-law and reports pursuant to Article 13(3) and (5);

(n) awareness raising and training materials.

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.

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.

Article 6

Common provisions on the register and the database

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.

2. The competence centre shall keep the files of any procedure relating to the registration of the SEP. The Executive Director of the EUIPO shall determine the form in which those files shall be kept and made available. The competence centre shall keep the files for 10 years after the removal of the registration of the SEP. Upon request, personal data may be removed from the register or the database after 18 months from the expiry of the SEP or removal of the SEP from the register.

3. The competence centre may correct any information contained in the register or the database pursuant to Article 23.

4. The SEP holder and its legal representative in the Union shall be notified of any change in the register or the database when that change concern a particular SEP.

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

6. The Commission shall determine the conditions of access to the database, including the fees for such access, or for registration certificates and certified copies from the database or the register, by means of an implementing act. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Article 7

Identification of implementations of a standard and related SEP licensing terms and conditions

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

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

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

Article 8

Information pertaining to essentiality

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

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

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

Article 9

Information to be provided by patent pools

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

(a) standards subject to collective licensing;

(b) the administrative entity's shareholders or ownership structure;

(c) process for evaluating SEPs;

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

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

(f) illustrative cross-references to the standard;

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

(h) royalties and discount policy per product category;

(i) standard licence agreement per product category;

(j) list of licensors in each product category;

(k) list of licensees for each product category.

Article 10

Information on decisions on SEPs

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

   (a) injunctions;

   (b) infringement proceedings;

   (c) essentiality and validity;

   (d) abuse of dominance;

   (e) determination of FRAND terms and conditions.

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

Article 11

Information on FRAND determinations

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

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

Article 12

Information on SEP related rules in third countries

1. The competence centre shall collect and publish in the database information on any SEP related rules in any third country.

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.

Article 13

Enhancing transparency and information sharing

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

2. The collection, storage and processing of such data shall serve the purposes of:

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

   (b) accessing the information necessary for conducting those proceedings more easily and efficiently;

   (c) communicating with the parties to the proceedings;

(d) producing reports and statistics enabling the competence centre to improve its operations and the functioning of the registration of SEPs and the proceedings under this Regulation.

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

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

5. The competence centre shall publish in the database an annual report on methodologies for FRAND determinations based on information from court and arbitration decisions and statistical information on licences and licensed products from the FRAND determinations.

6. Upon a reasoned request by a stakeholder, any confidential information shall be redacted in a non-confidential format before the competence centre publishes or transmits such information.

Chapter 2
Notification of a standard and an aggregate royalty

Article 14

Notification of a standard to the competence centre

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

   (a) the commercial name of a standard;

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

   (c) the date of the publication of the latest technical specification;

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

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

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

4. In the absence of notification under paragraph (1) or under paragraph (3) any implementer may notify, to the competence centre the information referred to in paragraph (1).

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.

6. The competence centre shall publish on the EUIPO website the notifications made pursuant to paragraphs (1), (3) and (4) for comments by stakeholders. Stakeholders may submit their comments to the competence centre within 30 days from the publication of the list.

7. After expiry of the time limit referred to in paragraph (6) the competence centre shall consider all comments received including all relevant technical specifications and implementations and publish the information pursuant to paragraph (1).

Article 15

Notification of an aggregate royalty to the competence centre

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

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

   (a) the commercial name of the standard;

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

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

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

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

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

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

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

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

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

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

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

Article 16

Revision of aggregate royalty

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

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

Article 17

Process for facilitating agreements on aggregate royalty determinations

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

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

3. The request shall contain the following information:

   (a) the commercial name of the standard;

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

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

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

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

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

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

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

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

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

Article 18

Non-binding expert opinion on aggregate royalty

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

2. The request referred to in paragraph (1) shall be made no later than 150 days after:

   (a) the publication of the relevant standard for known implementations; or

   (b) new implementations are first sold on the Union market.

3. That request shall include:

   (a) commercial name of the standard;

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

   (c) list of relevant products, processes, services or systems or implementations;

   (d) list of known stakeholders and contact details.

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.

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

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

7. Stakeholders that submit to the panel confidential information shall provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

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

   (a) propose an aggregate royalty, including the information referred to in Article 15(2), or

   (b) submit justification on the impossibility to propose an aggregate royalty due to technological, economic, or other considerations.

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

   (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

   (b) to provide the expert opinion.

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

11. 1The 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.

12. The expert opinion shall include an analysis of the value chain concerned and the potential impact of the aggregate royalty on the innovation incentives of both SEP holders and stakeholders in the value chain where licensing is to take place.

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

Chapter 3
Registration of SEPs

Article 19

Administration of the register of standard essential patents

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

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

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

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

Article 20

Registration of standard essential patents

1. Upon request of a SEP holder the competence centre shall register any patent in force in one or more Member States and falling within the scope of this Regulation that is essential for a standard, for which the competence centre has published a notice pursuant to Article 19(2).

2. For a SEP to be included in the register, at least one patent claim shall correspond with at least one requirement or recommendation to the standard, identified by standard name, version (and/or release) and sub-clause.

3. The request for registration shall be made within 6 months from the publication of the notice pursuant to Article 19(2). In case the SEP is only granted by a national or European patent office after the publication of the notice pursuant to Article 19(2),

the request for registration shall be made within 6 months from the grant of the SEP by the relevant patent office.

4. The request shall include the information set out in Article 4(3) and Article 5(2), points (a), (b), (d) and (e).

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

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

Article 21

Date of registration

1. The date of registration shall be the date on which the competence centre has received a registration request pursuant to Article 20(2), (4) and (5) .

2. The competence centre shall publish the registered SEPs in the register within 7 working days from the date of registration.

Article 22

Examination of the conditions of registration

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

2. The EUIPO shall adopt a methodology for selecting a sample of SEP registrations for checks.

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

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

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

6. Any completing or correcting information on a SEP pursuant to this article shall be made free of charge.

Article 23

Correction of an entry in the register or information in the database

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

2. Any third party may request the competence centre to correct a SEP registration or information contained in the database. The request shall contain the following information:

   (a) the name and contact details of the requesting person;

   (b) the registration number of the registered SEP;

   (c) the reasons for the request;

   (d) evidence from an independent source supporting the request.

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.

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 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:

   (a) the expiry of a registered SEP

   (b) the invalidation of a registered SEP by a competent authority; or

   (c) a final judgment that the registered SEP is not essential to the relevant standard.

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

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

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

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.

9. Any corrections pursuant to this article shall be made free of charge.

Article 24

Effects of absence of registration or suspension of registration of SEPs

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

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

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

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

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

Article 25

Removing a SEP from the register and the database

1. A SEP holder may request the removal of its registered SEP from the register and the database, on the following grounds:

   (a) expiry of the patent;

   (b) invalidation of the patent by a competent authority;

   (c) final judgment of a competent court of a Member State that the registered patent is not essential to the relevant standard;

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

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

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

Title IV
Evaluators and Conciliators

Article 26

Evaluators and conciliators

1. An evaluator shall conduct essentiality checks.
2. A conciliator shall conduct the following tasks:
   (a) mediate among parties in establishing an aggregate royalty;
   (b) provide a non-binding opinion on an aggregate royalty;
   (c) serve in a FRAND determination.
3. The evaluators and conciliators shall adhere to a code of conduct.
4. The competence centre shall appoint [10] evaluators from the roster of evaluators as peer evaluators for a period of [three] years.
5. By [OJ: please insert the date = 18 months from entry into force of this regulation], the Commission shall by means of an implementing act adopted in accordance with the examination procedure referred to in , lay down the practical and operational arrangements concerning:
   (a) the requirements for evaluators or conciliators, including a Code of Conduct;
   (b) the procedures pursuant to Articles 17, 18, 31 and 32 and Title VI.

Article 27

The selection procedure

1. The competence centre shall conduct a procedure of selecting candidates based on the requirements established in the implementing act referred to in Article 26(5).
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.
3. Where the competence centre has not yet established roster of candidates evaluators or conciliators at the moment of the first registrations or FRAND determination, the competence centre shall invite ad hoc renowned experts who satisfy the requirements set out in the implementing act referred to in Article 26(5).
4. The competence centre shall regularly review the rosters that a sufficient number of qualified candidates is maintained.

Title V
Essentiality checks of standard essential patents

Article 28

General requirement for essentiality checks

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

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

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

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

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

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

Article 29

Administration of essentiality checks

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).

2. The competence centre shall notify the SEP holders about the SEPs selected for essentiality checks. Within the time limit established by the competence centre, the SEP holders may submit within the same time period a claim chart with a maximum amount of five correspondences between the SEP and the relevant standard, any additional technical information that may facilitate the essentiality check and translations of the patent requested by the competence centre.

3. The competence centre shall publish the list of SEPs selected for essentiality check.

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.

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

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

7. The competence centre shall allocate the SEPs for essentiality check to evaluators based on the roster of evaluators established pursuant to Article 27 and shall provide access to the evaluator access to the complete documentation provided by the SEP holder.

8. The competence centre shall ensure that the identity of the evaluator remain undisclosed to the SEP holders during the examination of the essentiality pursuant to Article 31 or during the peer evaluation pursuant to Article 32. All the communication between the SEP holder and the evaluator shall pass through the competence centre.

9. In case of failure to respect formal requirements pursuant to Article 28, other procedural requirements or the code of conduct, the competence centre may, at the request of any stakeholder submitted within one month from the publication of the reasoned opinion or final reasoned opinion or on its own initiative, review the examination and decide to:

   (a) maintain, or

   (b) revoke

   the results of examination of the essentiality of a registered SEP or of the peer evaluation.

10. Where the competence centre revokes the results pursuant to paragraph 9(b), the competence centre shall appoint a new evaluator or peer evaluator to conduct a new examination of the essentiality check pursuant to Article 31 or new peer evaluation pursuant to Article 32.

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

Article 30

Observations by stakeholders

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

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

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

Article 31

Examination of the essentiality of a registered SEP

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

Article 32

Peer evaluation

1. Where the competence centre has informed the SEP holder pursuant to Article 31(3), the SEP holder may request peer evaluation before the expiry of the period to submit its observations pursuant to Article 31(3).
2. If the SEP holder requests a peer evaluation, the competence centre shall appoint a peer evaluator.
3. The peer evaluator shall duly consider all the information submitted by the SEP holder, the reasons of the initial evaluator why the SEP may not be essential to the standard and any amended claim chart or additional observations provided by the SEP holder.
4. In case the peer evaluation confirmed the preliminary conclusions of the evaluator that the evaluated SEP may not be essential to the standard for which it was registered, the peer evaluator shall inform the competence centre and provide the reasons for this opinion. The competence centre shall inform the SEP holder and invite the SEP holder to submit its observations.
5. The peer evaluator shall duly consider the observations of the SEP holder and issue a final reasoned opinion to the competence centre within 3 months from its appointment. The final reasoned opinion shall include the name of the SEP holder, of the evaluator and of the peer evaluator, the SEP subject to the essentiality check, the relevant standard, a summary of the examination and peer evaluation procedure, the preliminary conclusion of the evaluator, the result of the peer evaluation and the reasons on which that result is based.

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

7. The results of the peer evaluation shall serve to improve the essentiality check process and ensure consistency.

Article 33

Publication of the results of the essentiality checks

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

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

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

Title VI
FRAND determination

Article 34

Initiation of the FRAND determination

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

   (a) SEP holder, prior to any initiation of a SEP infringement claim before a competent court of a Member State;

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

2. The party requesting the FRAND determination shall be referred to as the 'requesting party', any party responding to the request as the 'responding party', and both shall be referred to as the 'parties' for the purposes of FRAND determination.

3. The FRAND determination may be initiated by a party or entered into by the parties to resolve disputes related to FRAND terms and conditions voluntarily.

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

proceedings on the merits for the duration of the FRAND determination. In deciding whether to grant the provisional injunction, the competent court of a Member States shall consider that a procedure for FRAND determination is ongoing.

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

Article 35

Rules of procedure

The FRAND determination shall be governed by Article 34 to Article 58, as further implemented pursuant to Article 26(5).

Article 36

Content of the request to initiate a FRAND determination

1. The FRAND determination shall be initiated by a written request to the competence centre that shall contain the following information:
   (a) the name and contact information of the requesting party;
   (b) the name and address of the responding party;
   (c) the registration numbers of the relevant SEPs in the register;
   (d) the commercial name of the standard and the name of the standard developing organisation.
   (e) a summary of the licensing negotiations to date, if applicable;
   (f) references to any other FRAND determination, if applicable.
2. Where the request to initiate a FRAND determination is made by a SEP holder, in addition to the information listed in paragraph (1), it shall contain the following information:
   (a) claim charts mapping patent claims to the standard of selected registered SEPs;
   (b) proof of essentiality checks, if available.
3. The request to initiate a FRAND determination may include a proposal for a FRAND determination.

Article 37

Duration of the FRAND determination

1. Unless otherwise agreed by the parties, the period from the date of the submission of the request to continue the FRAND determination in accordance with Article 38(5)(b) or Article 38(3)(c) or Article 38(4)(a), second sentence, or Article 38(4)(c), as applicable, until the date of the termination of the procedure shall not exceed 9 months.
2. The period for the time barring of claims before a competent court of a Member State shall be suspended for the duration of the FRAND determination.

Article 38

Notification of the FRAND determination request and response

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

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.

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:

   (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;

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

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

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:

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

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

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

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

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

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

Article 39

Selection of conciliators

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

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

Article 40

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

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

Article 41

Preparation of the proceedings

If during the FRAND determination a conciliator is unable to participate, withdraws or needs to be replaced because he or she does not comply with the requirements as provided for in Article 26, the procedure provided for in Article 39 shall apply. The time period referred to in Article 37 shall be extended for the time necessary for the appointment of the new conciliator for the FRAND determination.

Article 42

Preparation of the proceedings

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

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

Article 43

Written procedure

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

Article 44

Objection to the FRAND determination

1. A party may submit an objection stating that the conciliator is unable to make a FRAND determination on legal grounds, such as a previous binding FRAND determination or agreement between the parties, no later than in the first written submission. The other party shall be given opportunity to submit its observations.
2. The conciliator shall decide on the objection and either reject it as unfounded before considering the merits of the case or join it to the examination of the merits of the FRAND determination. If the conciliator overrules the objection or joins it to the examination of the merits of the determination of FRAND terms and conditions, it shall resume consideration of the determination of FRAND terms and conditions.
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.

Article 45

Conduct of the FRAND determination

1. The conciliator shall assist the parties in an independent and impartial manner in their endeavour to reach a determination of FRAND terms and conditions.
2. The conciliator may invite the parties or the party requesting the continuation of the FRAND determination to meet with him/her or may communicate with him/her orally or in writing.
3. The parties or the party requesting the continuation of the FRAND determination shall cooperate in good faith with the conciliator and, in particular, shall attend the meetings, comply with his/her requests to submit all relevant documents, information and explanations as well as use the means at their disposal to enable the conciliator to hear witnesses and experts whom the conciliator might call.
4. The responding party may join the FRAND determination at any moment before its termination.
5. At any stage of the procedure upon request by both parties, or the party requesting the continuation of the FRAND determination, as applicable, the conciliator shall terminate the FRAND determination.

Article 46

Failure of a party to engage

1. If a party:

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

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

   (c) in any other way fails to comply with a requirement relating to the FRAND determination,

   the conciliator shall inform both parties thereof.

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

   (a) make a proposal for a FRAND determination in accordance with Article 55 based on the information available to it, attaching such weight as it considers fit to any evidence submitted to it,

   (b) terminate the procedure.

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

Article 47

Parallel proceedings in a third country

1. For the purposes of this article a parallel proceeding means a proceeding that satisfies the following conditions:

   (a) any procedure before a court, tribunal, an administrative or state authority of a third country taking legally binding and enforceable decisions on patent assertion, injunction, infringement, abuse of a dominant market position or a determination of FRAND terms and conditions;

   (b) concerning a licensing dispute regarding the same standard and implementation and a patent which in substance has the same claims as the SEPs that is subject to the FRAND determination;

   (c) involving one or more of the parties to the FRAND determination as a party.

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.

Article 48

Evidence

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

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.

Article 49

Witnesses and experts

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

Article 50

Proposal for a determination of FRAND terms and conditions

1. At any time during the FRAND determination, the conciliator or a party on its own motion or by invitation of the conciliator may submit proposals for a determination of FRAND terms and conditions
2. If the requesting party has submitted a written proposal for FRAND terms and conditions in its written submission, the responding party shall be given opportunity to comment on it and/or submit a written counter-proposal in its reply.
3. When submitting suggestions for FRAND terms and conditions, the conciliator shall take into account the impact of the determination FRAND terms and conditions on the value chain and on the incentives to innovation of both the SEP holder and the stakeholders in the relevant value chain. To that end, the conciliator may rely on the expert opinion referred to in Article 18 or, in case of absence of such an opinion request additional information and hear experts or stakeholders.

Article 51

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

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

Article 52

Submission of reasoned proposals for determination of FRAND terms and conditions by the parties

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

Article 53

Oral procedure

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

Article 54

Disclosure of information

1. When the conciliator receives information for the purposes of FRAND determination from a party, it shall disclose it to the other party so that the other party has the opportunity to present any explanation.
2. A party may request the conciliator that specific information in a submitted document is kept confidential.
3. When a party requests the information in a document it had submitted to be kept confidential, the conciliator shall not disclose that information to the other party. The party invoking confidentiality shall also provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. This non-confidential version shall be disclosed to the other party.

Article 55

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

1. At the latest 45 days before the end of the time limit referred to in Article 37, the conciliator shall submit a reasoned proposal for a determination of FRAND terms and conditions to the parties or, as applicable, the party requesting the continuation of the FRAND determination.
2. Either party may submit observations to the proposal and suggest amendments to the proposal by the conciliator, who may reformulate its proposal to take into account the observations submitted by the parties and shall inform the parties or the party requesting the continuation of the FRAND determination, as applicable, of such reformulation.

Article 56

Termination of the FRAND determination and notice of termination

1. In addition to the termination of the FRAND determination for reasons provided for Article 38(4), Article 44(3), Article 45(5), Article 46(2), point (b), Article 46(3) and Article 47(2), the FRAND determination shall be terminated in any of the following ways:
   (a) a settlement agreement is signed by the parties;
   (b) a written declaration is signed by the parties accepting the reasoned proposal for a determination of FRAND terms and conditions by the conciliator referred to in Article 55;
   (c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the conciliator referred to in Article 55;

(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the conciliator referred to in Article 55.

2. In case of termination of the FRAND determination, the competence centre shall adopt a notice of termination of the FRAND determination and notify the parties within 5 days from termination. The notice of termination shall include the names of the parties and the conciliator, the subject-matter of the FRAND determination, a summary of the procedure and the reasons for its termination.

3. The notice of termination notified to the SEP owner shall be considered to constitute a document within the meaning of Article 6(3) point (c) of Regulation (EU) No 608/2013 with regard to any request for a customs action against goods suspected to infringing its SEP.

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).

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

Article 57

Report

1. The conciliator shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).

2. The report shall include the following:

(a) the names of the parties;

(b) a confidential assessment of the FRAND determination;

(c) confidential summary of the main issues of disagreement;

(d) a non-confidential methodology and the assessment of the determination of FRAND terms and conditions by the conciliator.

3. The confidential report shall be available only to the parties and to the competence centre. The competence centre shall publish the non-confidential report in the database.

4. Either party to the FRAND determination may file the report in any proceedings before a competent court of a Member State against the other party to the FRAND determination, notwithstanding any procedural bar.

Article 58

Confidentiality

1. Except the methodology and the assessment of the FRAND determination by the conciliator referred to in Article 57(2), point (d), the competence centre shall keep confidential the determination of FRAND terms and conditions, any proposals for determination of FRAND terms and conditions submitted during the procedure and any documentary or other evidence disclosed during the FRAND determination which is not publicly available, unless otherwise provided by the parties.

2. Notwithstanding paragraph (1), the competence centre may include information concerning the FRAND determination in any aggregate statistical data that it publishes concerning its activities, provided that such information does not allow identification the parties or the particular circumstances of the dispute to be identified.

Title VII
Procedural rules

Article 59

Communications to and notifications from the competence centre

1. The communication to and notifications from the competence centre shall be conducted in principle by electronic means.

2. The Executive Director of the EUIPO shall determine to what extent and under which technical conditions communications and notifications referred to in paragraph (1) are to be submitted electronically.

Article 60

Time limits

1. Time limits shall be laid down in terms of full years, months, weeks or days. Calculation shall start on the day following the day on which the relevant event occurred.

2. The Executive Director of the EUIPO shall determine, before the commencement of each calendar year, the days on which the EUIPO is not open for receipt of documents or on which ordinary post is not delivered in the locality in which the EUIPO is located.

3. The Executive Director of the EUIPO shall determine the duration of the period of interruption in the case of a general interruption in the delivery of post in the Member State where the EUIPO is located or, in the case of an actual interruption of the EUIPO's connection to admitted electronic means of communication.

4. In cases of exceptional occurrences making the communication between the parties to the proceedings and the competence centre very cumbersome, the Executive Director of the EUIPO may extend all time limits that would otherwise expire on or after the date of commencement of such an occurrence, as determined by the Executive Director in relation to the following subjects:

   (a) parties to the proceedings having their residence or registered office in the region concerned;

   (b) representatives or assistants with a place of business in the region concerned, appointed by the parties.

5. When determining the length of extension referred to in the second subparagraph, the Executive Director of the EUIPO shall take into account the end date of the exceptional occurrence. If the occurrence referred to in the second subparagraph affects the seat of the EUIPO, the determination of the Executive Director of the EUIPO shall specify that it applies in respect of all parties to the proceedings.

Title VIII
Micro, Small and Medium-size Enterprises

Article 61

Training, advice and support

1. The competence centre shall offer training and support on SEP related matters for micro, small and medium-size enterprises free of charge.
2. The competence centre may commission studies, if it considers it necessary, to assist micro, small and medium-size enterprises on SEP related matters.
3. The costs of the services referred to in paragraph (1) and paragraph (2) shall be borne by the EUIPO.

Article 62

FRAND terms for micro, small and medium-sized enterprises

1. When negotiating a SEP licence with micro, small and medium-sized enterprises, SEP holders shall consider offering to them FRAND terms and conditions that are more favourable than the FRAND terms and conditions they offer to enterprises that are not micro, small and medium-sized for the same standard and implementations.
2. If a SEP holder offers more favourable FRAND terms and conditions to micro, small and medium-sized enterprises, or concludes a SEP licence that includes more favourable terms and conditions, pursuant to paragraph (1), such FRAND terms and conditions shall not be considered in a FRAND determination, unless the FRAND determination is conducted solely with regard to FRAND terms and conditions for another micro, small or medium-sized enterprise.
3. SEP holders shall also consider discounts or royalty-free licensing for low sales volumes irrespective of the size of the implementer taking the licence. Such discounts or royalty-free licensing shall be fair, reasonable and non-discriminatory and shall be available in the electronic database as set out in Article 5(2), point (b).

Title IX
Fees and Charges

Article 63

Fees and charges

1. The competence centre may charge administrative fees for the services it renders under this Regulation.
2. Fees may be charged at least in respect of the following matters:

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

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

(c) for the essentiality check carried out by the evaluator in accordance with Article 31 and by the peer evaluator in accordance with Article 32;

(d) for the conciliators for the FRAND determination in accordance with Title VI.

3. Where the competence centre charges fees in accordance with paragraph 2, the fees shall be borne as follows:

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

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

(c) the fees referred to in paragraph (2), point (c) by the SEP holder that requested an essentiality check pursuant to Article 29(5) or peer evaluation pursuant to Article 32(1) and the implementer that requested an essentiality check pursuant to Article 29(6);

(d) the fees referred to in paragraph (2), point (d) equally by the parties, unless they agree otherwise, or the conciliator suggests a different apportionment based on the level of participation of the parties in the FRAND determination.

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.

5. By [OJ: please insert the date = 18 months from entry into force of this Regulation], the Commission shall adopt an implementing act determining the amounts of the fees referred to in Article 63, the arrangement concerning the payment methods related to the rules set out in paragraph (3) and paragraph (4) of this Article. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Article 64

Payment of fees

1. Fees shall be paid to the EUIPO. All payments shall be made in euro. The Executive Director of the EUIPO may establish which specific payment methods may be used.

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

3. The date on which the payment shall be considered to have been made to the EUIPO shall be the date on which the amount of the payment or of the transfer is actually entered in a bank account held by EUIPO.

4. If any part of the required payment remains outstanding after the deadline in paragraph (2), the competence centre may suspend access to the database of the defaulting party, until payment is made.

Article 65

Financial provisions

1. The expenses incurred by the EUIPO or the evaluators or conciliators selected by the EUIPO pursuant to Articles 26 and 27 in carrying out the tasks conferred to it in accordance with this Regulation shall be covered by the administrative fees to be paid to the EUIPO by the users of the services of the competence centre.

2. Regarding costs incurred by the EUIPO for activities entrusted to it by this Regulation which are not covered by the fees under this Regulation, the EUIPO shall finance those activities from its own budgetary means.

Title X
Final Provisions

Article 66

Opening registration for an existing standard

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

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

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

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

within [OJ: please insert the date = 18 months from entry into force of this regulation].

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

Article 67

Exercise of delegation of power

1. The power to adopt the delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt a delegated act referred to in Articles 1(4), 4(5) and 66(4) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of power referred to in Articles 1(4), 4(5) and 66(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 1(4), 4(5) and 66(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 68

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 69

Commission guidance

The Commission may issue guidance under this Regulation on matters covered by its scope, excluding matters related to the interpretation of Article 101 and Article 102 TFEU.

Article 70

Evaluation

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

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

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

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 European Parliament, to the Council, to the European Economic and Social Committee and to the Management Board of the EUIPO.

Article 71

Amendments to Regulation (EU) 2017/1001

Regulation (EU) 2017/1001 is amended as follows:

1. Article 151(1) is amended as follows:

   (a) the following point is inserted:

   ‘(ba) administration, promotion and support of the tasks conferred on it, performed by a competence centre, under Regulation (EU) No … of the European Parliament and of the Council+* ;

   * Regulation (EU) .../... of the European Parliament and of the Council of ... on standard essential patents (OJ ...).’;

   (b) paragraph 3 is replaced by the following:

   ‘3. The Office may provide alternative dispute resolution services, including mediation, conciliation, arbitration, determination of royalties and FRAND determination.’;

2. in Article 157(4), the following point is added:

   ’(p) exercising the powers conferred on him or her under Regulation (EU) …++.’;

3. Article 170 is amended as follows:

   (a) the title is replaced by the following:

   ‘Alternative Dispute Resolution Centre’;

   (b) paragraphs 1 and 2 are replaced by the following

   ‘1. For the purposes of Article 151(3), the Office may establish an Alternative Dispute Resolution Centre (‘the Centre’).

   2. Any natural or legal person may use the services of the Centre for settling disputes relating to intellectual property rights’;

(c) paragraph 15 is replaced by the following:

‘15. The Office may cooperate with other recognised national or international bodies providing alternative dispute resolution services.’;

(d) the following paragraph is added:

‘16. Articles 18, 19 and Articles 34 to 58 of Regulation …++ shall apply to the Centre in all proceedings relating to standard essential patents.’.

[+ OJ: Please insert in the text the number of this Regulation and insert the number, date and OJ reference of this Regulation in the footnote.]

[++ OJ: Please insert in the text the number of this Regulation.]

Article 72

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

3.2.2. Estimated output funded with operational appropriations

3.2.3. Summary of estimated impact on administrative appropriations

3.2.3.1. Estimated requirements of human resources

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on Standard Essential Patents and amending Regulation (EU) 2017/1001

1.2. Policy area(s) concerned

Internal market

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[49]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

This initiative aims at: (i) ensuring that end users, including small businesses and EU consumers benefit from products based on the latest standardised technologies at reasonable prices; (ii) making the EU an attractive place for innovation and standards development (including for global participants); and (iii) ensuring that both EU SEP holders and implementers innovate in the EU, make and sell products in the EU and are competitive on global markets.

1.4.2. Specific objective(s)

Specific objective No

• Provide more clarity on who owns SEP and which SEPs are truly essential.

• Provide clarity on FRAND royalty and other terms and conditions

• Facilitate SEP dispute resolution.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Increase transparency of SEP licensing, lowering transaction cost and facilitating SEP dispute resolution for both SEP holders and implementers.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Success indicators are defined in the impact assessment chapter 9Specify the indicators for monitoring progress and achievements.Each indicator should be accompanied by targets and baseline.

Table 1: Monitoring indicators

Research question	Indicators
Specific Objective 1. Provide information on SEPs ownership and essentiality	

[49] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Has access to information on SEPs improved?	- Number of standards with SEPs registered in the database - Number of SEP holders registered - Number of essentiality checks conducted (overall, per SEP holder, per standard) - Is database up to date (when SEP is registered, is information updated) - Number of times database is used (access rate) and how it is used (e.g. new private services built on these data) - Perception of quality of register and essentiality checks - Results of peer evaluations (number of confirmed essentiality checks) - Cost/quality of the central system in comparison to available private solutions
Specific Objective 2. Provide clarity on FRAND royalty	
Has information on FRAND price, terms and conditions improved?	- Number of studies done by Competence Centre - Number of SMEs receiving assistance - Perception of quality of studies, assistance - Number of standards, and their applications - Number of aggregate royalties announced, or expert opinions provided - Perception of the aggregate royalty rate setting process/and rate itself by implementers and holders; use in court cases/judgements - Frequency of changes of the aggregate royalty - Cost/quality of the Competence Centre services in comparison to available private solutions
Specific Objective 3. Facilitate dispute resolution	
How the new systems changed dispute resolution	- Usage of conciliation (number of cases per year, duration, quality assessment by courts, usage in court proceedings and in judgments; usage in support of applications for customs' action) - Change in SEP litigation cost/duration due to conciliation - Usefulness of guidelines (perception by stakeholders, usage in court cases,)
Sources of information: Competence Centre database; Feedback/Surveys of new system (Competence Centre/register/conciliation/guidelines) users such as e.g. SEP holders and implementers, judges, essentiality checkers; Court cases/judgements/injunctions analysis; dedicated evaluation studies; public consultations; desk research	
General objectives	
Impact on SEP holders	- Number of SEP holders based in the EU - Number of SEPs registered by SEP holders based in the EU - Length of licence negotiations, number of licensors - Contribution of EU firms in standard development activities - Localisation of production/R&D of such products/services (EU/third countries)
Impact on SEP implementers	- Cost of SEP licence for EU firms, effort of obtaining a license - Percentage of SEPs covered through licensing. - Competitiveness of EU firms making SEP implementing products/services in the EU and third countries. - Localisation of production/R&D of such products/services (EU/third countries) - Contribution of EU firms in standard development activities
Impact on EU customers	- Time of introduction of new products/services using latest standards in the EU in comparison to other countries, price of such products
Sources of information: Surveys, official statistics (e.g. Eurostat's "Enterprises using IoT", isoc_eb_iot), dedicated evaluation studies; public consultations; desk research.	

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

Creation of the Competence Centre within the European Union Intellectual Property Office (EUIPO), including setting up of a SEP register, necessary IT tools as well as preparatory activities for the remaining components of the initiative (e.g. definition of all processes, preparation of all the procedures, setting up quality controls, compiling a list of SEP examiners, creating a roster of conciliators, training of SEP examiners and conciliators, gathering information SEP related policies and case law summaries, setting up SME assistance hub, preparation of training materials, etc.) is

expected to take up to two years. The system is expected to be fully operational afterwards.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

Action at EU level is expected to save costs for stakeholders, both SEP holders and implementers, and for Member States. For instance, there would be one register, one essentiality check per patent family, one common methodology for the conduct of such checks, and a streamlined and transparent conciliation (FRAND determination) process. SEP holders and implementers would not have to incur the same costs in each EU Member State which would be the case with national solutions, especially in a situation where most standards are regional or global.

1.5.3. Lessons learned from similar experiences in the past

EUIPO will build on its experience with managing registers for other IP titles, as well as its experience with assistance to SMEs and alternative dispute resolution services.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

N/A

1.5.5. Assessment of the different available financing options, including scope for redeployment

This initiative will be fully self-financed by the EUIPO (through fees).

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation period expected to take up to two years, followed by full-scale operation.

1.7. Method(s) of budget implementation planned[50]

☐ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☒ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

No EU budget involved, fully financed by the EUIPO from fees.

[50] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Rules of EUIPO will apply. The regulation will be evaluated every five years in accordance with Art 71 of the draft regulation.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

Rules of EUIPO will apply.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Rules of EUIPO will apply.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

Rules of EUIPO will apply.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

Rules of EUIPO will apply.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines N/A

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[51]	from EFTA countries [52]	from candidate countries and potential candidates [53]	fromother third countries	other assigned revenue
	N/A	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested N/A

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	N/A		YES/NO	YES/NO	YES/NO	YES/NO

[51] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[52] EFTA: European Free Trade Association.
[53] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☒ The proposal/initiative does not require the use of operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	

DG: <…….>			Year **N**[54]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations										
Budget line[55]	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes[56]										
Budget line		(3)								
TOTAL appropriations for DG <…….>	Commitments	=1a+1b +3								
	Payments	=2a+2b +3								

54 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

55 According to the official budget nomenclature.

56 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

<u>If more than one operational heading is affected by the proposal / initiative, repeat the section above:</u>

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework	**7**	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex 5 to the Commission decision on the internal rules for the implementation of the Commission section of the general budget of the European Union), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)	**TOTAL**

DG: <…….>									
• Human resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		Year **N**[57]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments								
	Payments								

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)	**TOTAL**
	OUTPUTS							

[57] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

⇩	Type[58]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[59]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

58 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

59 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. *Summary of estimated impact on administrative appropriations*

– ☒ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N [60]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 7 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 7 of the multiannual financial framework								
Outside HEADING 7[61] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								
TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

60 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

61 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

The table below presents an indicative number of FTEs that the EUIPO may need to use in order to implement the proposal.

	2024* (implementation period)	2025 (implementation period)	2026 (operational period)	2027 and subsequent (operational period)
EUIPO AD/AST staff	6	6	6	6
EUIPO contractual staff	6	6	24	4
total	12	12	30	10

*real date will depend on the adoption of the proposal by co-legislators

The high number of FTEs in the year three (first year of the system's operation) is due to the expected registration of up to 72 000 patent families, while in the subsequent years the number of the registrations is expected to drop to around 10% of the initial registrations. The actual take-up of the new system is, however, uncertain – these are our estimations based on the impact assessment. It should be noted that the staff resources in the table above also include four FTEs in each year for operational activities, such as the operation of the Competence Centre, which will have the role of a back-office for FRAND determination processes (conciliations) and aggregate royalty processes.

Additionally, during the operational period EUIPO will outsource services such as essentiality checks and conciliations to external experts. We estimate that in the year three, around 82 FTEs of experts in the essentiality assessment will be necessary, going down to around eight FTEs of experts from the year four onwards. We also estimate that service of around two FTEs of conciliators will be required annually.

The table below presents an indicative cost of FTEs that EUIPO may need to use in order to implement the proposal.

EUR million (to three decimal places) in constant prices

	2024* (implementation period)	2025 (implementation period)	2026 (operational period)	2027 and subsequent (operational period)
EUIPO AD/AST staff	0.790		0.790	0.790
EUIPO contractual staff	0.810		3.120	0.520
Total	1.590		3.900	1.310

*real date will depend on the adoption of the proposal by co-legislators

Additionally, one-off IT expenditures are estimated at EUR 0.815 million, and annual IT maintenance expenditures at EUR 0.163 million.

An estimate for the remuneration of the outsourced experts is presented below.

EUR million (to three decimal places) in constant prices

	2024*-2025 (implementation period)	2026 (operational period)	2027 and subsequent (operational period)

External experts		74.025	9.067

Detailed calculations and forecasts are presented in the impact assessment, annex A7.1.

Estimate to be expressed in full time equivalent units

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)								
20 01 02 01 (Headquarters and Commission's Representation Offices)								
20 01 02 03 (Delegations)								
01 01 01 01 (Indirect research)								
01 01 01 11 (Direct research)								
Other budget lines (specify)								
• External staff (in Full Time Equivalent unit: FTE)[62]								
20 02 01 (AC, END, INT from the 'global envelope')								
20 02 03 (AC, AL, END, INT and JPD in the delegations)								
XX 01 xx **yy zz** [63]	- at Headquarters							
	- in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)								
01 01 01 12 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL								

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

62 AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

63 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

N/A, the proposal is managed by EUIPO and finance by fees

The proposal/initiative:

– ☐ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

– ☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative:

– ☐ does not provide for co-financing by third parties

– ☒ provides for the co-financing by third parties estimated below:

EUIPO will collect fees in order to cover all its costs as well as the remuneration of the external experts. The table below presents the estimated value of fees collected by the EUIPO.[64]

EUR million (to three decimal places) in constant prices

	2024*-2025 (implementation period)	2026 (operation period)	2027 and subsequent (operation period)
		78.329	10.782

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

[64] Fees also cover the IT maintenance cost and a share of one-off costs (expected to be recovered during ten years).