Council of the European Union

Brussels, 3 July 2024
(OR. en)

10566/24

Interinstitutional File: 2023/0133(COD)

CODEC 1397
PI 82
RC 22
COMPET 754
MI 667
IND 349
PE 146

INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standard essential patents and amending Regulation (EU) 2017/1001 - Outcome of the European Parliament's first reading (Strasbourg, 26 to 29 February 2024)

I. INTRODUCTION

The rapporteur, Marion WALSMANN (EPP, DE), presented a report on the above proposal for a Regulation on behalf of the Committee on Legal Affairs (JURI) which contained 268 amendments (amendments 1 to 268) to the proposal.

In addition, the ID group tabled 10 amendments (amendments 269 to 278) and a number of MEPs from different political groups tabled 48 amendments (amendments 279 to 327).

II. VOTE

When it voted on 28 February 2024, the plenary of the European Parliament adopted amendments 1 to 268 to the proposal for a Regulation. No other amendments were adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto.

ANNEX

(28.2.2024)

P9_TA(2024)0100

Standard essential patents

European Parliament legislative resolution of 28 February 2024 on the proposal for a regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001 (COM(2023)0232 – C9-0147/2023 – 2023/0133(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2023)0232),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0147/2023),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 20 September 2023[1],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the opinions of the Committee on International Trade and the Committee on the Internal Market and Consumer Protection,

– having regard to the report of the Committee on Legal Affairs (A9-0016/2024),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] OJ C, C/2023/865, 08.12.2023, ELI: http://data.europa.eu/eli/C/2023/865/oj.

Amendment 1
Proposal for a regulation
Recital 1

Text proposed by the Commission	*Amendment*
(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]	(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 ***micro,*** 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 of 11 November 2021[34].
[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.	[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.	[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.	[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)).	[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)).

Amendments2 and 280
Proposal for a regulation
Recital 2

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

Amendment 3
Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) Good faith SEP licensing negotiations between parties occur in many cases, yet in some, SEPs become the subject of legal proceedings. This Regulation aims to provide advantages to both Union SEP holders and SEP implementers by introducing mechanisms designed to address two key issues. First, situations where SEP implementers unreasonably delay or decline FRAND licenses. Second, scenarios where SEP holders impose non-FRAND royalties due to the risk of injunction and a lack of transparency. It is essential to ensure that SEP holders and implementers act in good faith before, during and after licensing negotiations. SEP implementers using standardised technology should proactively seek to take a license from the SEP holder who owns the technology they use and SEP holders should grant a license under FRAND terms and conditions to any party seeking one, irrespective of the position of the potential licensee in the respective value chain.

Amendment 4
Proposal for a regulation
Recital 2 b (new)

Text proposed by the Commission	*Amendment*
	(2b) The measures introduced by this Regulation are consistent with the objectives of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPs Agreement') to promote technological innovation and the dissemination of technology to the mutual advantage of the SEP holder and the user, as well as with the principles of preventing the abuse of intellectual property rights and adopting measures for public interest reasons. In particular, according to the TRIPs Agreement, an exception to the exclusive rights conferred by a patent is justified if it does not unreasonably conflict with a normal exploitation of the patent and it does not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Amendment 5
Proposal for a regulation
Recital 3

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

Amendment 6
Proposal for a regulation
Recital 4

Text proposed by the Commission	*Amendment*
(4) There are well established commercial relationships and licensing practices for certain ***use cases*** of standards***, such as the standards for wireless communications***, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are 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.	(4) There are well established commercial relationships and licensing practices for certain ***implementations*** of standards, with iterations over multiple generations leading to considerable mutual dependency and significant value visibly accruing to both SEP holders and implementers. There are other, typically more novel ***implementations*** – 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 ***implementations in*** which there is sufficient evidence that SEP licensing negotiations on FRAND terms ***and conditions*** do not give rise to significant difficulties or inefficiencies.

Amendment 7
Proposal for a regulation
Recital 4 a (new)

Text proposed by the Commission	*Amendment*
	(4a) Significant difficulties or inefficiencies in the licensing of SEPs that affect the functioning of the internal market might result from, among other things, material impediments to the timely and effective deployment, development, distribution or commercialisation of a product, service, or technology, but also unreasonable delays, involving an undue postponement of the conclusion of a licence agreement. They may also result from excessive costs, multiple legal disputes, challenges or litigations involving more than one SEP holder or SEP implementer, as well as from barriers to innovation where the implementation of a standard, including any lack thereof, hinders, limits or curtails technological innovation or advancement, as compared to industry norms.

Amendment 8
Proposal for a regulation
Recital 5

Text proposed by the Commission	*Amendment*
(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology ***use cases*** underpinning Union objectives of green, digital and resilient growth, the Regulation should also apply to standards or parts thereof, published before its entry into force where inefficiencies in the 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.	(5) Whereas transparency in SEP licensing should stimulate a balanced investment environment, along entire Single Market value chains, in particular for emerging technology ***implementations*** 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 or the development of ***innovative*** technologies and emerging ***implementations***. 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 ***implementations***, for which SEPs can be registered.

Amendment 9
Proposal for a regulation
Recital 6

Text proposed by the Commission	*Amendment*
(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] .	(6) Because a FRAND commitment should be made for any SEP ***claimed to be essential*** 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].
[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.)	[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.)

Amendment 10
Proposal for a regulation
Recital 7

Text proposed by the Commission	*Amendment*
(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.	(7) Licensing on FRAND terms and conditions***, which are key in the development of the digital society,*** includes licensing royalty-free. Given that most issues arise with royalty-bearing licensing policies, this Regulation does not apply to royalty-free licensing ***of SEPs, except where such SEPs are part of a portfolio of patents licenses for royalties***.

Amendment 11
Proposal for a regulation
Recital 7 a (new)

Text proposed by the Commission	*Amendment*
	(7a) Open standards are key in the development of our digital society, including the development of open source software. Open standards remove barriers to interoperability, promote choice between vendors and technology solutions and ensure market competition and innovation. This Regulation applies to open standards, whilst not discouraging SEP holders to innovate and participate in the open collaborative standards development.

Amendment 12
Proposal for a regulation
Recital 10 a (new)

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

Amendment 13
Proposal for a regulation
Recital 10 b (new)

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

Amendment 14
Proposal for a regulation
Recital 12

Text proposed by the Commission	*Amendment*
(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.	(12) ***As the agency of the European Union in charge of intellectual property rights and in order*** 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 ***crucial to ensure that*** the competence centre ***has the*** necessary ***means, including*** human and financial resources to ***effectively perform*** its tasks.

Amendment 15
Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) SEP licensing may cause friction in the value chains that have so far not been exposed to SEPs. Therefore, it is important that the competence centre raises awareness concerning SEP licensing in the value chain through any of the tools at its disposal, including through a meaningful engagement of stakeholders. Other factors would include the ability of upstream manufacturers to pass the cost of a SEP licence and any potential impact of existing indemnification clauses downstream within a value chain. The framework provided for in this Regulation should promote the EU´s technological leadership in innovation.

Amendment 16
Proposal for a regulation
Recital 13

Text proposed by the Commission	*Amendment*
(13) The competence centre should set up and administer an electronic register ***and an electronic database*** containing detailed information on SEPs in force in one or more Member States***, including essentiality check results, opinions, reports, available case-law from jurisdictions across the globe, rules relating to SEPs in third countries, and results of studies specific to SEPs. In order to raise awareness and facilitate SEP licensing for SMEs***, the competence centre should ***offer assistance to SMEs. The setting*** up and ***administering a system for essentiality checks and processes for aggregate royalty determination and FRAND determination by the competence centre should include actions improving the system and the processes on a continuous basis***, including ***through the use of new technologies. In line with this objective***, ***the competence centre*** should ***establish training procedures for evaluators of essentiality and conciliators for providing opinions on aggregate royalty as well as on FRAND determination and*** should ***encourage consistency in their practices***.	(13) The competence centre should ***on the one hand*** set up and administer an electronic register containing detailed information on SEPs in force in one or more Member States***. The electronic register should serve as a foundational repository designed to be the primary reference point for users, providing basic information about SEPs free of charge. On the other hand***, the competence centre should ***also set*** up and ***administer an electronic database providing easily accessible information in a more extensive and comprehensive dataset to which access could be subject to the payment of a reasonable and proportionate fee. Public authorities***, including ***courts***, should ***have access to the information in the database free of charge. Academic institutions should also be able to request access to the information free of charge under certain conditions. The electronic register and the electronic database*** should ***offer a high level of legal certainty***.

Amendment 17
Proposal for a regulation
Recital 13 a (new)

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

Amendment 18
Proposal for a regulation
Recital 14

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

Amendment 19
Proposal for a regulation
Recital 15

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

Amendment 20
Proposal for a regulation
Recital 16

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

Amendment 21
Proposal for a regulation
Recital 16 a (new)

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

Amendment 22
Proposal for a regulation
Recital 17

Text proposed by the Commission	*Amendment*
(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.	(17) In line with the general principles and objectives of transparency, participation and access to European standardisation, the ***electronic*** 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.

Amendment 23
Proposal for a regulation
Recital 19

Text proposed by the Commission	*Amendment*
(19) In order to ensure transparency of about SEPs, it is appropriate to require from SEP holders to register their patents which are essential to the standard for which the registration is open. SEP holders should register their SEPs within 6 months following the opening of the registration by the competence centre or the grant of the relevant SEPs, whichever is first. ***In case of timely registration, SEPs*** holders ***should be able to*** collect royalties ***and*** claim damages for uses and infringements that happened before the registration.	(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. ***SEP*** holders ***may*** collect royalties ***even if their SEP is not registered, but they should only be able to*** claim damages for uses and infringements that happened before the registration ***in case of timely registration, provided that the amount thereof has been established in accordance with the FRAND determination rules set out in this Regulation***.

Amendment 24
Proposal for a regulation
Recital 20

Text proposed by the Commission	*Amendment*
(20) SEP holders ***may*** register ***after*** the indicated time limit***. However, in that case, SEP holders*** should not be able to ***collect royalties and*** claim ***damages for the period of delay***.	(20) ***In case of failure by*** SEP holders ***to*** register ***within*** the indicated time limit***, the competence centre should notify the SEP holder that, in case of further delays in registering its patents, following a grace period of 1 month, the SEP holder*** should not be able to ***bring a*** claim ***in relation to its patent until the registration is completed***.

Amendment 25
Proposal for a regulation
Recital 22

Text proposed by the Commission	*Amendment*
(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***.	(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. ***In case of*** failure to update the registration***, the competence centre should notify the SEP holder that in case of further delays in updating its*** registration***, following a grace period of 1 month, its SEP may be suspended***.

Amendment 26
Proposal for a regulation
Recital 23

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

Amendment 27
Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission	*Amendment*
	(23a) It is necessary to ensure that the registration and the 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.

Amendment 28
Proposal for a regulation
Recital 24

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

Amendment 29

Proposal for a regulation
Recital 26

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

Amendment 30

Proposal for a regulation
Recital 27

Text proposed by the Commission	*Amendment*
(27) ***Any assessment*** of essentiality of SEPs conducted by an independent entity prior to the entry into force of the Regulation, for example through patent pools, as well as essentiality determinations by judicial authorities should be indicated in the register. Those SEPs should not be re-checked for essentiality after the relevant evidence supporting the information in the register is provided to the competence centre.	(27) ***Assessments*** of essentiality of SEPs conducted by an independent entity prior to the entry into force of the Regulation, for example through patent pools, as well as essentiality determinations by judicial authorities should be indicated in the register. Those SEPs should not be re-checked for essentiality after the relevant evidence supporting the information in the register is provided to the competence centre ***unless the evaluator has objective reasons to believe, based on sufficient evidence, that the prior essentiality check was inaccurate***. ***SEP holders or patent pools should also be able to conduct the assessment of essentiality of SEPs after the entry into force of this Regulation.***

Amendment 31
Proposal for a regulation
Recital 29

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

Amendments32 and 289
Proposal for a regulation
Recital 30

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

Amendment 33
Proposal for a regulation
Recital 31

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

Amendment 34
Proposal for a regulation
Recital 32

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

Amendment 35
Proposal for a regulation
Recital 33

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

Amendment 36
Proposal for a regulation
Recital 34

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

Amendment 37
Proposal for a regulation
Recital 35

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

Amendment 38
Proposal for a regulation
Recital 36

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

Amendment 39
Proposal for a regulation
Recital 37

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

Amendment 40
Proposal for a regulation
Recital 38

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

Amendment 41
Proposal for a regulation
Recital 39

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

Amendment 42
Proposal for a regulation
Recital 40

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

Amendment 43
Proposal for a regulation
Recital 41

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

Amendment 44
Proposal for a regulation
Recital 42

Text proposed by the Commission	*Amendment*
(42) The Regulation respects the intellectual property rights of patent owners ***(***Article 17(2) of EU Charter of Fundamental Rights***)***, although it includes a restriction on the ability to enforce a SEP that has not been registered within a certain time-limit and introduces a requirement to conduct a FRAND determination before enforcing individual SEPs. The limitation on the exercise of intellectual property rights is allowed under the EU Charter, provided that the proportionality principle is respected. According to settled case-law, fundamental rights can be restricted provided that those restrictions correspond to objectives of general interest pursued by the Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference which infringes the very essence of the rights 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]	(42) The Regulation respects the intellectual property rights of patent owners***, in line with*** 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]
[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,	[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.

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.

Amendment 45
Proposal for a regulation
Recital 43

Text proposed by the Commission	*Amendment*
(43) The FRAND determination is also consistent with the right to an effective remedy and to access to justice as laid down in Article 47 of the Charter of Fundamental Rights of the European Union as the implementer and the SEP holder fully retain that right. In case of 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.	(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. ***The FRAND determination procedure also allows a deposit of a bond by the alleged infringer as a provisional injunction of a financial nature, which can be requested in order to avoid seriously restricting the alleged infringer's activity and ensuring that the other party receives the corresponding sum in the event of a claim for damages. Moreover, the FRAND determination in no way impairs the SEP holder's ability to receive compensation for an infringement that occurred during the FRAND determination in subsequent court proceedings.***
[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	[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

Amendment 46
Proposal for a regulation
Recital 44

Text proposed by the Commission	*Amendment*
(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 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.	(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 Regulation, the Horizontal Guidelines[42] and the Commission's 2017 Communication 'Setting out the EU approach to Standard Essential Patents'.[43] Furthermore, the ***panel of*** conciliators should consider any expert opinion on the aggregate royalty or in the absence thereof, should request information from the parties before it makes its final proposals well as guidance issued under this Regulation, as well as guidance issued under this Regulation.
[42] Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ C 11, 14.01.2011, pp. 1 (currently under review)	[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.	[43] Communication on Setting out the EU approach to Standard Essential Patents, COM(2017)712 final, 29.11.2017.

Amendment 47
Proposal for a regulation
Recital 45

Text proposed by the Commission	*Amendment*
(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.	***deleted***

Amendment 48
Proposal for a regulation
Recital 45 a (new)

Text proposed by the Commission	*Amendment*
	(45a) In order to avoid a possible negative impact on companies which are established in the Union as well as engage and compete successfully as regards the development of global technologies through standardisation, the Commission should evaluate the impact that the essentiality check system, the aggregate royalties determination system and the FRAND determination system have on the competitiveness of Union SEP holders on a global level. Based on the outcome of that evaluation, the Commission should, where necessary, present a legislative proposal in order to adapt the systems. The role of patent pools, including those created by SEP implementers, should be evaluated by the Commission in order to assess their impact once this Regulation has entered into force, notably in terms of their impact on the competitiveness on the market.

Amendment 49
Proposal for a regulation
Recital 46

Text proposed by the Commission	*Amendment*
(46) SMEs may be involved in SEP licensing both as SEP holders and implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation ***are likely to*** facilitate the licensing of their SEP. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings. The SEPs of micro and small enterprises should not be the subject of sampling for essentiality check, but they should be able to propose SEPs for essentiality checks if they wish to. SME implementers should likewise benefit from reduced access fees and free support and trainings. Finally, SEP holders should be encouraged to incentivise licensing by SMEs through low volume discounts or exemptions from FRAND royalties.	(46) SMEs may be involved in SEP licensing both as SEP holders and ***SEP*** implementers. While there are currently a few SME SEP holders, the efficiencies produced with this Regulation ***should also*** facilitate the licensing of their SEP. Additional conditions are necessary to relieve the cost burden on such SMEs such as reduced administration ***burdens and administrative*** fees and potentially reduced fees for essentiality checks and conciliation in addition to free support and trainings***, so that they are better placed to engage in SEP related matters and also standard development***. The SEPs of micro and small enterprises and ***start-ups*** 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 ***and start-up*** 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. ***In this context, it is important to ensure that SMEs and start-ups benefit from a one-stop shop set up by the competence centre which identifies relevant licensees and licensors for the SMEs and advises them, free of charge, on SEPs. To that end, the competence centre should set up a SEP Licensing Assistance Hub for SMEs and start-ups which could also provide, under certain conditions, assistance with regard to judicial support, such as a pro bono legal representative during court proceedings.***

Amendment 50
Proposal for a regulation
Recital 46 a (new)

Text proposed by the Commission	*Amendment*
	(46a) While advantages should be granted to SMEs, they should not be susceptible to misuses. In this regard, patent assertion entities, which may be characterised by an "obtain and assert" business model and which have the purpose of generating revenues through licensing fees, royalties and damage compensation, should not benefit from exemptions and the help from the competence centre provided for in this Regulation.

Amendment 51
Proposal for a regulation
Recital 46 b (new)

Text proposed by the Commission	*Amendment*
	(46b) The support mechanisms, such as IP vouchers for SMEs, have been effective in assisting SMEs to protect their IP rights. The period of application of those mechanisms should be prolonged beyond 2024.

Amendment 52
Proposal for a regulation
Recital 47

Text proposed by the Commission	*Amendment*
(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.	(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 ***implementations*** 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.
[44] OJ L 123, 12.5.2016, p. 1.	[44] OJ L 123, 12.5.2016, p. 1.

Amendment 53
Proposal for a regulation
Recital 48

Text proposed by the Commission	*Amendment*
(48) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission to adopt the detailed requirements for the selection of evaluators and conciliators, as well as adopt the rules of procedure and Code of Conduct for evaluators and conciliators. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. 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]	(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***. Evaluators and conciliators should be of good repute and possess sufficient knowledge, skills and experience to perform their duties***. The Commission should also adopt the technical rules for the selection of a sample of SEPs for essentiality checks and the methodology for the conduct of such essentiality checks by evaluators and peer evaluators. The Commission should also determine any administrative fees for its services in relation to the tasks under this Regulation and fees for the services ***of*** evaluators, experts and conciliators, derogations thereof and payment methods and adapt them as necessary. The Commission should also determine the standards or parts thereof that have been published before the entry into force of this Regulation, for which SEPs can be registered. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.[45]
[45] Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13.)	[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.)

Amendment 54
Proposal for a regulation
Article 1 – paragraph 2 – introductory part

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

Amendment 55
Proposal for a regulation
Article 1 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Articles 17 and 18 and Article 34(1) shall not apply ***to SEPs to the extent that they are implemented for use cases*** identified ***by the Commission in accordance with paragraph 4***.	3. Articles 17 and 18 and Article 34(1) shall not apply ***where there is sufficient evidence that SEP licensing negotiations on FRAND terms and conditions do not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market as regards*** identified ***implementations of certain standards or parts thereof. Such implementations, standards and parts thereof shall be identified pursuant to the procedure set out in Article 65b***.

Amendment 56
Proposal for a regulation
Article 1 – paragraph 4

Text proposed by the Commission	*Amendment*
4. ***Where there is sufficient evidence that, as regards identified use cases of certain standards or parts thereof, SEP licensing negotiations on FRAND terms do not give rise*** to significant difficulties or inefficiencies ***affecting the functioning of the internal market, the Commission shall, after an appropriate consultation process, by means of a delegated act pursuant to Article 67, establish a list of such use cases***, standards ***or*** parts thereof***, for the purposes of paragraph 3***.	4. ***Without prejudice to paragraph 2 of this Article, this Regulation shall also apply to patents in force in one or more Member States and that a SEP holder claims to be essential to a standard published by a standard development organisation before the entry into force of this Regulation, where the functioning of the internal market is severely distorted due*** to significant difficulties or inefficiencies ***in the licensing of SEPs for certain implementations, standards and parts thereof. Such implementations***, standards ***and*** parts thereof ***shall be identified pursuant to the procedure set out in Article 65c***.

Amendment 57
Proposal for a regulation
Article 1 – paragraph 5

Text proposed by the Commission	*Amendment*
5. This Regulation shall apply to ***holders of SEP in force in one or more Member States***.	5. This Regulation shall ***not*** apply to ***SEPs that are subject to a royalty-free intellectual property policy, except when such SEPs are part of a portfolio of patents licensed for royalties***.

Amendment 58
Proposal for a regulation
Article 2 – paragraph 1 – point 1

Text proposed by the Commission	*Amendment*
(1) 'standard essential patent' or 'SEP' means any patent that is essential to a standard;	(1) 'standard essential patent' or 'SEP' means any patent that ***a SEP holder claims to be*** is essential to a standard;

Amendment 59
Proposal for a regulation
Article 2 – paragraph 1 – point 3

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

Amendment 60
Proposal for a regulation
Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission	*Amendment*
	(5a) 'implementation' means a specific scenario where a particular standardised technology or method is applied to fulfil a given purpose or function of a product, process, service or system, irrespective of the level in the value chain;

Amendment 61
Proposal for a regulation
Article 2 – paragraph 1 – point 6

Text proposed by the Commission	*Amendment*
(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;	(6) 'SEP holder' means an owner of a SEP or a person holding an exclusive licence for a SEP in one ***or*** more Member States;

Amendment 62
Proposal for a regulation
Article 2 – paragraph 1 – point 7

Text proposed by the Commission	*Amendment*
(7) 'implementer' means a natural or legal person that implements, or intends to implement, a standard in a product, process, service or system;	(7) 'implementer' means a natural or legal person that implements, or intends to implement, a standard in a product, process, service or system ***on the Union market***;

Amendment 63
Proposal for a regulation
Article 2 – paragraph 1 – point 10

Text proposed by the Commission	*Amendment*
(10) 'aggregate royalty' means the ***maximum*** amount of ***royalty for*** all patents essential to a standard;	(10) 'aggregate royalty' means the ***total*** amount of ***money paid or required to be paid to license*** all patents essential to a standard;

Amendment 64
Proposal for a regulation
Article 2 – paragraph 1 – point 10 a (new)

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

Amendment 65
Proposal for a regulation
Article 2 – paragraph 1 – point 11

Text proposed by the Commission	*Amendment*
(11) 'patent pool' means an entity created by an agreement between two or more SEP holders to license one or more of their ***patents to one another or*** to third parties;	(11) 'patent pool' means an entity***,*** created by an agreement between two or more SEP holders ***or a consortium in which multiple SEP holders agree*** to license one or more of their ***SEPs to each other or*** to third parties;

Amendment 66
Proposal for a regulation
Article 2 – paragraph 1 – point 13

Text proposed by the Commission	*Amendment*
(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;	(13) 'claim chart' means a ***document identifying*** correspondence between the elements (features) of one patent claim and at least one requirement of a standard or recommendation of a standard;

Amendment 67
Proposal for a regulation
Article 2 – paragraph 1 – point 16

Text proposed by the Commission	*Amendment*
(16) 'patent family' means a collection of patent ***documents that cover the same invention and whose members have the same priorities***;	(16) 'patent family' means a collection of patent ***applications having at least one priority in common, including the priority documents themselves***;

Amendment 68
Proposal for a regulation
Article 2 – paragraph 1 – point 17 a (new)

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

Amendment 69
Proposal for a regulation
Article 2 – paragraph 1 – point 17 b (new)

Text proposed by the Commission	*Amendment*
	(17b) 'evaluator' means any person that has been appointed to conduct essentiality checks in accordance with Title V, who is independent and impartial, and does not have any direct or indirect conflict of interest;

Amendment 70
Proposal for a regulation
Article 2 – paragraph 1 – point 17 c (new)

Text proposed by the Commission	*Amendment*
	(17c) 'peer evaluator' means any person that has been appointed to conduct a peer evaluation, who is independent and impartial, and does not have any direct or indirect conflict of interest;

Amendment 71
Proposal for a regulation
Article 2 – paragraph 1 – point 18 a (new)

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

Amendment 72
Proposal for a regulation
Article 3 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(a) set up and maintain an electronic register and an electronic database for SEPs;	(a) set up and maintain an electronic register and an electronic database for SEPs ***in accordance with Articles 4 and 5***;

Amendment 73
Proposal for a regulation
Article 3 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) set up and manage rosters of evaluators and conciliators;	(b) set up and manage rosters of evaluators and conciliators ***in accordance with Article 27***;

Amendment 74
Proposal for a regulation
Article 3 – paragraph 2 – point c

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

Amendment 75
Proposal for a regulation
Article 3 – paragraph 2 – point d

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

Amendment 76
Proposal for a regulation
Article 3 – paragraph 2 – point f

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

Amendment 77
Proposal for a regulation
Article 3 – paragraph 2 – point g – point i

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

Amendment 78
Proposal for a regulation
Article 3 – paragraph 2 – point g – point ii

Text proposed by the Commission	*Amendment*
(ii) enabling access to case-law (including alternative dispute resolution) on SEPs, including from third country jurisdictions;	(ii) enabling access to case-law (including alternative dispute resolution) on SEPs, including from third country jurisdictions ***in accordance with Article 13(3)***;

Amendment 79
Proposal for a regulation
Article 3 – paragraph 2 – point g – point iii

Text proposed by the Commission	*Amendment*
(iii) compiling non-confidential information on FRAND determination methodologies and FRAND royalties;	(iii) compiling non-confidential information on FRAND determination methodologies and FRAND royalties ***in accordance with Article 13(4) and (5)***;

Amendment 80
Proposal for a regulation
Article 3 – paragraph 2 – point g – point iv

Text proposed by the Commission	*Amendment*
(iv) enabling access to SEP-related rules of third countries;	(iv) enabling access to SEP-related rules of third countries ***in accordance with Article 12***;

Amendment 81
Proposal for a regulation
Article 3 – paragraph 2 – point h

Text proposed by the Commission	*Amendment*
(h) provide training, support and general advice on SEPs to SMEs;	(h) ***set up and maintain a SEP Licensing Assistance Hub for SMEs and start-ups and*** provide training, support and general advice on SEPs to SMEs ***and start-ups in accordance with Article 61***;

Amendment 82
Proposal for a regulation
Article 3 – paragraph 2 – point j

Text proposed by the Commission	*Amendment*
(j) raise awareness about SEP licensing***, including SEP licensing in the value chain***.	(j) ***establish a dedicated working group on conditions for licensing SEPs in the value chain and*** raise awareness about SEP licensing.

Amendment 83
Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
1. A Union register for SEPs ('the register') ***is established***.	1. A Union register for SEPs ('the register') ***shall be set up and maintained in an electronic format by the competence centre***.

Amendment 84
Proposal for a regulation
Article 4 – paragraph 2

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

Amendment 85
Proposal for a regulation
Article 4 – paragraph 3 – point b

Text proposed by the Commission	*Amendment*
(b) registered SEPs ***identification***, including the country of registration and patent number;	(b) ***identification of*** registered SEPs, including the country of registration and patent number;

Amendment 86
Proposal for a regulation
Article 4 – paragraph 3 – point c

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

Amendment 87
Proposal for a regulation
Article 4 – paragraph 3 – point f

Text proposed by the Commission	*Amendment*
(f) if the SEP holder is part of ***a group of*** companies, the name, address and contact details of the parent company;	(f) if the SEP holder is ***an affiliate, subsidiary or*** part of ***one or more*** companies, the name, address and contact details of the parent company;

Amendment 88
Proposal for a regulation
Article 4 – paragraph 3 – point h

Text proposed by the Commission	*Amendment*
(h) the existence of any ***public*** standard terms and conditions, including SEP holder's royalty and discount policies;	(h) the existence of any ***publicly available*** standard terms and conditions, including SEP holder's royalty***, royalty-free*** and discount policies;

Amendment 89
Proposal for a regulation
Article 4 – paragraph 3 – point i

Text proposed by the Commission	*Amendment*
(i) the existence of any ***public*** standard terms and conditions for SEP licensing to SMEs;	(i) the existence of any ***publicly available*** standard terms and conditions for SEP licensing to SMEs ***and start-ups***;

Amendment 90
Proposal for a regulation
Article 4 – paragraph 3 – point j

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

Amendment 91
Proposal for a regulation
Article 4 – paragraph 4 – point c

Text proposed by the Commission	*Amendment*
(c) information on whether an essentiality check or peer evaluation have been performed and reference ***to the result***;	(c) ***any*** information on whether an essentiality check or peer evaluation have been performed and, ***unless not possible due to contractual limits agreed upon by the parties, also a*** reference ***to the outcome of the essentiality check***;

Amendment 92
Proposal for a regulation
Article 4 – paragraph 4 – point d

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

Amendment 93
Proposal for a regulation
Article 4 – paragraph 4 – point f

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

Amendment 94
Proposal for a regulation
Article 4 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. Prior to registering their patents, SEP holders may voluntarily submit their SEPs for essentiality checks to the competence centre.

Amendment 95
Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The competence centre shall ***establish*** and maintain an electronic database for SEPs.	1. The competence centre shall ***set up*** and maintain an electronic database for SEPs.

Amendment 96
Proposal for a regulation
Article 5 – paragraph 2 – point b

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

Amendment 97
Proposal for a regulation
Article 5 – paragraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) ***public*** standard terms and conditions for SEP licensing to SMEs pursuant to Article 62(1), if available;	(c) ***publicly available*** standard terms and conditions for SEP licensing to SMEs***, and start-ups*** pursuant to Article 62(1), ***including royalty-free access,*** if available;

Amendment 98
Proposal for a regulation
Article 5 – paragraph 2 – point d

Text proposed by the Commission	*Amendment*
(d) information regarding known products, processes, services or systems and implementations pursuant to Article 7, first paragraph, point ***(b)***;	(d) information regarding known products, processes, services or systems and implementations ***and, where available, any known market data*** pursuant to Article 7, first paragraph, point ***(a)***;

Amendment 99
Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) may be subject to the payment of a ***fee***.	3. Access to the information pursuant to paragraph (2), points (f), (h), (i), (j) and (k) ***of this Article shall be available to any third party subject to registration with the competence centre and*** may be subject to the payment of a ***reasonable fee, as set out in Article 63***.

Amendment 100
Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission	*Amendment*
4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge subject to registration with the competence centre.	4. However, public authorities, including courts, shall have full access to the information in the database referred to in paragraph (2) free of charge subject to registration with the competence centre. ***Academic institutions may also request access to the information free of charge solely for the purpose of conducting academic tasks.***

Amendment 101
Proposal for a regulation
Article 6 – paragraph 1

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

Amendment 102
Proposal for a regulation
Article 6 – paragraph 5

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

Amendment 103
Proposal for a regulation
Article 7 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) information as regards the products, processes, services or systems in which the subject-matter of the SEP may be incorporated or to which it is intended to be applied, for all existing or potential implementations of a standard, to the extent such information is known to the SEP holder.	(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 ***and, where available, any market data***, to the extent such information is known to the SEP holder.

Amendment 104
Proposal for a regulation
Article 7 – paragraph 1 – point b

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

Amendment 105
Proposal for a regulation
Article 8 – title

Text proposed by the Commission	*Amendment*
Information ***pertaining to*** essentiality	Information ***on*** essentiality

Amendment 106
Proposal for a regulation
Article 8 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(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.	(a) a final decision on essentiality for a registered SEP made by a competent court of a Member State within ***2*** months ***after the*** decision ***has become final***;

Amendment 107
Proposal for a regulation
Article 8 – paragraph 1 – point b

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

Amendment 108
Proposal for a regulation
Article 9 – paragraph 1 – introductory part

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

Amendment 109
Proposal for a regulation
Article 9 – paragraph 1 – point g

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

Amendment 110
Proposal for a regulation
Article 9 – paragraph 1 – point h

Text proposed by the Commission	*Amendment*
(h) royalties and discount policy ***per product category***;	(h) royalties***, royalty-free*** and discount ***policies per implementation including information on royalty calculation per SEP owner in the pool and aggregate royalty rate, if applicable***;

Amendment 111
Proposal for a regulation
Article 9 – paragraph 1 – point i

Text proposed by the Commission	*Amendment*
(i) standard licence agreement per ***product category***;	(i) standard licence agreement per ***implementation***;

Amendment 112
Proposal for a regulation
Article 9 – paragraph 1 – point j

Text proposed by the Commission	*Amendment*
(j) list of licensors in each ***product category***;	(j) list of licensors in each ***implementation***;

Amendment 113
Proposal for a regulation
Article 9 – paragraph 1 – point k

Text proposed by the Commission	*Amendment*
(k) list of licensees for each ***product category***.	(k) list of licensees for each ***implementation***.

Amendment 114
Proposal for a regulation
Article 9 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. The competence centre shall verify the information submitted by patent pools in accordance with paragraph 1 on a regular basis and at least once a year, based on a methodology it develops for this purpose, ensuring that the verification process is thorough, transparent and consistent. That methodology shall be made available to patent pools and to other stakeholders for the sake of transparency.

Amendment 115

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

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

Amendment 116
Proposal for a regulation
Article 10 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. Competent courts of Member States shall notify the competence centre within ***6*** months ***from the adoption of a judgment*** concerning SEPs on:	1. Competent courts of Member States shall notify the competence centre within ***2*** months ***after the decision*** concerning SEPs ***has become final*** on:

Amendment 117
Proposal for a regulation
Article 10 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) infringement ***proceedings***;	(b) infringements;

Amendment 118

Proposal for a regulation
Article 11 – paragraph 1

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

Amendment 119
Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The competence centre shall collect ***and*** publish ***in the database*** information on any SEP related rules in any third country.	1. The competence centre shall collect***,*** ***duly verify*** and ***promptly*** publish information on any SEP related rules in any third country ***in the database***. ***The competence centre may also collect information on compliance with this Regulation in third countries as well as monitor its impact on implementers.***

Amendment 120
Proposal for a regulation
Article 12 – paragraph 2

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

Amendment 121
Proposal for a regulation
Article 12 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. In order to facilitate effective implementation of this Regulation, the competence centre may cooperate, engage and exchange information with, amongst others, authorities of third countries and international organisations dealing with SEPs, in particular as regards the information on SEP related rules in third countries or the prevention of parallel proceedings.

Amendment 122
Proposal for a regulation
Article 13 – paragraph 1

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

Amendment 123
Proposal for a regulation
Article 13 – paragraph 2 – point c a (new)

Text proposed by the Commission	*Amendment*
	(ca) making available to interested persons SEPs, standards and implementations, with the use of easily accessible research tools and reasonably understandable search results;

Amendment 124
Proposal for a regulation
Article 13 – paragraph 2 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) facilitating assessments of SEP licensing practices and their impact on the internal market, innovation and access to standardised technology.

Amendment 125
Proposal for a regulation
Article 14 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. Holders of ***a patent*** in force in one or more Member States which ***is*** essential to a standard for which FRAND commitments have been made shall notify to the competence centre, where possible through the standard development organisation or through a joint notification, the following information:	1. Holders of ***patents*** in force in one or more Member States which ***are claimed to be*** essential to a standard for which FRAND commitments have ***or have not*** been made shall notify to the competence centre, where possible through the standard development organisation or through a joint notification, the following information:

Amendment 126
Proposal for a regulation
Article 14 – paragraph 3

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

Amendment 127
Proposal for a regulation
Article 14 – paragraph 5

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

Amendment 128
Proposal for a regulation
Article 14 – paragraph 6

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

Amendment 129
Proposal for a regulation
Article 15 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Holders of SEPs in force in one or more Member States for which FRAND commitments have been made may jointly notify the competence centre the aggregate royalty for ***the*** SEPs covering a standard.	1. Holders of SEPs in force in one or more Member States for which FRAND commitments have ***or have not*** been made may jointly notify the competence centre the aggregate royalty for ***all*** SEPs covering a standard.

Amendment 130
Proposal for a regulation
Article 17 – title

Text proposed by the Commission	*Amendment*
Process for facilitating agreements on aggregate royalty ***determinations***	Process for facilitating agreements ***between SEP holders*** on aggregate royalty

Amendment 131
Proposal for a regulation
Article 17 – paragraph 3 – point e

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

Amendment 132
Proposal for a regulation
Article 17 – paragraph 4

Text proposed by the Commission	*Amendment*
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.	4. The competence centre shall ***publish the request and invite other*** SEP holders to express their interest in participating in the process and to provide their estimated percentage of SEPs from all SEPs for the standard.

Amendment 133
Proposal for a regulation
Article 17 – paragraph 7

Text proposed by the Commission	*Amendment*
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.	7. Where the SEP holders fail to make ***an agreement regarding the*** joint notification ***submission of an aggregate royalty*** within 6 months from the appointment of the conciliator, the conciliator shall terminate the process.

Amendment 134
Proposal for a regulation
Article 17 – paragraph 8

Text proposed by the Commission	*Amendment*
8. If the ***contributors*** agree on a joint notification, the procedure set out in Article 15(1), (2) and (4) shall apply.	8. If the ***SEP holders*** agree on a joint notification, the procedure set out in Article 15(1), (2) and (4) shall apply.

Amendment 135
Proposal for a regulation
Article 18 – paragraph 1

Text proposed by the Commission	*Amendment*
1. A SEP holder or an implementer may request the competence centre for a non-binding expert opinion on a ***global*** aggregate royalty.	1. A SEP holder or an implementer may request the competence centre for a non-binding expert opinion on ***an*** aggregate royalty. ***An implementer may make this request, even if an agreement amongst SEP holders has already been reached, including through the procedure laid down in Articles 15 to 17.***

Amendment 136
Proposal for a regulation
Article 18 – paragraph 4

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

Amendment 137
Proposal for a regulation
Article 18 – paragraph 5

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

Amendment 138
Proposal for a regulation
Article 18 – paragraph 6

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

Amendment 139
Proposal for a regulation
Article 18 – paragraph 8 – introductory part

Text proposed by the Commission	*Amendment*
8. Following the appointment, the panel shall request the participating SEP holders to***, within one month***:	8. ***Within one month*** following the appointment, the panel shall request the participating SEP holders to:

Amendment 140
Proposal for a regulation
Article 18 – paragraph 8 – point b

Text proposed by the Commission	*Amendment*
(b) submit justification on the impossibility to propose an aggregate royalty due to technological, economic, or other considerations***.***	(b) submit justification on the impossibility to propose an aggregate royalty due to technological, economic, or other considerations***; and***

Amendment 141
Proposal for a regulation
Article 18 – paragraph 8 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) provide evidence or observations to assist the panel in deciding on aggregate royalty.

Amendment 142
Proposal for a regulation
Article 18 – paragraph 8 a (new)

Text proposed by the Commission	*Amendment*
	8a. The panel shall permit participants to submit responses to the submissions provided for in paragraph 8 and reactions to those responses.

Amendment 143
Proposal for a regulation
Article 18 – paragraph 9 – introductory part

Text proposed by the Commission	*Amendment*
9. The panel shall duly consider the submissions provided for in ***paragraph 8*** and decide:	9. The panel shall duly consider the submissions ***and responses*** provided for in ***paragraphs 8 and 8a*** and decide:

Amendment 144
Proposal for a regulation
Article 18 – paragraph 9 – point a

Text proposed by the Commission	*Amendment*
to ***suspend*** the procedure ***for the expert opinion on aggregate royalty*** for an initial period of no longer than 6 months, which can be further extended on the basis of a duly justified request by one of the participating SEP holders, or	(a) to ***grant a suspension of*** the procedure for an initial period of no longer than 6 months, which can be further extended ***for another period of 3 months*** on the basis of a duly justified request by one of the participating SEP holders, or

Amendment 145
Proposal for a regulation
Article 18 – paragraph 10

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

Amendment 146
Proposal for a regulation
Article 18 – paragraph 11

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

Amendment 147
Proposal for a regulation
Article 19 – paragraph 1 – introductory part

Text proposed by the Commission	*Amendment*
1. The competence centre shall create an entry in the register for a standard for which FRAND commitments have been made within 60 days from the earliest of the following events:	1. The competence centre shall create an entry in the register for a standard ***or part thereof*** for which FRAND commitments have been made within 60 days from the earliest of the following events:

Amendment 148
Proposal for a regulation
Article 20 – paragraph 5

Text proposed by the Commission	*Amendment*
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.	5. A SEP holder shall update the information in the register***, except for the information provided in accordance with Article 4(3), point (c),*** and database to reflect relevant changes in relation to its registered SEP by notifying the competence centre within 6 months from the change occurring.

Amendment 149
Proposal for a regulation
Article 20 – paragraph 6

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

Amendment 150
Proposal for a regulation
Article 22 – paragraph 1

Text proposed by the Commission	*Amendment*
1. A sample of SEP registrations ***shall be checked annually for*** completeness and correctness.	1. ***The EUIPO shall annually check*** a sample of SEP registrations ***in order to verify their*** completeness and correctness.

Amendment 151
Proposal for a regulation
Article 22 – paragraph 3

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

Amendment 152
Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission	*Amendment*
4. If the SEP holder fails to provide the correct and complete information, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied.	4. If the SEP holder fails to provide the correct and complete information, ***the competence centre shall notify the SEP holder about its failure to provide the correct and complete information and that, following a grace period of 1 month during which the SEP holder could still provide the required information, its*** registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied.

Amendment 153
Proposal for a regulation
Article 23 – paragraph 3

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

Amendment 154
Proposal for a regulation
Article 23 – paragraph 4 – introductory part

Text proposed by the Commission	*Amendment*
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:	4. The competence centre shall notify the SEP holder and invite the SEP holder to ***request a correction of*** the entry in the register or the information submitted for the database, where relevant within a time limit no less than ***3*** 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:

Amendment 155
Proposal for a regulation
Article 23 – paragraph 5

Text proposed by the Commission	*Amendment*
5. If the SEP holder fails to correct the entry in the register or the information submitted for the database within the given time limit, the registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied.	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 ***competence centre shall notify the SEP holder about its failure to provide the correct and complete information and that, following a grace period of 1 month during which the SEP holder could still provide the required information, the*** registration shall be suspended from the register, until such time as the incompleteness or inaccuracy is remedied.

Amendment 156

Proposal for a regulation
Article 23 – paragraph 8

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

Amendment 157
Proposal for a regulation
Article 24 – paragraph 1

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

Amendment 158
Proposal for a regulation
Article 24 – paragraph 2

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

Amendment 159
Proposal for a regulation
Article 24 – paragraph 3

Text proposed by the Commission	*Amendment*
3. ***Paragraphs (1) and (2) are*** without prejudice to provisions included in contracts ***setting*** a royalty for ***a broad portfolio of*** patents***, present or future, stipulating that the invalidity, non-essentiality or unenforceability of a limited number thereof shall not affect the overall amount and enforceability of the royalty or other terms and conditions of the contract***.	3. ***Paragraph 1 is*** without prejudice to provisions included in contracts ***concluded and applied before the entry into force of this Regulation which set*** a royalty for patents ***that are or have been claimed to be essential to a standard***.

Amendment 160
Proposal for a regulation
Article 24 – paragraph 4

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

Amendment 161
Proposal for a regulation
Article 26 – paragraph 5 – introductory part

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

Amendment 162
Proposal for a regulation
Article 26 – paragraph 5 – point a

Text proposed by the Commission	*Amendment*
(a) the requirements for evaluators or conciliators, including a Code of Conduct;	(a) the requirements for evaluators or conciliators, including a Code of Conduct***, including at least the criteria of Article 27(2a) of this Regulation***;

Amendment 163
Proposal for a regulation
Article 27 – paragraph 2

Text proposed by the Commission	*Amendment*
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.***	2. The competence centre shall establish a roster of suitable candidates for evaluators or conciliators ***and make sure that:***

Amendment 164
Proposal for a regulation
Article 27 – paragraph 2 – point a (new)

Text proposed by the Commission	*Amendment*
	(a) there is no potential conflicts of interest, so that the chosen evaluators and conciliators are impartial and unbiased;

Amendment 165
Proposal for a regulation
Article 27 – paragraph 2 – point b (new)

Text proposed by the Commission	*Amendment*
	(b) every evaluator and conciliator appointed to the roster has the necessary qualification, experience and skills to perform the required tasks effectively. In particular, they shall have the necessary qualifications, substantial experience in the patent industry and dispute resolution, a demonstrated understanding of FRAND terms and conditions or a solid technical background in relevant technology field.

Amendment 166
Proposal for a regulation
Article 27 – paragraph 2 - subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
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)***.	***There shall be different rosters of*** evaluators ***and*** conciliators ***depending on the technical area of their specialisation or expertise***.

Amendment 167

Proposal for a regulation
Article 28 – paragraph 1

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

Amendment 168
Proposal for a regulation
Article 29 – paragraph 1

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

Amendment 169
Proposal for a regulation
Article 29 – paragraph 4

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

Amendment 170
Proposal for a regulation
Article 29 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. If an evaluator has sufficient reason to believe that a prior essentiality check conducted under Article 8, point (b), might be inaccurate, the evaluator shall have the authority to review the result of that check. If, after the review, the evaluator concludes that the prior essentiality check result was inaccurate, this evaluator shall conduct a new essentiality check for the specific SEP in question.

Amendment 171
Proposal for a regulation
Article 30 – paragraph 1

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

Amendment 172
Proposal for a regulation
Article 30 – paragraph 3

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

Amendment 173
Proposal for a regulation
Article 31 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The evaluator shall duly consider any information provided by the SEP holder.	4. The evaluator shall duly consider any information provided by the SEP holder ***or by stakeholders in accordance with the procedure laid down in Article 30***.

Amendment 174
Proposal for a regulation
Article 32 – paragraph 3

Text proposed by the Commission	*Amendment*
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.	3. The peer evaluator shall duly consider all the information submitted by the SEP holder ***or stakeholders which have provided observations or evidence in accordance with the procedure laid down in Article 30***, the reasons of the initial evaluator why the SEP may not be essential to the standard and any amended claim chart or additional observations provided by the SEP holder.

Amendment 175
Proposal for a regulation
Article 32 – paragraph 5

Text proposed by the Commission	*Amendment*
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.	5. The peer evaluator shall duly consider the observations of the SEP holder ***or the observations or evidence provided by other stakeholders in accordance with Article 30*** and issue a final reasoned opinion to the competence centre within 3 months from its appointment. The final reasoned opinion shall include the name of the SEP holder, of the evaluator and of the peer evaluator, the SEP subject to the essentiality check, the relevant standard, a summary of the examination and peer evaluation procedure, the preliminary conclusion of the evaluator, the result of the peer evaluation and the reasons on which that result is based.

Amendment 176
Proposal for a regulation
Article 34 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	The FRAND determination shall not apply to existing licensing agreements during their application term.

Amendment 177
Proposal for a regulation
Article 34 – paragraph 4

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

Amendment 178
Proposal for a regulation
Article 34 – paragraph 5

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

Amendment 179
Proposal for a regulation
Article 36 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) the commercial name of the standard and the name of the standard developing organisation.	(d) the commercial name of the standard and the name of the ***relevant*** standard developing organisation.

Amendment 180
Proposal for a regulation
Article 36 – paragraph 1 – point f

Text proposed by the Commission	*Amendment*
(f) references to any other FRAND determination, if applicable.	(f) references to any other ***related*** FRAND determination, if applicable.

Amendment 181
Proposal for a regulation
Article 36 – paragraph 2 – introductory part

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

Amendment 182
Proposal for a regulation
Article 37 – paragraph 1

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

Amendment 183
Proposal for a regulation
Article 38 – paragraph 1

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

Amendment 184
Proposal for a regulation
Article 38 – paragraph 2

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

Amendment 185
Proposal for a regulation
Article 38 – paragraph 3 – introductory part

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

Amendment 186
Proposal for a regulation
Article 38 – paragraph 3 – point a

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

Amendment 187
Proposal for a regulation
Article 38 – paragraph 3 – point b

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

Amendment 188
Proposal for a regulation
Article 38 – paragraph 4 – introductory part

Text proposed by the Commission	*Amendment*
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:***	4. Where the responding party agrees to the FRAND determination ***the competence centre shall notify*** the requesting party ***thereof.***

Amendment 189
Proposal for a regulation
Article 38 – paragraph 4 – point a

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

Amendment 190
Proposal for a regulation
Article 38 – paragraph 4 – point b

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

Amendment 191
Proposal for a regulation
Article 38 – paragraph 4 – point c

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

Amendment 192
Proposal for a regulation
Article 38 – paragraph 4 – point d

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

Amendment 193
Proposal for a regulation
Article 38 – paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. Each party may, at any time during the FRAND determination process, declare to commit to comply with its outcome. The declaring party may make its commitment to comply subject to the other party's commitment to the outcome. This shall not terminate the FRAND determination process.

Amendment 194
Proposal for a regulation
Article 38 – paragraph 5

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

Amendment 195
Proposal for a regulation
Article 38 – paragraph 6

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

Amendment 196
Proposal for a regulation
Article 39 – title

Text proposed by the Commission	*Amendment*
Selection of conciliators	Selection ***of a panel*** of conciliators

Amendment 197
Proposal for a regulation
Article 39 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***or the request to continue in accordance with Article 38(5), the competence centre*** shall ***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***.	1. Following the reply to the FRAND determination by the responding party in accordance with Article 38(2), ***the requesting and responding parties*** shall ***each appoint one conciliator*** from the roster of conciliators referred to Article 27(2) ***to the panel of conciliators. The third*** conciliator ***shall be appointed by the competence centre from the roster of conciliators referred to in Article 27(2)***.

Amendment 198
Proposal for a regulation
Article 39 – paragraph 2

Text proposed by the Commission	*Amendment*
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).	***deleted***

Amendment 199
Proposal for a regulation
Article 40 – title

Text proposed by the Commission	*Amendment*
	Appointment of conciliators

Amendment 200
Proposal for a regulation
Article 40 – paragraph 1

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

Amendment 201
Proposal for a regulation
Article 40 – paragraph 2

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

Amendment 202
Proposal for a regulation
Article 42 – paragraph 1

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

Amendment 203
Proposal for a regulation
Article 42 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	2. ***The panel of conciliators*** shall communicate to the parties or the party requesting the continuation of the FRAND determination the conduct as well as the schedule of procedure.

Amendment 204
Proposal for a regulation
Article 43 – paragraph 1

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

Amendment 205
Proposal for a regulation
Article 44 – paragraph 1

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

Amendment 206
Proposal for a regulation
Article 44 – paragraph 2

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

Amendment 207
Proposal for a regulation
Article 44 – paragraph 3

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

Amendment 208
Proposal for a regulation
Article 45 – paragraph 1

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

Amendment 209
Proposal for a regulation
Article 45 – paragraph 2

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

Amendment 210
Proposal for a regulation
Article 45 – paragraph 3

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

Amendment 211
Proposal for a regulation
Article 45 – paragraph 5

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

Amendment 212
Proposal for a regulation
Article 46 – paragraph 1 – point a

Text proposed by the Commission	*Amendment*
(a) fails to comply with any request of the ***conciliator,*** Rules of procedure or schedule of procedure referred to in Article 42(2),	(a) fails to comply with ***Article 45(3) or*** any request of the ***panel of conciliators*** Rules of procedure or schedule of procedure referred to in Article 42(2), ***or***

Amendment 213
Proposal for a regulation
Article 46 – paragraph 1 – point b

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

Amendment 214
Proposal for a regulation
Article 46 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
the ***conciliator*** shall inform both parties thereof.	the ***panel of conciliators*** shall inform both parties thereof.

Amendment 215
Proposal for a regulation
Article 46 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. Having received the notification of the ***conciliator***, the complying party may ask the ***conciliator*** to take one of the following actions:	2. Having received the notification of the ***panel of conciliators***, the complying party may ask the ***panel of conciliators*** to take one of the following actions:

Amendment 216
Proposal for a regulation
Article 46 – paragraph 3

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

Amendment 217
Proposal for a regulation
Article 47 – paragraph 2

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

Amendment 218
Proposal for a regulation
Article 48 – paragraph 1

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

Amendment 219
Proposal for a regulation
Article 48 – paragraph 2

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

Amendment 220
Proposal for a regulation
Article 49 – paragraph 1

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

Amendment 221
Proposal for a regulation
Article 50 – paragraph 1

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

Amendment 222
Proposal for a regulation
Article 50 – paragraph 3

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

Amendment 223
Proposal for a regulation
Article 51 – title

Text proposed by the Commission	*Amendment*
Recommendation of a determination of FRAND terms and conditions by the ***conciliator***	Recommendation of a determination of FRAND terms and conditions by the ***panel of conciliators***

Amendment 224
Proposal for a regulation
Article 51 – paragraph 1

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

Amendment 225
Proposal for a regulation
Article 52 – paragraph 1

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

Amendment 226
Proposal for a regulation
Article 53 – paragraph 1

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

Amendment 227
Proposal for a regulation
Article 54 – paragraph 1

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

Amendment 228
Proposal for a regulation
Article 54 – paragraph 2

Text proposed by the Commission	*Amendment*
2. A party may request the ***conciliator*** that specific information in a submitted document is kept confidential.	2. A party may request the ***panel of conciliators*** that specific information in a submitted document is kept confidential.

Amendment 229
Proposal for a regulation
Article 54 – paragraph 3

Text proposed by the Commission	*Amendment*
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.	3. When a party requests the information in a document it had submitted to be kept confidential, the ***panel of conciliators*** shall not disclose that information to the other party. The party invoking confidentiality shall also provide a non-confidential version of the information submitted in confidence in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. This non-confidential version shall be disclosed to the other party.

Amendment 230
Proposal for a regulation
Article 55 – paragraph 1

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

Amendment 231
Proposal for a regulation
Article 55 – paragraph 2

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

Amendment 232
Proposal for a regulation
Article 56 – paragraph 1 – point b

Text proposed by the Commission	*Amendment*
(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;	(b) a written declaration is signed by the parties accepting the reasoned proposal for a determination of FRAND terms and conditions by the ***panel of conciliators*** referred to in Article 55;

Amendment 233
Proposal for a regulation
Article 56 – paragraph 1 – point c

Text proposed by the Commission	*Amendment*
(c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the ***conciliator*** referred to in Article 55;	(c) a written declaration is made by a party not to accept the reasoned proposal of a determination of FRAND terms and conditions by the ***panel of conciliators*** referred to in Article 55;

Amendment 234
Proposal for a regulation
Article 56 – paragraph 1 – point d

Text proposed by the Commission	*Amendment*
(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the ***conciliator*** referred to in Article 55.	(d) a party has not submitted a reply to the reasoned proposal of a determination of FRAND terms and conditions by the ***panel of conciliators*** referred to in Article 55.

Amendment 235
Proposal for a regulation
Article 56 – paragraph 4

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

Amendment 236
Proposal for a regulation
Article 57 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The ***conciliator*** shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).	1. The ***panel of conciliators*** shall provide the parties with a written report following the termination of the FRAND determination in cases listed in Article 56(1), point (c) and Article 56(1), point (d).

Amendment 237
Proposal for a regulation
Article 57 – paragraph 2 –– point d

Text proposed by the Commission	*Amendment*
(d) a non-confidential methodology and the assessment of the determination of FRAND terms and conditions by the ***conciliator*.**	(d) a non-confidential methodology and the assessment of the determination of FRAND terms and conditions by the ***panel of conciliators*.**

Amendment 238
Proposal for a regulation
Article 58 – paragraph 1

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

Amendment 239
Proposal for a regulation
Article 60 – paragraph 1 a (new)

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

Amendment 240
Proposal for a regulation
Article 61 – title

Text proposed by the Commission	*Amendment*
Training, advice and support	***SEP Licensing Assistance Hub for SMEs and start ups***

Amendment 241
Proposal for a regulation
Article 61 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The competence centre shall ***offer training and support on SEP related matters for micro, small and medium-size enterprises*** free of charge***.***	1. The competence centre shall ***set up and manage a SEP Licensing Assistance Hub for SMEs and start-ups which shall help the SMEs and start-ups with following tasks*** free of charge***:***

Amendment 242
Proposal for a regulation
Article 61 – paragraph 1 – point a (new)

Text proposed by the Commission	*Amendment*
	(a) identification of which SEPs might be relevant to their product or service, possible licensors and patent pools, in the event that the SME or the start-up is a SEP implementer;

Amendment 243
Proposal for a regulation
Article 61 – paragraph 1 – point b (new)

Text proposed by the Commission	*Amendment*
	(b) identification of possible licensees and, with the help of the European Observatory on infringements of intellectual property rights, advise them on how to best enforce their SEP rights on European and global level, in the event that the SME or the start-up is a SEP holder;

Amendment 244
Proposal for a regulation
Article 61 – paragraph 1 – point c (new)

Text proposed by the Commission	*Amendment*
	(c) offer training and support on SEP related matters.

Amendment 245

Proposal for a regulation
Article 61 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	The competence centre shall not be held liable for any help provided to SMEs and start-ups under this paragraph. When performing the tasks referred to in this paragraph, the competence centre may work in close cooperation with national patent offices and governmental schemes that support SMEs.

Amendment 246
Proposal for a regulation
Article 61 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. The competence centre shall, on a regular basis, proactively seek input from SMEs and start-ups on what training and support would be most helpful.

Amendment 247
Proposal for a regulation
Article 61 – paragraph 2

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

Amendment 248
Proposal for a regulation
Article 61 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The costs of the services referred to in paragraph (1) and paragraph (2) shall be borne by the EUIPO.	3. The costs of the services referred to in paragraph (1) and paragraph (2) shall be borne by the EUIPO ***and the EUIPO shall ensure that the services are sufficiently funded and resourced***.

Amendment 249
Proposal for a regulation
Article 61 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Paragraphs 1 and 2 shall not apply to patent assertion entities or to SMEs, which are a subsidiary, affiliate, or owned or directly or indirectly controlled by another natural or legal person that is not a SME itself.

Amendment 250
Proposal for a regulation
Article 62 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	2. ***When*** a SEP holder, or concludes a SEP licence that includes more favourable terms and conditions, ***than those offered to companies that are not an SME*** pursuant to paragraph (1), such FRAND terms and conditions shall not be considered in a FRAND determination, unless the FRAND determination is conducted solely with regard to FRAND terms and conditions for another micro, small or medium-sized enterprise.

Amendment 251
Proposal for a regulation
Article 62 – paragraph 3

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

Amendment 252
Proposal for a regulation
Article 62 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Any benefits granted to SMEs under this Regulation may be withheld or withdrawn in cases of circumvention or misuse.

Amendment 253
Proposal for a regulation
Article 63 – paragraph 4

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

Amendment 254
Proposal for a regulation
Article 65 a (new)

Text proposed by the Commission	*Amendment*
	Article 65a
	Reasoned request to the Commission
	A SEP holder or a SEP implementer may submit a reasoned request to the Commission to determine whether:
	(a) the SEP licensing negotiations on FRAND terms and conditions do not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market as regards identified implementations of certain standards or parts thereof within 1 month of the publication of the standard by the Standard Development Organisation;
	(b) the functioning of the internal market is severely distorted due to significant difficulties or inefficiencies in the licensing of SEPs for particular existing implementations of standards or parts thereof within 12 months of the entry into force of this Regulation.

Amendment 255
Proposal for a regulation
Article 65 b (new)

Text proposed by the Commission	*Amendment*
	Article 65b
	Delegated acts with respect to new standards
	1. Within 4 months of the receipt of the request referred to in paragraph 1, the Commission is empowered to adopt delegated acts in accordance with Article 67 and after an appropriate consultation process including all relevant stakeholders and to establish a list of implementations, standards or parts thereof, where SEP licensing negotiations on FRAND terms do not give rise to significant difficulties or inefficiencies affecting the functioning of the internal market.
	2. The Commission shall review the list referred to in paragraph 1 once a year in order to determine if it needs to be updated.
	3. The procedure under this Article shall not affect the time limits set out in Articles 17 and 18.

Amendment 256
Proposal for a regulation
Article 65 c (new)

Text proposed by the Commission	*Amendment*
	Article 65c
	Delegated acts with respect to existing standards
	1. The Commission shall conduct appropriate consultations including relevant stakeholders.
	2. After considering all evidence and expert opinions, the Commission is empowered to adopt a delegated act in accordance with Article 67 to establish a list determining which of the existing implementations of standards or parts thereof can be notified in accordance with Article 66(1) or (2). By means of that delegated act, the Commission shall also determine which procedures, notification and publication requirements set out in this Regulation apply to those existing standards, parts thereof or relevant implementations. The delegated act shall be adopted by ... [OJ: please insert the date 18 months from entry into force of this Regulation]. The Commission shall check once a year if the list needs to be updated.

Amendment 257
Proposal for a regulation
Article 66 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Until [OJ: please insert the date = 28 months from the entry into force of this regulation] holders of SEPs essential to a standard published before the entry into force of this Regulation (‘existing standards’), for which FRAND commitments have been made, may notify the competence centre pursuant to Articles 14, 15 and 17 of any of the existing standards or parts thereof that will be determined in the delegated act in accordance with ***paragraph (4)***. The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.	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 ***or have not*** 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 ***Article 65c***. The procedures, notification and publication requirements set out in this Regulation apply mutatis mutandis.

Amendment 258
Proposal for a regulation
Article 66 – paragraph 4

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

Amendment 259
Proposal for a regulation
Article 67 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	2. The power to adopt a delegated act referred to in Articles 4(5)***, 65b and 65c*** shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Amendment 260
Proposal for a regulation
Article 67 – paragraph 3

Text proposed by the Commission	*Amendment*
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.	3. The delegation of power referred to in Articles ***4(5), 65b and 65c*** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 261
Proposal for a regulation
Article 67 – paragraph 6

Text proposed by the Commission	*Amendment*
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.	6. A delegated act adopted pursuant to Articles 4(5)***, 65b and 65c*** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Amendment 262
Proposal for a regulation
Article 70 – paragraph 1

Text proposed by the Commission	*Amendment*
1. By [OJ: please insert the date = 5 years from entry into force of this regulation] the Commission shall evaluate the ***effectiveness and efficiency of the SEP registration and the essentiality check system.***	1. By … [OJ: please insert the date = 5 years from entry into force of this Regulation]***, and every three years thereafter,*** the Commission shall evaluate the ***implementation of this Regulation. The evaluation shall assess the operation of this Regulation, in particular:***

Amendment 263
Proposal for a regulation
Article 70 – paragraph 1 – point a (new)

Text proposed by the Commission	*Amendment*
	(a) the impact, effectiveness and efficiency of the competence centre and its working methods;

Amendment 264
Proposal for a regulation
Article 70 – paragraph 1 – point b (new)

Text proposed by the Commission	*Amendment*
	(b) the effectiveness and efficiency of the SEP registration and the essentiality check system; and

Amendment 265
Proposal for a regulation
Article 70 – paragraph 1 – point c (new)

Text proposed by the Commission	*Amendment*
	(c) the impact that the essentiality check system, the aggregate royalties determination and the FRAND determination system have, in particular on the competitiveness of the Union SEP holders on a global level and on innovation in the Union.

Amendment 266
Proposal for a regulation
Article 70 – paragraph 2

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

Amendment 267
Proposal for a regulation
Article 70 – paragraph 3

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

Amendment 268
Proposal for a regulation
Article 70 – paragraph 4

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