



Summary of the Opinion of the European Data Protection Supervisor on the Proposal for a Regulation on standard essential patents and amending Regulation (EU) 2017/1001

(C/2023/713)

(The full text of this Opinion can be found in English, French and German on the EDPS website <https://edps.europa.eu>)

On 27 April 2023 the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001.

The Proposal aims at (i) making available detailed information on standard essential patents (SEPs) and existing fair, reasonable and non-discriminatory ('FRAND') terms and conditions to facilitate licensing negotiations; (ii) raise awareness of SEP licensing in the value chain and (iii) provide for an alternative dispute resolution mechanism for setting FRAND terms and conditions. The Proposal would create a competence centre within European Union Intellectual Property Office (EUIPO), which would be tasked to administer databases, a register and the procedures for essentiality checks of SEPs and the FRAND determination.

The EDPS notes that the Proposal would entail processing of personal data, notably personal data relating SEP holders and/or their legal representative, as well as personal data relating to evaluators and conciliators. For this reason, the EDPS recommends specifying in a recital that the processing of personal data in accordance with this Regulation shall be subject to the EUDPR ⁽¹⁾ and to Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽²⁾ ('the GDPR').

Regarding the register and databases managed by EUIPO, the Proposal should clearly set out the specific purpose(s) for which personal data may be made available and provide for a procedure ensuring that only third parties who demonstrate a legitimate interest have access to such data. The Proposal should also specify in the enacting terms the role of EUIPO as controller under the EUDPR.

Finally, the EDPS invites the EU legislator to consider whether the 18-month retention period could be prescribed as a rule for personal data (regardless of the submission of a request), and, in any case, to specify who would be entitled to lodge such a request for removal of personal data to EUIPO.

1. Introduction

1. On 27 April 2023, the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001 ⁽³⁾ ('the Proposal').
2. The overall objectives of the Proposal are to: (i) ensure that end users, including small businesses and EU consumers benefit from products based on the latest standardised technologies; (ii) make the EU attractive for standards innovation; and (iii) encourage both standard essential patents ('SEP') holders and implementers to innovate in the EU, make and sell products in the EU and be competitive in non-EU markets. The initiative aims to incentivise participation by European firms in the standard development process and the broad implementation of such standardised technologies, particularly in IoT industries ⁽⁴⁾.

⁽¹⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽²⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽³⁾ COM(2023) 232 final.

⁽⁴⁾ COM(2023) 232 final, p. 1.

3. In this context, the initiative seeks to: (i) make available detailed information on SEPs and existing fair, reasonable and non-discriminatory ('FRAND') terms and conditions to facilitate licensing negotiations; (ii) raise awareness of SEP licensing in the value chain and (iii) provide for an alternative dispute resolution mechanism for setting FRAND terms and conditions ⁽⁵⁾.
4. To achieve these objectives, the Proposal includes provisions that establish a competence center within the European Union Intellectual Property Office ('the EUIPO competence center'), which would be tasked setting up and managing, inter alia, a roster of evaluators and conciliators ⁽⁶⁾, establishing and maintaining a register of SEPs ('the register') ⁽⁷⁾ and establishing and maintaining an electronic database for SEPs ('the database') ⁽⁸⁾.
5. The present Opinion of the EDPS is issued in response to a consultation by the European Commission of 19 April 2023 pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in recital 50 of the Proposal.

6. Conclusions

18. In light of the above, the EDPS makes the following recommendations:
 - (1) to specify in Recital 14 that the processing of personal data in accordance with this Regulation shall be subject to the EUDPR and to Regulation (EU) 2016/679 ('the GDPR');
 - (2) to specify in Article 4 the specific purposes for which personal data may be made available and to provide for a procedure ensuring that only third parties who demonstrate a legitimate interest have access to personal data;
 - (3) to specify in Article 5 the specific purpose for which personal data may be made available and to specify that only registered third parties who demonstrate a legitimate interest will be provided with access to personal data;
 - (4) to specify in the enacting terms of the Proposal the role as controller of EUIPO under the EUDPR;
 - (5) to consider whether an 18-month retention period could be prescribed as a rule for personal data regardless of the submission of a request, and, in any case, to specify who would be entitled to lodge such a request for removal of personal data to EUIPO.

Brussels, 19 June 2023.

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⁽⁵⁾ COM(2023) 232 final, p. 1.

⁽⁶⁾ Article 3(2)(b) of the Proposal.

⁽⁷⁾ Article 4 of the Proposal.

⁽⁸⁾ Article 5 of the Proposal.