

# **THE EU STANDARD ESSENTIAL PATENTS (SEP) REFORM:**

Potential effects on digital  
SMEs of Member States

## THE EU STANDARD ESSENTIAL PATENTS (SEP) REFORM: Potential effects on digital SMEs of Member States

*The European Parliament is voting on a proposal that could harm the continent's technology sector by changing how standard-essential patents (SEPs) are licensed.*

Standard Essential Patents (SEPs) are patented technologies used by products and technologies that follow a standard, such as 5G, WiFi, and Bluetooth. A standard is an agreed or established technical description that ensures product interoperability. For example, certain phones, laptops, and other devices would only work with certain routers without a shared standard for WiFi devices. Standards are usually produced by standard development organisations (SDOs) with inputs from industry and technical experts. SEPs are essential for implementing a standard; therefore, companies that want to make standard-compliant products must use them.

Currently, companies that own SEPs agree to license them to other companies on fair, reasonable and non-discriminatory (FRAND) terms, and they negotiate the licensing fees among themselves. **This means that the SEP holders can charge a reasonable amount for their patented technologies, and the SEP users can access them without discrimination or excessive costs.** According to [a report](#) by the European Commission, this system is working well, which found no bottlenecks or barriers that discourage innovation or adoption of standards.

The proposal by the European Commission would replace this system with a bureaucratic process that would set the licensing fees and allow the biggest companies in an industry to form groups to negotiate lower fees for themselves. **This would harm the interests of small, innovative firms that invent breakthrough technologies and favour the interests of large, foreign firms that dominate the market.** It would also discourage participation by European firms in the standard development process and the broad implementation of such standardised technologies, particularly in the Internet of Things (IoT) industries.

The proposed SEP regulation would affect consumers and businesses differently, depending on whether they are SEP holders or SEP implementers.

- For SEPs holders, especially small and innovative firms, the proposal would reduce their incentives to invest in R&D and contribute to standards, as they would face lower returns on their patented technologies and higher administrative costs. They would also lose their autonomy to negotiate licensing fees with SEPs implementers and would have to accept the rates set by the EUIPO or the LNGs. This could undermine their competitiveness and profitability and discourage them from participating in the European and global markets.

- For SEPs implementers, especially large and dominant firms, the proposal would benefit them by lowering their costs of accessing SEPs and reducing their legal risks. They would also gain more bargaining power by forming LNGs and collectively negotiating with SEPs holders. This could enable them to capture a larger share of the market and increase their profits, but it could also stifle innovation and competition, and harm the interests of end users and consumers.
- For consumers, the proposal could have mixed effects. On the one hand, it could lower the prices of products that use standardized technologies, such as smartphones, laptops, and IoT devices, and increase their availability and variety. On the other hand, it could reduce the quality and diversity of such products, as less innovation and competition would occur in the market. It could also limit the choices and preferences of consumers, as they would have to rely on the products offered by the dominant firms.

The reform described above has the potential to completely disrupt European SMEs: in 2022 alone, SMEs owned 85% of the SEPs in Europe.

The EU's SEPs reform will have significant implications for the European technology sector, specifically for the small and medium-sized enterprises that own or use standard essential patents.

The new process will set the licensing fees and allow large negotiating groups to bargain collectively with SEP holders. This new process will benefit the big and foreign firms that dominate the market but harm the small and innovative firms that contribute to developing and adopting standards, particularly in the Internet of Things industries.



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