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**COMMISSION DECISION**

**of 5.7.2018**

**setting up a group of experts on licensing and valuation of standard essential patents**

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### setting up a group of experts on licensing and valuation of standard essential patents

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) Article 173 of the Treaty assigned the Union and the Member States the task of ensuring that the conditions necessary for the competitiveness of the Union's industry exist;
- (2) As set out in its Communication on Setting out the EU approach to Standard Essential Patents (“SEPs”)<sup>1</sup>, the Commission considers it necessary to increase expertise and know-how around the determination of fair, reasonable and non-discriminatory (“FRAND”) licensing terms and the sound valuation of intellectual property, including in the context of the digitisation of the economy.
- (3) With a view to deepening expertise on evolving industry practices, the Commission wishes to call upon the expertise of specialists;
- (4) It is therefore necessary, in accordance with the abovementioned Communication, to set up a group of experts in the field of licensing and valuation of SEPs and to define its tasks and its structure;
- (5) The group should assist the Commission in consolidating good practices and in the monitoring of SEP licensing markets to inform any policy measures that may be required for ensuring a balanced framework for the licensing of SEPs;
- (6) The group should be composed of experts appointed in a personal capacity, as well as experts representing a common interest shared by stakeholders involved in activities related to licensing and/or valuation of SEPs. All members of the group should possess insight knowledge of licensing and/or valuation of SEPs. Organisations directly involved in the field of licensing and/or valuation of SEPs may be granted the status of observers;
- (7) Rules on disclosure of information by members of the group should be laid down;
- (8) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>2</sup>.

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<sup>1</sup> COM(2017) 712 final of 29.11.2017.

<sup>2</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAS DECIDED AS FOLLOWS:

*Article 1*  
**Subject matter**

The group of experts on licensing and valuation of SEPs, (“the group”), is set up.

*Article 2*  
**Tasks**

The group’s tasks shall be:

- (a) to facilitate an exchange of experience and good practice in the field of licensing and valuation of SEPs;
- (b) to provide the Commission with the necessary economic, legal and technical expertise regarding evolving industry practices related to the licensing of SEPs, the sound valuation of intellectual property, and the determination of FRAND licensing terms;
- (c) to assist the Commission in the monitoring of SEP licensing markets to inform any policy measures that may be required for ensuring a balanced framework for smooth, efficient and effective licensing of SEPs; and
- (d) to assist the Commission in obtaining information on licensing and valuation practices in accordance with the Communication from the Commission on Setting out the EU approach to Standard Essential Patents.

*Article 3*  
**Consultation**

1. The Commission may consult the group on any matter relating to licensing and valuation of SEPs.
2. The Chairperson of the group may advise the Commission to consult the group on a specific question related to licensing and valuation of SEPs.
3. The Commission’s Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (“DG GROW”) shall set the framework of the consultation and fix a time limit for the consultation within which the group has to provide its opinions, recommendations or reports.

*Article 4*  
**Membership**

1. The group shall be composed of up to 15 members. All members of the group shall have substantial experience in licensing and/or valuation of SEPs.
2. Members shall be individuals appointed in a personal capacity and individuals appointed to represent a common interest shared by stakeholders involved in activities related to licensing and/or valuation of SEPs. At least two thirds of the Members of the group shall be individuals appointed in a personal capacity.
3. Members appointed in a personal capacity shall act independently and in the public interest.

4. Members appointed to represent a common interest shall not represent an individual stakeholder, but a policy orientation common to different stakeholders.
5. Members who are no longer capable of contributing effectively to the expert group's deliberations, who, in the opinion of the Commission department concerned, do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term of office.

*Article 5*  
***Selection process***

1. The selection of the group's members shall be carried out *via* a public call for applications, to be published on the Register of Commission expert groups and other similar entities ('the Register of expert groups'). In addition, the call for applications may be published through other means, including on dedicated websites.
2. The call for applications shall clearly outline the selection criteria, including the required expertise and the interests to be represented in relation to the work to be performed.
3. The minimum deadline for applications shall be four weeks.
4. Individuals applying to be appointed as members of the group in a personal capacity shall disclose any circumstances that could give rise to a conflict of interest. In particular, the Commission shall require those individuals to submit a declaration of interests ('DOI') form on the basis of the standard DOI form for expert groups, together with an updated *curriculum vitae* (CV), as part of their application. Submission of a duly completed DOI form shall be necessary in order to be eligible to be appointed as a member in a personal capacity. The conflict of interest assessment shall be performed in compliance with the Commission's horizontal rules on expert groups ('the horizontal rules').<sup>3</sup>
5. Registration in the Transparency Register is required in order for individuals representing a common interest to be appointed.
6. The members of the group shall be appointed by the Director-General of DG GROW, after consultation of other Commission services concerned, from specialists with significant competence in the areas referred to in Article 2 and who have responded to the call for applications.
7. Members shall be appointed for two years. They shall remain in office until the end of their term of office. Their term of office may be renewed.
8. DG GROW shall, after consultation of other Commission services concerned, appoint alternate members, in accordance with the same conditions as members, who shall on a provisional basis automatically replace any members who are absent or indisposed.
9. DG GROW shall, after consultation of other Commission services concerned, establish a reserve list of suitable candidates that may be used to appoint members' replacements. DG GROW shall ask applicants for their consent before including their names on the reserve list.

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<sup>3</sup> Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups C(2016) 3301 final

*Article 6*  
**Chairperson**

The group shall be chaired by a representative of DG GROW or by a person appointed by DG GROW, after consultation of other Commission services concerned.

*Article 7*  
**Operation**

1. The group shall act at the request of DG GROW, which shall cooperate closely with other Commission services concerned, in compliance with the horizontal rules<sup>4</sup>.
2. The Chairperson, in consultation with DG GROW, may appoint individual members of the group as rapporteurs.
3. Communications within the group in preparation of a meeting may be carried out by electronic means. A representative of DG GROW and the Chairperson shall always be in copy of such communications.
4. Meetings of the group shall, in principle, be held on Commission premises on the basis of an agenda determined by DG GROW, in consultation with the rapporteurs.
5. DG GROW shall provide secretarial services. Commission officials from other departments involved in the EU approach to SEPs and with an interest in the proceedings may attend meetings of the group.
6. In agreement with DG GROW, the group may, by simple majority of its members, decide that deliberations shall be public.
7. Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chairperson.
8. The group shall adopt its opinions, recommendations or reports by consensus. If the group cannot adopt its opinions, recommendations or reports by consensus, it will do so by a vote. The outcome of the vote shall be decided by simple majority of all members. Members who have voted against shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports.

*Article 8*  
**Sub-groups**

1. DG GROW may set up sub-groups for the purpose of examining specific questions on the basis of terms of reference defined by DG GROW. Sub-groups shall operate in compliance with the horizontal rules and shall report to the group. They shall be dissolved as soon as their mandate is fulfilled.
2. The members of sub-groups that are not members of the group shall be selected via a public call for applications, in compliance with Article 5 and the horizontal rules<sup>5</sup>.

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<sup>4</sup> See Article 13.1 of the horizontal rules.

<sup>5</sup> See Articles 10 and 14.2 of the horizontal rules.

*Article 9*  
***Invited experts***

DG GROW may, after consultation of other Commission services concerned, invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an *ad hoc* basis.

*Article 10*  
***Observers***

1. Organisations directly involved in the field of licensing and/or valuation of SEPs may be granted an observer status, in compliance with the horizontal rules, by direct invitation.
2. Organisations appointed as observers shall nominate their representatives. Observer organisations shall be responsible for ensuring that their representatives provide a high level of expertise in the field of licensing and/or valuation of SEPs. DG GROW may refuse the nomination by an organisation of a representative if this nomination does not comply with the requirements set out in this Article. In such case, the organisation concerned shall be asked to appoint another representative.
3. Observers' representatives may be permitted by the Chairperson, in consultation with DG GROW, to take part in the discussions of the group and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of recommendations or advice of the group.

*Article 11*  
***Rules of procedure***

On a proposal by and in agreement with DG GROW, the group shall adopt its rules of procedure by simple majority of its members, on the basis of the standard rules of procedure for expert groups, in compliance with the horizontal rules<sup>6</sup>.

*Article 12*  
***Professional secrecy and handling of classified information***

The members of the group and their representatives, as well as invited experts and observers, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443<sup>7</sup> and 2015/444<sup>8</sup>. Should they fail to respect these obligations, the Commission may take all appropriate measures.

*Article 13*  
***Transparency***

1. The group shall be registered in the Register of expert groups.

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<sup>6</sup> See Article 17 of the horizontal rules.

<sup>7</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>8</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. As concerns the group composition, the following data shall be published on the Register of expert groups:
  - (a) the name of individuals appointed in a personal capacity;
  - (b) the name of individuals appointed to represent a common interest; the interest represented shall be disclosed;
  - (c) the name of observer organisations;
  - (d) the name of observer organisations' representatives.
3. All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available either on the Register of expert groups or *via* a link from the Register to a dedicated website, where this information can be found. Access to dedicated websites shall not be submitted to user registration or any other restriction. In particular, the agenda and other relevant background documents shall be published in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001<sup>9</sup>.

*Article 14*  
***Meeting expenses***

1. Participants in the activities of the group shall not be remunerated for the services they offer.
2. Travel and subsistence expenses incurred by participants in the activities of the group shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

Done at Brussels, 5.7.2018

*For the Commission*  
*Elżbieta BIENKOWSKA*  
*Member of the Commission*

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<sup>9</sup> These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.