



# *Standard essential patents*

## *Commission proposal for a Regulation*

StandICT.eu Training Academy Webinar

27 June 2024

# Draft SEPs Regulation

Main elements

# SEP Regulation proposal at a glance

## The new rules introduce:



The establishment of a '**Competence Centre**' at the European Union Intellectual Property Office to manage the process, gather information and support SMEs



A **centralised register** and electronic database with information on relevant standards, products and processes, SEPs in force in the EU, SEP licensing FRAND terms and conditions



An **SEP aggregate royalty determination process**: i.e. maximum license fee for using a standardised technology



An **out-of-court** dispute resolution mechanism to determine Fair, Reasonable, and Non-Discriminatory (FRAND) licensing terms and conditions

# Transparency Through the SEP Register/Database

- **Purpose:** To bring light to the often murky waters of SEP declarations, enhancing trust and predictability in the system.
- **Key Characteristics:**
  - A unified database for all declared SEPs across the EU.
  - Designed for public access, enabling open scrutiny and diminishing the chances of undeclared or "stealth" SEPs.
  - Built for scalability, accommodating essentiality checks through a well-organized and standardised structure and process with transparent results.
- **Goals of the Register:** By leveling the playing field, the register ensures that all stakeholders, be it SEP holders or implementers, are equipped with the same set of information, thereby diminishing information asymmetry and discouraging unsporting tactics.

# Essentiality checks

- **Upholding authenticity and ensuring equitable licensing**
- **Process of Essentiality Verification:**
  - An obligatory step to validate the indispensability of declared SEPs.
  - Aims at weeding out unauthentic declarations, ensuring only truly core patents are recognized and protected.
- **Equity in Essentiality:** By filtering out non-crucial patents, the system ensures that implementers are shielded from unnecessary licensing costs. Simultaneously, genuine SEP holders can maintain the integrity and value of their legitimate SEPs.

# Aggregate royalty notification or determination

- **Balancing Stakeholder Interests**
  - Ensure clarity on the cumulative royalty burden for standard-implementers and facilitate more predictable and transparent licensing negotiations. Notification of a maximum aggregate royalty rates or determination to assess and validate the aggregate royalty.
- **Goals of the aggregate royalty rules:**
  - For Implementers: Provides a clearer picture of total licensing costs, aiding in budgeting and strategic decision-making.
  - For SEP Holders: Establishes a structure where individual SEP value is recognized within an overall framework, preventing disproportionate levels of the aggregate royalty.
  - For the SEP Ecosystem in general: Encourages more entities, including SMEs, to adopt and implement new standards by ensuring that the aggregate royalty for the standard remains at reasonable levels.

# FRAND determination

- **Main Features of FRAND Determination:**
  - A codified, transparent, and structured approach towards deciding what constitutes 'fair, reasonable, and non-discriminatory' licensing terms.
  - Designed to act as a deterrent for SEP holders from making excessive royalty demands, and deterrent for SEP implementers to delay taking licenses.
- **Balance in FRAND:**
  - By offering a uniform framework for negotiations, it safeguards the interests of both stakeholders, promoting genuine, good-faith dialogue and ensuring licensing terms reflect the true value of the technology.

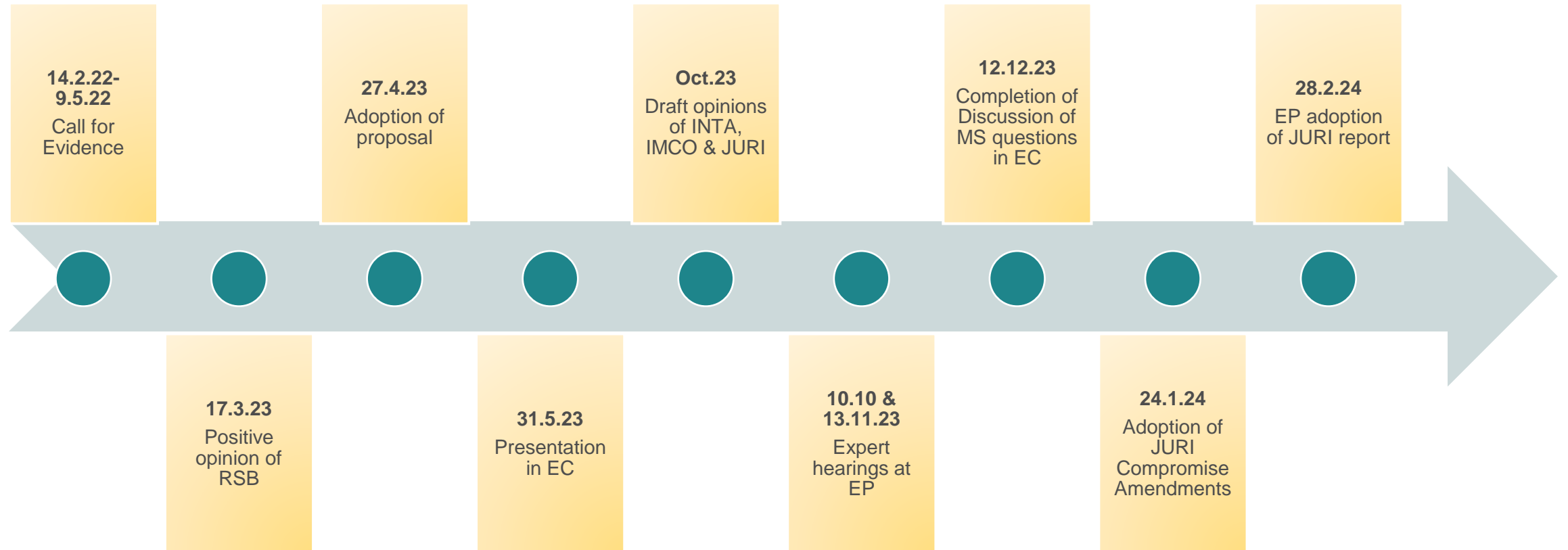
# SEPs Regulation

Current state-of-play



# Where are we?

## Legislative milestones



# Where are we going?

*Legislative players*

- **European Parliament:**

- No further discussions/decisions necessary prior to trilogues.

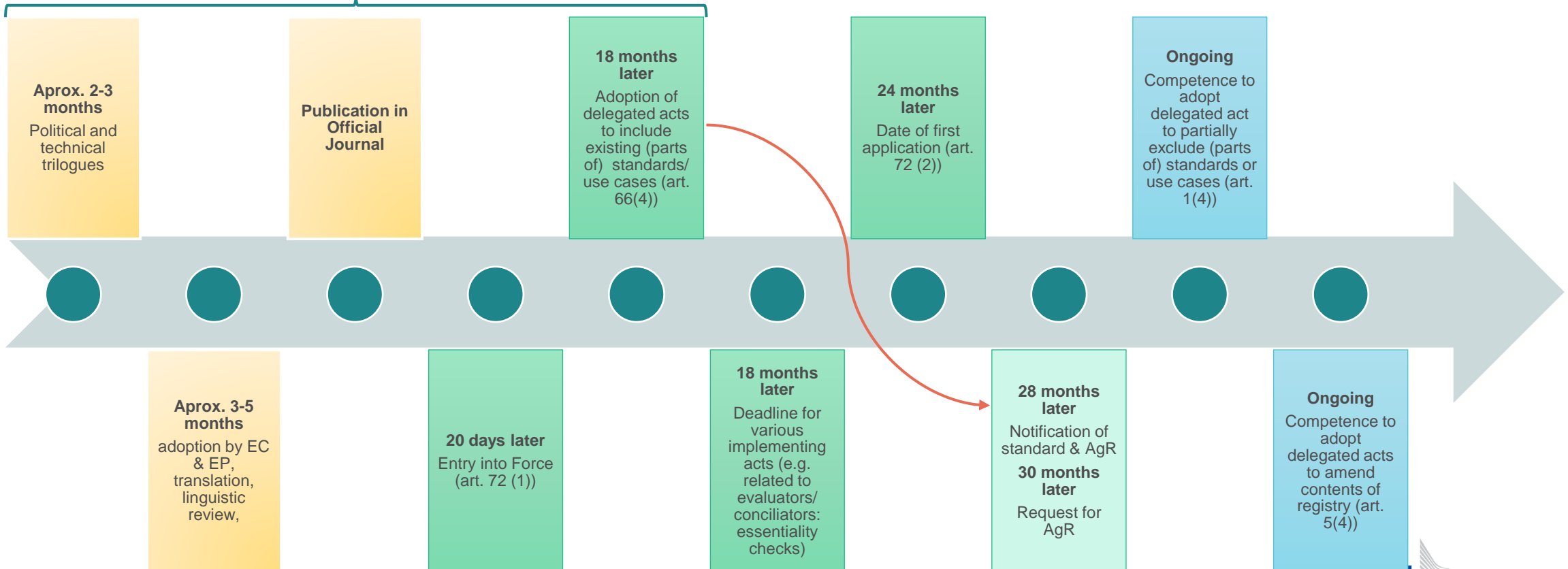
- **European Council:**

- Needs to adopt a general approach (= negotiation mandate for trilogues).
- BE Pres. has so far not prioritized proposal → likely adoption of GA end of 2024.
- Member States submitted aprox. 200 questions.
- So far only some MS have submitted positions on the file.

# Timeline hypotheticals

Application ≈ 30-35 months after start of trilogues

Certainty on Scope at Application ≈ 24-29 months after start of trilogues



# Upcoming study on implementation aspects

## **Tender for a study:**

Selected implementing aspects of the draft Regulation on SEPs

## **Budget:**

€320k

## **Duration:**

9 months

## **Content:**

- 1) market analysis of the standard landscape based on which a methodology to apply the scope is established
- 2) a comprehensive, streamlined methodology on how to conduct essentiality checks
- 3) specific elements that pertain to the implementation of the Regulation

## **Prior notice available:**

<https://ted.europa.eu/en/notice/-/detail/358499-2024>

Thank you for your interest!