



# Intellectual Property and Standardisation

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## I. Introduction

Intellectual property (IP) rights and standardisation coexist in a complex yet symbiotic relationship, both serving as crucial tools for the development of innovation and its dissemination. And yet, at first glance, standards and intellectual property rights (IPRs) may seem contradictory. On the one hand, IPRs provide legal monopolies over a certain asset, rewarding companies investments and promoting further innovation by allowing them to prevent others from copying or using their creation without their consent. On the other hand, standards can be understood as the democratisation of successful technologies solutions, enabling adoption and accessibility to these technologies for society at large through the implementation of common frameworks. The relationship between standards and IPRs requires careful balance, as by definition, IPRs provide exclusivity, which is a barrier, while standardisation aims to make technology more accessible.

The role of standardisation can be illustrated by the solutions it has provided for users of electronic devices. Until recently, forgetting a phone charger could result in the battery running out before there was an opportunity to recharge the device, due to chargers for specific brands and models being unavailable. Fortunately for consumers, a [standard](#) was implemented recently at the European Union level that now obliges mobile phone manufacturers to use the USB-C charger for all their models. The European Union decision to mandate USB-C chargers for mobile devices has simplified consumers' lives by eliminating the need to carry multiple chargers for different devices. This move has also reduced costs and electronic waste, showcasing how standardisation can be a useful tool to address real-world challenges.

Beyond such practical and concise examples, standardisation is vital for fostering innovation, enabling interoperability between devices, while allowing companies to expand market access and promoting sustainable development by adopting the most suitable technologies. By creating these standards or “universal frameworks” (by region or at international levels), companies also benefit from focusing on product/features development rather than reinventing or implementing basic components which are at its technological peak. At the same time, intellectual property ensures that proprietary technologies are protected while encouraging collaboration in standard-setting processes. Together, standardisation and IPRs drive technological progress, benefiting businesses and consumers alike by creating efficient, unified solutions in an increasingly interconnected world.

Standardisation is not limited to hardware harmonisation, it also involves more complex technologies and structures that also may impact within the functionality of other devices, including parts of the technology that makes them functional such as 4G, WI-FI, MPEG codecs among others. These technologies have been developed by private companies, and its use and introduction will require to comply with the license agreement offered by the legal owner, usually through Special Interests Groups (i.e. Bluetooth Special Interest Group<sup>1</sup>).

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<sup>1</sup> <https://www.bluetooth.com/develop-with-bluetooth/join/>

Standards also play a crucial role in EU-funded initiatives such as Horizon Europe, where projects often rely on existing standards as background technologies for implementation, or generate results that could lead to the creation of new technology standards in a specific sector. Participants in EU-funded projects must therefore consider the governance implications of implementing standardised technologies as background technologies, or when results are potentially susceptible to standardisation, and how to manage their protection, exploitation and dissemination.

## II. Definition of Standardisation

Standardisation is the process of developing, implementing, and promoting unified technical specifications or features for a particular technology, based on proven best practices, to ensure optimal functionality, interoperability, and compatibility across different products and services. The origin of standards lies in how technological development currently works in a globalised world, where technologies have become increasingly sophisticated and interconnected. Much of modern technology, going from smart phones to cars and industrial machinery are a combination of many innovations covered by a multitude of patents and know-how coming from multiple sources. Therefore, there is a need to simplify and facilitate technology implementation and dissemination across a competitive market between patent owners and implementers, to promote the development of new innovations and prevent patents from becoming insurmountable barriers to entry for newcomers to the market.

When a certain technology becomes a standard, it provides benefits to both manufacturers and consumers.

### For manufacturers and service providers

Manufacturers and service providers take advantage of established technology standards to foster their own innovation and compatibility, even those coming from third companies that might be competitors. For example, Qualcomm<sup>2</sup>, is a mobile communications company that developed essential patents for 3G, 4G and 5G technologies, which have become industry standards. These patents have allowed Qualcomm to secure its place in the market, while enabling other market players, including direct competitors, to obtain licences for these technologies and integrate them into their own products.

Both parties also benefit from standards since it simplifies and facilitates negotiations with, as an example, the fact of implementing similar licence terms for all parties and fosters agreements

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<sup>2</sup> <https://www.qualcomm.com/licensing>

in cases where the technologies are owned by several parties or investment funds. As an example, Nordic Semiconductor reached an agreement where companies purchasing their own IoT hardware will also benefit from the acquisition of certain Nokia's cellular patents, simplifying and facilitating the integration of these standards into their own products<sup>3</sup>.

Ultimately, this enables them to expand their international product portfolio while reducing costs, thanks to the compliance and regulatory simplification provided by adopting standards that are already recognised by official countries and institutions. For example, a mobile phone manufacturer that signs a 5G licence knows that this technology is valid and usable in certain countries.

### For consumers

Consumers benefit from a wider range of compatible and interoperable devices at a lower cost. Adherence to standards and regulations improves the quality, reliability and security of products by leveraging proven technologies.

## III. Adoption Process of New Standards

### How are standards adopted?

Normally, the establishment and development of technology standards require the cooperation from different stakeholders and experts organised through recognised bodies which are classified in territorial levels:

- **National Level:** Each country within the EU has an officially recognised standardisation body, which does not develop standards but supports coordination and management of standard development in the country.
- **International Level:** "Standard Development Organisations (SDOs)" are the bodies involved in the development and adoption of global standards. An example of SDO organisations is the International Organization for Standardization<sup>4</sup> (ISO). There are EU bodies whose work is entirely focused on standardisation processes. These bodies are also referred as "European Standard Organisations<sup>5</sup> (ESOs)". The three official bodies designated as ESOs by the EU regulations<sup>6</sup> are the European Committee for Standardization (CEN), The

<sup>3</sup> <https://www.nokia.com/newsroom/nokia-and-nordic-semiconductor-to-simplify-iot-standard-essential-patent-licensing/>

<sup>4</sup> <https://www.iso.org/home.html>

<sup>5</sup> [https://single-market-economy.ec.europa.eu/single-market/goods/european-standards/key-players-european-standardisation\\_en](https://single-market-economy.ec.europa.eu/single-market/goods/european-standards/key-players-european-standardisation_en)

<sup>6</sup> <https://eur-lex.europa.eu/eli/reg/2012/1025/oj/eng>

European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI)<sup>7</sup>. These are the only organisations authorised to produce European standards.

Inside the ESOs, proposals for processes and technologies that require a standardisation are initially presented, evaluated and developed through technical committees composed by members and participants from both the private and the public sector.

The workflow process to implement a new standard is the following:

- 1) Initial proposal: The process for a technology to be standardised begins with the recognition of a market need and the submission of a formal proposal for a new standard. This can be submitted by any interested party, including companies, associations, national bodies, or individuals.
- 2) Proposal assessment: The ESO/SDO assesses the proposal to ensure it aligns with its mandate and does not duplicate existing standards. A technical committee or working group is established to develop the standard; experts and stakeholders are appointed or invited to participate. They also evaluate potential patents and potential alternatives involved in the implementation of a new standard. Once consensus is reached, a formal vote is held to approve the final draft.
- 3) After a patent is recognised to be essential for the proposed standard, the patent owner is requested by the concerned SDO to agree on granting licenses on FRAND (Fair, Reasonable and Non-discriminatory terms). Then two scenarios may appear:
  - a. The patent owner agrees on granting the patent on FRAND terms and therefore the process can continue, or
  - b. the patent owner refuses to provide FRAND licences and therefore the SDO shall decide if the standard proceeding can continue.
- 4) Approval and publication: Following approval, the standard is published and made available for implementation and reference.

Once a technology has been declared a standard, any manufacturer producing goods that comply with that standard must incorporate the technology into their products. The party seeking to use the technology contacts the Standard Essential Patent (SEP) holder to negotiate licensing terms and fees in accordance with FRAND principles, ensuring fair and mutually beneficial outcomes for both parties.

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<sup>7</sup> <https://www.etsi.org/>

### SDO's rules and standards interaction with legal frameworks

The acceptance of a standard by an SDO implies the guarantee of a process which follows the principles of impartiality, openness transparency and consensus. On the other hand, while SDOs implement a high level of self-regulation, they are still obliged to comply with international and local legal frameworks.

The process of standardisation requires careful attention to prevent any actions that could lead to the exclusion of competitors or distort commercial competition, which are prohibited under the European Union legal framework. Specific concerns include:

- Situations where the standardisation process is used as a pretext to implement product cartels (agreements to fix prices among competitors).
- The intentional exclusion of competitors or certain companies from accessing or participating in the adoption of the standard, thereby restricting market competition unfairly.

To prevent anti-competitive conducts such as mentioned, the “EU Horizontal Cooperation Guidelines”<sup>8</sup> and accompanying “Horizontal Block Exemption Regulations”<sup>9</sup> define the circumstances in which cooperation between competitors in standardisation is acceptable under EU law. According to these guidelines, a standardisation agreement is not considered being anti-competitive if:

- Participation is open to all interested parties (no exclusion of competitors).
- Processes are transparent, including access to draft standards and methodologies.
- Adoption is voluntary, meaning compliance with the standard is not compulsory.
- Access is FRAND-based, ensuring fair, reasonable, and non-discriminatory terms for using Standard Essential Patents.

These conditions create a “safe harbour” under EU competition law for standardisation activities that meet them.

In addition, the prevention of cartels within standardisation activities is also ensured through a combination of EU competition law (Articles 101 and 102 TFEU), specialised EU guidelines, and internal compliance rules within standardisation bodies. These mechanisms ensure that collaboration between competitors in standards development promotes interoperability and innovation rather than restricting competition. European bodies such as CEN, CENELEC, and ETSI incorporate competition law safeguards directly into their procedures.

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8 [https://competition-policy.ec.europa.eu/document/fd641c1e-7415-4e60-ac21-7ab3e72045d2\\_en](https://competition-policy.ec.europa.eu/document/fd641c1e-7415-4e60-ac21-7ab3e72045d2_en)

9 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_2990](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2990)

## IV. Standard Essential Patents and FRAND Licences

### How does standardisation interact with intellectual property rights?

The process of standardisation engages with technologies that are, in principle, protected via intellectual property rights, creating a contradictory scenario: While patent rights grant their owners an exclusive temporary right to prevent others from using the invention, standards aim to make these innovations accessible to as many users as possible.

When a standard incorporates technology covered by a patent, the patent is considered essential for the standard's correct implementation (these are known as 'Standard Essential Patents', or SEPs). Therefore, the patent owner must grant licences for that patent to parties that require them at a reasonable cost under FRAND licensing terms. The fact that a patent is declared essential for an industry standard is usually considered highly attractive to owners and inventors, as it significantly enhances a company's portfolio, financial strength, and strategic position in the market. Standard Essential Patents and FRAND licences normally only cover patents, not other intellectual assets such as know-how or software. These must be negotiated separately unless they are voluntarily included in the SEP/FRAND agreement.

Standards Development Organisations are aware of this reality and usually implement guidelines and explanations for IPR policies and implementations into their procedures. For example, the European Telecommunications Standards Institute clearly encapsulates these principles by stating that it seeks to strike a balance between telecommunications and the rights of the owners of IPR holders. IPR holders should be adequately and fairly rewarded for the use of their IPR in the implementation of standards. ETSI shall take reasonable measures to ensure that its activities are available to potential users in accordance with the general principles of standardisation.

### What is a Standard Essential Patent?

Standard Essential Patents are patent rights that the scope of protection of which involves technologies and features necessary to implement a standard. In technical terms, these patents are considered "essential", because there is no technological alternative for implementing the standard. Examples include EP2070217B1<sup>10</sup> and EP2087626B1<sup>11</sup>, related to Nokia technology patents essential for 3G and 4G technology implementation of their respective standards<sup>12</sup>.

As explained above, the standardisation proposal and evaluation process is how key patented technologies are identified. It is also the point at which the patent holder agrees to be included and offers licences on FRAND terms. Otherwise, an alternative must be found or the standard proposal abandoned. Once the standard incorporating the SEP has been implemented,

<sup>10</sup> <https://worldwide.espacenet.com/patent/search/family/039230587/publication/EP2070217B1?q=pn%3DEP2070217B1>

<sup>11</sup> <https://worldwide.espacenet.com/patent/search/family/039091776/publication/EP2087626B1?q=EP2087626B1>

<sup>12</sup> <https://www.etsi.org/technologies/mobile/4g>

interested companies must negotiate a licence with the patent holder under FRAND terms.

Although they are interconnected, SEPs and normal patents differ in several respects. A patent protects an invention within the country in which it was issued, giving the owner the freedom to exploit it as they wish, including through different licensing strategies in different countries. In contrast, SEPs are considered essential for implementing a standard and the patent owner has agreed to license them to any third party that complies with the FRAND conditions in all territories in which the standard is recognised.

### Definition of FRAND licences

In order to comply with the standardisation objectives, which aim to disseminate SEP technology on the most favourable terms for all parties involved, the patent holder must agree to offer licences that comply with FRAND conditions. While negotiations on specific details will be left to the parties involved, the following principles must be followed:

- **Fair:** the patent holder must negotiate the licensing terms equitably, without taking advantage of their position to impose abusive or restrictive terms.
- **Reasonable:** the fees and terms of the licence must reflect the value of the patent and be consistent with what would be reasonable in the industry.
- **Non-Discriminatory:** all licensees must have access to the patents under the same conditions and terms, without unjustified preferences or exclusions.

FRAND conditions are not mandatory requirements automatically imposed on patent holders when licensing SEPs; rather, they are voluntary commitments arising from participation in and acceptance of standard-setting processes. In essence, they are contractual undertakings rather than legal restrictions placed on the patent itself. These licences were created to ensure adequate compensation for both parties while mitigating concerns about unfair competition in standardisation processes. The main impacts of implementing FRAND obligations are as follows:

- **Reasonable costs:** FRAND terms regulate the costs of granting SEP licences. Without this mechanism, patent holders could impose excessively high fees on potential licensees for the use of indispensable technologies required by a standard.
- **Transparency and non-discrimination:** By requiring uniform and objective licensing conditions, FRAND prevents discriminatory practices—ensuring that access to a licence is not refused to competitors or offered under arbitrary or unequal terms.
- **Simplification of licensing negotiations:** In cases where a single standard essential

technology is owned collectively by multiple entities, FRAND licences help streamline the process of obtaining the necessary intellectual property rights, promoting efficiency and cooperation among rights holders.

## Enforcement of FRAND licences

Patent holders are free to decide whether and how to license their technology. If they decide to participate in Standard Development, they commit themselves to license their SEP under FRAND terms. FRAND licences can be enforced by any interested third party through Standard Organisations and judicial intervention. Normally, the SDO of a given field requires patent owners to declare whether they are willing to offer licences on FRAND terms before the technology is standardised. If the declaration is positive, a FRAND commitment is incorporated for SEP owners, obliging them to offer licences on reasonable terms to any company implementing the standards via licensing agreements and SDO internal rules and regulations.

There are enforcement and control mechanisms in place to deal with SEP holders who are unwilling to negotiate or who do not offer fair and non-discriminatory terms. National courts will assess whether the offered licence meets FRAND requirements and may impose the terms of a FRAND licence or royalty in cases where one of the parties is not negotiating in good faith.

## Open standards

Open standards are a specific type of standard that is explicitly available to anyone interested in adopting, implementing and developing it. They are defined by open access, which allows free use and enables third-party participation in their development and improvement. Open standards are considered non-proprietary assets, owned by no single entity, and they foster a collaborative and transparent approach to the creation of standards. Unlike traditional standards, open standards promote accessibility and openness, encouraging the creation of a cohesive ecosystem in which anyone can freely implement the standards and contribute to their evolution.

Open standards are relevant to many industries that require a high degree of interoperability and compatibility between different pieces of hardware and software. Examples of open standards can be found in the telecommunications and information technology industries, namely:

- the USB/USB-C<sup>13</sup> ports that enable compatibility across devices and different manufacturers
- Domain Name System (DNS)<sup>14</sup> adopted as an open protocol that translates domain name from human friendly language to numeric IP addresses that computers use to identify each other on the network.

<sup>13</sup> <https://www.usb.org/about>

<sup>14</sup> <https://learn.microsoft.com/en-us/windows-server/networking/dns/dns-overview>

- The Wi-Fi<sup>15</sup> standard, formally known as IEEE 802.11, is a family of open wireless networking protocols that facilitate high-speed, reliable wireless communication over local area networks.

## V. Standardisation in EU-Funded Collaborative Projects

### Use of Standards within EU-funded projects

Standardised technologies commonly appear in EU-funded projects, either as listed Background assets for project implementation, or potentially as key exploitable results (KERs) that may lead to the adoption of a new standard in the industry. Participants must manage these assets as indicated for any other type of assets, through the Grant Agreement (GA) and Consortium Agreement (CA) stipulations, ensuring detailed licensing listing in Background, compliance with project obligations, and alignment with IP rules to avoid potential future disputes.

#### Background

When Standards assets are required for a certain EU initiative, they shall be treated and listed explicitly as any other asset referenced as background. This means that rights and licences over them shall be negotiated with the owner of the standard and the potential rights shall be listed and detailed properly, not only to ensure proper project implementation, but to clarify future use and exploitation of those Results. This step is crucial to prevent the action implementation to be blocked due to the lack of enough rights.

#### Results and exploitation plan

Ownership of standard results follows the same rules as other project assets. Depending on what was agreed, Results might be owned by the Beneficiary that generated them or jointly by several partners that participated in its obtention. Results with standardisation potential require early assessment and protection mechanisms before disclosure to the market, potential investors or to standard bodies. Any public disclosure without proper protection may destroy patentability and trade secret protection.

When a technology is standardised, it can affect positively the exploitation plan, since it provides an extraordinary income (SEP licensing) as the related companies will require a standardised license for the use of the technology. Therefore, ensuring early protection and management is crucial to protect future exploitation rights.

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<sup>15</sup> <https://www.wi-fi.org/>

### Practical example: CEN Workshop Agreement

A practical example of Standardisation influence in EU consortia is the CEN Workshop Agreement (CWA), which is a temporary document (preceding official Standardisation), that is designed to provide urgent guidance and specifications on topics such as Intellectual property and technology management and governance.

Before proposing a CWA, coordinators shall clarify any intellectual property status (protection, licenses and ownership) within the project. Then, partners shall draft guidelines and publish them via CEN channel<sup>16</sup> for industry adoption.

### Checklist questions for proper Standard implementation in EU-funded projects

To ensure proper standards management in EU-funded projects, certain key questions shall be addressed by project coordinators and partners such as:

- Does the project rely on existing standards as background IP? Has a compliant licence been secured, covering topics such as project implementation and obligations (e.g. access rights, exploitation and dissemination)? Have these topics been defined and detailed in any of the project Agreements? (e.g. Grant Agreement, Consortium Agreement or related)
- For results with standardisation potential, how pre-disclosure/pre protection will be managed? How concerned results will be protected (e.g. patents)?
- How will the standardisation align with the exploitation and dissemination obligations?

Addressing these questions will ensure a proper orientation for standards management and implementation within the EU initiative.

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<sup>16</sup> <https://www.cencenelec.eu/>

## VI. Standardisation and Small and Medium Enterprises

### How Standards strength SME's position and credibility

Standards are a powerful tool that strategically enhance SME's relevance in their respective sectors by improving their market positioning, presence and credibility. From the commercial perspective, the use of standardised technologies boosts company competitiveness by reducing costs and accelerating its innovation potential, facilitating the access and share to reliable and proven know-how, and potential access to new markets. Standards also increase compatibility between different products and components. More specifically in the context of EU initiatives, standards can also play a crucial role in project success, either by providing the necessary technological knowledge to implement the action or by informing future commercial scaling strategies and revenue, as described above.

Moreover, the adoption and recognition of international standards provide trust and credibility in front of customers and partners, while increasing the investor appealing based on the use of reliable and proven technologies, with specifications compliant with the current legislation (which usually means lesser risks for investments).

### Involvement of small and medium enterprises in standard processes

Small and medium enterprises (SMEs) often find it challenging to understand and engage effectively with the acquisition, implementation, and promotion of standards and essential patents (such as dealing with the complexities of the patent landscape and licensing agreements). In addition, SMEs struggle with a lack of awareness and specialised knowledge in this field, which limits their ability to participate meaningfully in standard-setting activities. Numerous initiatives have been launched to address these challenges and promote and facilitate SME representation and active involvement in standardisation processes and technical committees. Key examples include:

- The CEN-CENELEC SME Programmes<sup>17</sup> fosters SME participation in European standardisation by offering guidance, workshops, and financial support to reduce barriers to entry. These organisations also have established internal working groups and advisory panels to facilitate SME inputs in standardisation processes.
- The SME United represents SME interests at the EU level and advocating for better SME integration into standardisation policies.<sup>18</sup>
- The Enterprise Europe Network (EEN) assists SMEs with access to international standardisation bodies, intellectual property advice, and collaborative projects.<sup>19</sup>

<sup>17</sup> <https://www.cencenelec.eu/get-involved/small-and-medium-enterprises-smes/smes-and-standards/>

<sup>18</sup> <https://www.smeunited.eu/news/empowering-smes-by-shaping-standardisation-through-sbs-experts>

<sup>19</sup> <https://een.ec.europa.eu/>

These initiatives provide SMEs with tailored support and funding opportunities to help them navigate the complex intellectual property and regulatory landscape associated with standards and SEPs. They also facilitate SME involvement in technical panels and standard adaptation processes.

### Recommendations for SMEs

It is recommended as good practices for any SME or institution seeking to offer or implement standardised technologies:

- The proper IP protection of their inventions through strong patents, suited to their commercial interests and the know-how involved, prior to evaluate the possibility of bringing it as a standard.
- Effective verification that the technology of interest is being offered as an SEP is usually possible by consulting the relevant SDO's database. For example, a search for telecommunications standards can be conducted in the ETSI database<sup>20</sup>, and then negotiations can be started with the owner on FRAND terms. This initial step of due diligence is crucial to ensure legal compliance and to avoid any infringement risks. Once it has been confirmed that a licence is necessary, companies must obtain the relevant licences for any essential patents or intellectual property rights before incorporating the standard into their products. Taking this proactive approach helps prevent future legal disputes and ensures the standard is adopted smoothly.
- For SMEs considering active participation in the standard-setting process, it is essential to carefully review the relevant standard-setting committee's intellectual property policy and FRAND commitments, as these policies often include disclosure obligations. These obligations may require participants to disclose any know-how or patent information/data that could be relevant to the standard. While transparency helps the standardisation process, premature disclosure can affect patent rights and potentially invalidate future applications if the inventions disclosed are not yet fully protected. Therefore, companies must weigh up the benefits of contributing to the development of standards against the risks posed by disclosure requirements within the specific standardisation context in which they are operating. Taking this approach to strategic decision-making helps to strike the right balance between influencing the standard and protecting valuable intangible assets.

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<sup>20</sup> <https://portal.etsi.org/ngppapp/DarePortlet.html?tbid=&SubTB>

## VII. Useful Resources

- [European Union Standardisation Regulation \(EU\) No 1025/2012](#)
- [EU Standardisation Strategy](#)
- [Standardisation Requests](#)
- [CEN – European Committee for Standardization](#)
- [CENELEC – European Committee for Electrotechnical Standardization](#)
- [HS Booster](#)
- [ETSI – European Telecommunications Standards Institute](#)
- [EISMEA – Standardisation Support \(Single Market Programme\)](#)
- [EC Research & Innovation](#)
- [Small Business Standards \(SBS\)](#)

Useful links to standard institutions that provide assistance and resources related to standardisation for SMEs.:

- [Local support for SMEs by CEN-CENELEC experts](#)
- [Guide on “Using standards to support growth, competitiveness and innovation”](#)
- [Small Business Standards website for SMEs](#)
- [ETSI member page](#)
- [ISO resources and publications of interest for SMEs](#)

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

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