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NOTE

From:	Delegations of Austria, Czech Republic, Germany, Hungary, Italy, Latvia, Portugal, Slovakia, Spain
To:	Working Party on Intellectual Property (Patents)
N° Cion doc.:	8900/23 + ADD 1-4
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standard essential patents and amending Regulation (EU) 2017/1001 - Position paper

Delegations will find attached a position paper relating to the Commission's intent to withdraw the above-mentioned proposal (see WK 4148/2025), which has now been joined by the delegation of Hungary.

This position paper is now supported by the delegations of Austria, the Czech Republic, Germany, Hungary, Italy, Latvia, Portugal, Slovakia and Spain.

Position paper on the Commission ‘s intent to withdraw the proposal on SEPs

by the delegations of Austria, The Czech Republic, Germany, Hungary, Italy, Latvia, Portugal, Slovakia and Spain

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On 12 February 2025, the Commission communicated its intention to withdraw the Proposal for a regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001. According to the Commission’s assessment an agreement is not foreseeable.

We do not agree with this assessment and are committed to finding an agreement on the SEP regulation.

1. The Commission's intention to withdraw the SEP Regulation ignores the overwhelming support of the European Parliament and misinterprets the discussions in the Council.
The Commission has published the proposal for a SEP regulation on 27 April 2023, as part of a “patent package” that also entails a proposal for a regulation on compulsory licenses as well as four proposals for regulations on supplementary protection certificates (SPC).
The European Parliament has adopted a position on the proposal at first reading by a large majority on 28 February 2024.
The Council has discussed the proposal in various Council Working Party (CWP) meetings during the Spanish Presidency in 2023. After focussing on different parts of the patent package in 2024, discussions on the SEP regulations in the CWP were about to resume in February during the Polish Presidency. The Polish Presidency had announced four full-day CWP meeting on this proposal. The focus on other parts of the patent package in 2024 cannot be interpreted as a lack of commitment on working on the SEP regulation, but is merely due to a lack of resources to cover all parts of the patent package all at once. The agenda for the Polish Presidency shows the Council’s commitment to continue working on the regulation.

2. We remain committed to the goal of promoting transparency and predictability with regard to SEP and improving the SEP licensing system. It is for the benefit of EU industry and users of the European patent system to facilitate negotiations on SEP licensing agreements. Continuing the discussions on the SEP regulation proposal is the most effective path to address the numerous issues with SEP licensing.
We reaffirm our ambition to continue the legislative process with the co-legislators to develop a balanced regulatory framework for the licensing of SEP that can be widely accepted by both licensees and licensors while minimizing further bureaucracy and additional costs.