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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Intellectual Property (Patents)

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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standard essential patents and amending Regulation (EU) 2017/1001 - Member States comments
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Delegations will find attached Member States comments from the delegations of Greece and Portugal regarding the Commission's intent to withdraw the above-mentioned proposal.

**EL comments on
the Commission's proposal to withdraw
the Proposal for a Regulation on Standard Essential Patents (SEPs)**

Regarding the European Commission's withdrawal of its Proposal for a Regulation on Standard Essential Patents (SEPs) (COM(2023) 232), the Hellenic delegation, while acknowledging the need to address the concerns raised by SEP implementers to increase the transparency of the existing system, supports the withdrawal for the following reasons:

During the examination of the draft Proposal by the IP Working Party the Hellenic delegation has expressed reservations, since the proposed mechanism does not ensure the fulfillment of the objectives of the initiative. More specifically:

1. An Agency with patent examination expertise, such as the European Patent Office, is not available to manage the tasks foreseen in the proposed Regulation (e.g. essentiality checks).
2. Additional obligations and costs to SEP holders are introduced (e.g. obligation to register in the SEP Register, obligation to pay fees, FRAND determination procedure)
3. A time-consuming and costly FRAND determination process is proposed
4. A restriction to enforce a patent is introduced for SEP holders prior to the completion of the FRAND determination process, which is a disproportionate burden preventing the exercise of patent rights.
5. A limitation is introduced to the fundamental property right foreseen in the EU Charter of Fundamental Rights (article 17), preventing the SEP holder, who has failed to register a SEP in the SEP Register, a) from exploiting his IP right and receiving royalties and b) for claiming damages in the event of infringement
6. A limitation is introduced to the fundamental right of access to justice foreseen in article 47 of the EU Charter of Fundamental Rights for SEP holders, who have not registered a SEP in the SEP Register.

7. An Agency with prior expertise in valuation of a SEP and in training evaluators and conciliators on SEP related issues, is not available to guarantee that the tasks foreseen in the proposed Regulation will be completed.

In our view, the following issues should be further explored:

1. Whether the current SEP ecosystem raises any barriers to innovation for SMEs
 2. The potential impact of litigation on SEP licensing
 3. The determination of FRAND licensing terms by national courts
 4. Awareness and support to SMEs as standard implementers for facilitating licensing negotiations and SEP enforcement
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PORTUGAL (PT)

With reference to the intention of the European Commission to withdraw the legislative proposal for a Regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU) 2017/1001, announced in its work programme for 2025, Annex IV, we have the honour to inform that **Portugal favours the continuation of the analysis of this proposal by the co-legislators.**

We therefore support and adhere to the content of Position Paper WK 148/2025 REV 1.
