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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 27 April 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |

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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 - REGULATORY SCRUTINY BOARD OPINION |
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Delegations will find attached document SEC(2023) 174 final.

Encl.: SEC(2023) 174 final



EUROPEAN COMMISSION

Brussels, 20.04.2023
SEC(2023) 174 final

REGULATORY SCRUTINY BOARD OPINION

**Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on standard essential patents and amending Regulation (EU)2017/1001**

{COM(2023) 232 final}
{SWD(2023) 123 final} {SWD(2023) 124 final} {SWD(2023) 125 final}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Standard Essential Patents

Overall opinion: POSITIVE

(A) Policy context

This initiative aims to introduce legislation to strengthen the existing Standard Essential Patents (SEP) licensing system in the EU. SEPs are patents that protect the technology that is incorporated in a standard and are “essential” where an invention must be used in a product to comply with a technical standard.

The absence of specific national or EU rules on SEPs means there is limited information on who owns SEPs and it is not always clear that all patents sought to be licensed as SEP are necessary (essential) to implement a standard. There is also limited information about the level of SEP license fees so that SEP implementers have difficulties assessing the SEP’s owner royalty demands. Finally, SEP licensing disputes are often time and costs intensive.

This initiative is part of the Commission’s Intellectual Property Action Plan from November 2020 and is complementary to its updated Standardisation Strategy from February 2022.

B) Summary of findings

The Board notes additional information provided and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The report does not provide a clear overview of all the measures to minimise the negative impacts on Small and Medium Enterprises (SMEs) nor their combined impact.**
- (2) The report does not sufficiently disaggregate the costs to allow the administrative costs to be identified for the purpose of the One In, One Out approach.**

This opinion concerns a draft impact assessment which may differ from the final version.

Commission européenne/Europese Commissie, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË - Tel. +32 22991111
regulatory-scrutiny-board@ec.europa.eu

(C) What to improve

(1) The report should better set out all the measures to minimise the negative impacts of SMEs as well as their combined impacts. The description of the SME supporting measures should be strengthened when presenting the options, when discussing the preferred option and in the dedicated annex reporting on the SME test.

(2) The calculation of key estimates need to be clarified and precise references need to be provided. The report should clearly present - both in the main report and in annex 3 - the different categories of costs. This should allow to identify administrative costs in scope of the One In, One Out approach.

(3) The report should clarify the importance of SEPs in the overall EU Intellectual Property Rights system and further explain the links to the other relevant initiatives such as Supplementary Protection Certificates and Compulsory Licensing. The effects of those initiatives should be taken into account in the baseline.

(4) The report should provide further evidence supporting the choice of the EU Intellectual Property Office (EUIPO) as the body responsible for the new EU competence centre on SEPs. It should explain why the EUIPO is best suited for the corresponding tasks and which alternative options have been discarded.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The lead DG must take these recommendations into account before launching the interservice consultation.

In order to accommodate the Board's recommendations, the lead DG may need to further adjust the attached quantification tables to reflect this.

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| Full title | Proposal for a regulation of the European Parliament and of the Council establishing a framework for transparent licensing of standard essential patents |
| Reference number | PLAN/202/9218 |
| Submitted to RSB on | 20/02/2023 |
| Date of RSB meeting | Written procedure |

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

| I. Overview of Benefits (total for all provisions) – Preferred Option | | |
|--|------------------|--|
| Description | Amount | Comments |
| Direct benefits | | |
| Services provided by the Competence centre (e.g. SME assistance and trainings, studies, case-law repository) | EUR 5.9 million | Information provided for free. Free trainings and assistance to SMEs. Information of interest of both parties to license negotiations. |
| Access to SEP register with information on essentiality of patents and SEP owners' portfolio | EUR 71.1 million | Free access to basic information (e.g. SEP owners contact details, number of SEP registered). Fee based access to information on essentiality of individual patents, and essentiality rate of owners' portfolio. Information of interest of both parties to license negotiations. |
| Savings due to conciliation | EUR 7.5 million | Includes potential of up to 70% decrease in court cases; as well as value of advice on FRAND rate. Both parties to license negotiations are likely to benefit. |
| Saving in negotiation costs due to published aggregate royalty | EUR 25.3 million | Published aggregate royalty should facilitate license negotiations. Both parties to license negotiations are likely to benefit |
| Indirect benefits | | |
| EPO/NPO | EUR 29 million | Potential additional income from new patents (uncertain if it will materialise) |
| Administrative cost savings related to the 'one in, one out' approach* | | |
| n/a | | SEP licensing is not regulated in the EU. Hence there are no existing administrative obligations |

| II. Overview of costs – Preferred option | | | | | | | |
|--|-----------------------------|--------------------|-----------|------------|-----------|-----------------|-----------|
| | | Citizens/Consumers | | Businesses | | Administrations | |
| | | One-off | Recurrent | One-off | Recurrent | One-off | Recurrent |
| Action (a) | Direct adjustment costs | | | | | | |
| | Direct administrative costs | | | | | | |

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|---|---------------------------------------|--|--|--|------------------|--|--|
| | Direct regulatory fees and charges | | | | EUR 17.6 million | | |
| | Direct enforcement costs | | | | | | |
| | Indirect costs | | | | EUR 34.1 million | | |
| Costs related to the 'one in, one out' approach | | | | | | | |
| Total | Direct adjustment costs | | | | | | |
| | Indirect adjustment costs | | | | | | |
| | Administrative costs (for offsetting) | | | | | | |