

## The European Parliament v the Commission: the SEP case undermining the EU's image

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In February 2025, the European Commission announced the withdrawal of its proposed SEP Regulation, referencing the impossibility of reaching an agreement among member states in the Council and talking of the need to "stimulate a broader consensus" to avoid divisive text.

Some countries, such as Ireland and Sweden, voiced fears the proposed legislation imposed excessive regulatory burdens, while others (Italy, France, Germany, countries where cars are produced) underlined its strategic importance.

At the time the decision to pull the regulation was made, Industry Commissioner Stéphane Séjourné said the aim was to initiate a more collaborative approach to developing SEP policy, suggesting there was a desire to present a new, more balanced proposal.

Yet, although the regulation was controversial, the European Parliament gave it strong support, considering it strategic for European industry and SMEs, which are often under pressure from large global players.

As a result, MEPs recently voted to refer the withdrawal to the Court of Justice of the European Union. This is virtually unprecedented and highlights a growing tension between the European Parliament and European Commission.

Moreover, the clash risks fuelling the perception of a divided EU which is vulnerable to external pressures precisely at a time when technological sovereignty is a fundamental priority.

### **European lobbying and governance**

Contrary to what one might think, the pressure to reintroduce the regulation does not come mainly from Big Tech. Instead, it seems to be a consequence of behind-the-scenes lobbying by powerful industrial interests linked to German car manufacturers.

These companies, large users of standardised technologies, pushed for legislation that would dramatically increase SEP licensing costs and limit further the bargaining power of SEP holders, who are already subjected to multiple check and balances, starting with FRAND commitments. Now they are pushing for it to be revived.

The withdrawn text was perceived by many as too favourable to implementers of SEPs and over-burdensome for those who license them and who invest huge resources to develop technologies and include them in international standards without direct compensation. Its provisions would have increased the bureaucracy surrounding licensing transactions, instead of looking for efficient, market-led solutions.

This dynamic raises questions about European governance: to what extent can the EU institutions balance the interests of strategic industrial sectors without compromising the fairness of the innovation system?

### **Another way**

The SEP case shows that the transparency of the legislative process and the ability to resist lobbying pressure are crucial elements for the EU's credibility. This is where the focus should be.

European competitiveness at a time when innovation is at the heart of what drives the global economy forward is a non-negotiable. The Draghi report makes that very clear, while also highlighting the many obstacles that currently lie in the way of Europe fulfilling the huge potential it undoubtedly has.

With this in mind, rather than opening a legal dispute, Parliament could have asked the Commission to reopen consultations with stakeholders to draft a shared text focused on the SEP licensing market. Given the Commission itself, in communicating the withdrawal, had expressed its willingness to work on a new proposal that would ensure a greater balance between innovation, transparency and competitiveness, this would surely have been positively received.

In such a way, the damaging perception of divided EU institutions could have been avoided.

In fact, this can still happen. Litigation before the CJEU may currently be the way things are heading, but it can be avoided. There is nothing to stop the European Commission going ahead on its own initiative and setting out a new process – involving all stakeholders in the SEP licensing market – designed to lead to new proposals for the Parliament and European Council to consider. By presenting a revised text that balances the interests of SEP owners and implementers, while ignoring lobbying pressure from deep pocket special interest groups, European competitiveness would be enhanced, especially for companies that innovate.

What's more, balanced proposals are likely to enjoy widespread support and to become actionable far more quickly than the controversial legislation that was originally put forward in April 2023.

The alternative is not one that anybody who cares about the future of European competitiveness should wish for. If the appeal to the Court of Justice continues, regulatory uncertainty could well curb investment in innovation and weaken the EU's position in global negotiations on technology standards.



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