



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 June 2011

**Interinstitutional File:
2011/0093 (COD)**

10804/11

LIMITE

**PI 59
CODEC 1020**

NOTE

From: Presidency

To: MERTENS Group

No. prev. doc. 10629/11 PI 53 CODEC 891

No. Cion prop.: 9224/11 PI 31 CODEC 671 + 9226/11 PI 32

Subject: Proposal for a Regulation of the Council and the European Parliament
implementing enhanced cooperation in the area of the creation of unitary patent
protection
- Presidency compromise proposal

Delegations will find in Annex a set of compromise proposals drawn up by the Presidency for discussion at the Mertens group meeting on 14 June 2011.

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<p>Draft Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection (COM(2011) 215)</p> <p><i>Changes compared to doc. 10629/11.</i></p>	
<p>RECITALS</p>	
<p>Recital 15a</p> <p>In the framework of the Select Committee, the participating Member States should set the conditions of entrusting the European Patent Office to carry out the tasks entrusted to it by the participating Member States, ensure that requests for unitary effect are filed with the European Patent Office within one month of the date of the publication of the mention of the grant in the European Patent Bulletin and ensure that they are submitted in the language of the proceedings before the European Patent Office together with the translation prescribed for, during a transitional period, by Council Regulation.../... [translation arrangements]. In the framework of the Select Committee, the participating Member States should also set the level of the renewal fees and the share of the distribution of the renewal fees in accordance with the criteria set out in this Regulation.</p>	<p>Recital 15a</p> <p>In the framework of the Select Committee, the participating Member States should <u>[deleted] ensure the governance and supervision of the activities related to the tasks entrusted to the European Patent Office by the participating Member States,</u> ensure that requests for unitary effect are filed with the European Patent Office within one month of the date of the publication of the mention of the grant in the European Patent Bulletin and ensure that they are submitted in the language of the proceedings before the European Patent Office together with the translation prescribed for, during a transitional period, by Council Regulation.../... [translation arrangements]. <u>[deleted] The participating Member States should also ensure the setting, in accordance with the voting arrangements in Article 35(2) of the EPC, of</u> the level of the renewal fees and the share of the distribution of the renewal fees in accordance with the criteria set out in this Regulation.</p>
<p>Recital 16</p> <p>Patent proprietors should pay one common annual renewal fee for European patents with unitary effect. Renewal fees should be progressive throughout the term of the patent protection and, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, should cover all costs associated with the grant of the European patent and the administration of the unitary patent protection in accordance with Article 146 EPC. The level of the renewal fees should be fixed with the aim of</p>	<p>Recital 16</p> <p>Patent proprietors should pay one common annual renewal fee for European patents with unitary effect. Renewal fees should be progressive throughout the term of the patent protection and, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, should cover all costs associated with the grant of the European patent and the administration of the unitary patent protection <u>[deleted]</u>. The level of the renewal fees should be fixed with the aim of facilitating innovation and fostering</p>

<p>facilitating innovation and fostering the competitiveness of European businesses. It should also reflect the size of the market covered by the patent and be similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time where the level of the renewal fees is first fixed.</p>	<p>the competitiveness of European businesses. It should also reflect the size of the market covered by the patent and be similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time where the level of the renewal fees is first fixed.</p>
<p>Recital 18</p> <p>Renewal fees should be paid to the European Patent Organisation. The European Patent Office shall retain an amount to cover the expenses generated at the European Patent Office in carrying out tasks in relation to the unitary patent protection. The remaining amount shall be distributed among the participating Member States, which should be used for patent-related purposes. The share of distribution should be set on the basis of fair, equitable and relevant criteria namely the level of patent activity and the size of the market and should guarantee a minimum amount to be redistributed to each participating Member State. The distribution should provide compensation for having an official language other than one of the official languages of the European Patent Office, having a disproportionately low level of patenting activity established on the basis of the European Innovation Scoreboard (EIS) and having acquired membership of the European Patent Organisation relatively recently.</p>	<p>Recital 18</p> <p>Renewal fees should be paid to the European Patent Organisation. The European Patent Office shall retain an amount to cover the expenses generated at the European Patent Office in carrying out tasks in relation to the unitary patent protection, <u>in accordance with Article 146 of the EPC</u>. The remaining amount shall be distributed among the participating Member States, which should be used for patent-related purposes. The share of distribution should be set on the basis of fair, equitable and relevant criteria namely the level of patent activity and the size of the market and should guarantee a minimum amount to be redistributed to each participating Member State. The distribution should provide compensation for having an official language other than one of the official languages of the European Patent Office, having a disproportionately low level of patenting activity established on the basis of the European Innovation Scoreboard (EIS) and having acquired membership of the European Patent Organisation relatively recently.</p>
<p>Recital 21a</p> <p>The jurisdiction for European patents with unitary effect should be established and governed by an instrument setting up a unified patent litigation system.</p>	<p>Recital 21a</p> <p>The jurisdiction for European patents with unitary effect should be established and governed by an instrument setting up a unified patent litigation system <u>for European patents and European patents with unitary effect</u>.</p>

<p>ARTICLES</p>	
<p>Article 5a Law applicable to a European patent with unitary effect</p> <p>A European patent with unitary effect shall be governed by:</p> <p>(a) this Regulation and Regulation .../... implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements and Union law;</p> <p>(b) in matters not covered by (a), the EPC;</p> <p>(c) in matters not covered by (a) or (b), national law including rules of private international law, determined in accordance with Article 10.</p>	<p>Article 5a Law applicable to a European patent with unitary effect</p> <p>[deleted]</p>
<p>Article 8 Limitation of the effects of the European patent with unitary effect</p> <p>The rights conferred by the European patent with unitary effect shall not extend to any of the following:</p> <p>(a) acts done privately and for non-commercial purposes;</p> <p>(b) acts done for experimental purposes relating to the subject matter of the patented invention;</p> <p>(c) acts carried out solely for the purpose of conducting the necessary tests and trials in accordance with Article 13(6) of Directive 2001/82/EC or Article 10(6) of Directive 2001/83/EC in respect of any patent covering the product within the meaning of either of those Directives;</p> <p>(d) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription nor acts concerning the medicine so prepared;</p> <p>(e) the use on board vessels of countries other than participating Member States of the patented invention, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of participating Member States, provided that the invention is</p>	<p>Article 8 Limitation of the effects of the European patent with unitary effect</p> <p>The rights conferred by the European patent with unitary effect shall not extend to any of the following:</p> <p>(a) acts done privately and for non-commercial purposes;</p> <p>(b) acts done for experimental purposes relating to the subject matter of the patented invention;</p> <p>(c) acts carried out solely for the purpose of conducting the necessary tests and trials in accordance with Article 13(6) of Directive 2001/82/EC or Article 10(6) of Directive 2001/83/EC in respect of any patent covering the product within the meaning of either of those Directives;</p> <p>(d) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription nor acts concerning the medicine so prepared;</p> <p>(e) the use on board vessels of countries other than participating Member States of the patented invention, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of participating Member States, provided that the invention is</p>

<p>used there exclusively for the needs of the vessel;</p> <p>(f) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of States other than participating Member States, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter participating Member States;</p> <p>(g) the acts specified in Article 27 of the Convention on International Civil Aviation of 7 December 1944, where these acts concern the aircraft of a country other than a participating Member State;</p> <p>(h) acts as covered by the farmers privilege pursuant to Article 14 of Regulation (EC) No. 2100/94 which applies mutatis mutandis;</p> <p>(i) the use by a farmer of protected livestock for farming purposes, on condition that the breeding animals or other animal reproductive material were sold or otherwise commercialised to the farmer by the patent proprietor or with his/her consent. Such use includes the provision of the animal or other animal reproductive material for the purposes of his/her agricultural activity, but not the sale in the framework of or for the purpose of commercial reproductive activity;</p> <p>(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of Council Directive 91/250/EEC, in particular, by its provisions on decompilation and interoperability; and</p> <p>(k) the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council.</p>	<p>used there exclusively for the needs of the vessel;</p> <p>(f) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of States other than participating Member States, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter participating Member States;</p> <p>(g) the acts specified in Article 27 of the Convention on International Civil Aviation of 7 December 1944, where these acts concern the aircraft of a country other than a participating Member State;</p> <p>(h) <u>the use by a farmer of the product of his crop for propagation or multiplication on his own holding, provided that the reproductive vegetable material was sold or otherwise commercialized by the patent proprietor or with his consent to the farmer, for agricultural purposes. The scope and the detailed methods of this use are laid down in Article 14 of Regulation (EC) No. 2100/94;</u></p> <p>(i) the use by a farmer of protected livestock for farming purposes, on condition that the breeding animals or other animal reproductive material were sold or otherwise commercialised to the farmer by the patent proprietor or with his/her consent. Such use includes the provision of the animal or other animal reproductive material for the purposes of his/her agricultural activity, but not the sale in the framework of or for the purpose of commercial reproductive activity;</p> <p>(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of Council Directive 91/250/EEC, in particular, by its provisions on decompilation and interoperability; and</p> <p>(k) the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council.</p>
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<p>Article 12a Select Committee</p> <p>1. In their capacity as Contracting States to the EPC, the participating Member States shall ensure the governance and supervision of the activities related to the tasks referred to in Article 12 by the European Patent Office. To that end they shall set up a Select Committee of the Administrative Council of the European Patent Organisation within the meaning of Article 145 of the EPC.</p> <p>2. The participating Member States in the framework of the Select Committee shall:</p> <p>(a) set the conditions of entrusting the European Patent Office to carry out the tasks referred to in Article 12(1);</p> <p>(b) ensure that requests by the patent proprietor for unitary effect for a European patent are filed in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin;</p> <p>(c) ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in Article 6 of Council Regulation .../... [translation arrangements], has been submitted together with the translations referred to in that Article; and that the European Patent Office is informed of limitations and revocations of European patents with unitary effect;</p> <p>(d) set the level of the renewal fees in accordance with Article 15; and</p> <p>(e) set the share of distribution of the renewal fees in accordance with Article 16.</p>	<p>Article 12a Select Committee</p> <p>1. In their capacity as Contracting States to the EPC, the participating Member States shall ensure the governance and supervision of the activities related to the tasks referred to in Article 12 by the European Patent Office. To that end they shall set up a Select Committee of the Administrative Council of the European Patent Organisation within the meaning of Article 145 of the EPC.</p> <p>2. The participating Member States [deleted] shall:</p> <p>[deleted]</p> <p>(a) ensure that requests by the patent proprietor for unitary effect for a European patent are filed in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin;</p> <p>(b) ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in Article 6 of Council Regulation .../... [translation arrangements], has been submitted together with the translations referred to in that Article; and that the European Patent Office is informed of limitations and revocations of European patents with unitary effect;</p> <p>(c) ensure the setting of the level of the renewal fees in accordance with Article 15; and</p> <p>(d) ensure the setting of the share of distribution of the renewal fees in accordance with Article 16.</p>
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