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THE EUROPEAN UNION**

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**NOTE**

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from: General Secretariat of the Council  
to: Working Party on Intellectual Property (Patents)

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No. prev. doc.: 12313/09 PI 75  
No. Cion prop. 10786/00 PI 49

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Subject: Revised proposal for a Council Regulation on the Community Patent  
- Proposals by the Maltese delegation

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Delegations will find in Annex, for information, Malta's comments on the revised Proposal for a Council Regulation on the Community Patent as contained in 11417/09.

**Malta's Comments on the revised Proposal for a Council Regulation on the Community Patent (Council document 11417/09 dated 25 June 2009)**

Following the Working Party on Intellectual Property (Patents) held on 8 July 2009, Malta is proposing the changes below with regard to the Recitals that set the principles on which a Distribution Key for the allocation of renewal fees of the Community Patent will be based:

*Recital (5d)*

Malta proposes that Recital (5d) is amended to read as follows:

(5d) When fixing the level of the renewal fees the Select Committee shall take into account that the renewal fees shall:

- facilitate the promotion ~~protection~~ of innovation in Europe;
- foster the competitiveness of European business, especially SMEs, in the global economy;
- together with the fees due to be paid during the application phase, cover the costs associated with the granting and administration of the Community patent, thus contributing to the financial stability of the EPO; and
- reflect the size of the market covered by the Community patent, duly taking into account comparable patent systems.

*Justification:* The introduction of the word 'promotion' would reflect better one of the underlying objectives of this Proposal which is essentially to augment European innovation through patents. Whilst the word 'promotion' in itself also encompasses the notion of 'protection', it is felt that the word promotion reflects more sincerely the aspirations of the EU Innovation Strategy<sup>1</sup>. It is pertinent to note that the Spring European Council of 8-9 March 2009 referred to the 'strengthening', 'improvement' and 'promotion' of innovation as opposed to the use of the word 'protection'. Therefore, it is strongly felt that the revised Proposal should maintain the spirit of the text agreed by the European Council. The use of the word 'promotion' would also be in line with the use of the word 'promote' in the last bullet under Recital (5e).

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<sup>1</sup> Commission Communication on Putting knowledge into practice: A broad-based innovation strategy for the EU (COM (2006) 502)

Moreover, a renewal fee should be set at a level which is considered accessible to all enterprises, particularly SMEs with a view to promote innovation by means of a patent. In this context, Malta welcomes the second bullet under Recital (5d) that refers specifically to the competitiveness of European business, SMEs in particular.

*Recital (5e)*

Malta proposes that Recital (5e) is amended to read as follows:

(5e) When fixing the distribution key the Select Committee shall take into account that a basket of fair, equitable and relevant criteria shall be reflected. Amongst these criteria the following should be given particular importance:

- proportionality with regard to the level of patent activity;
- proportionality with regard to the size of the market;
- compensation for the lack of an official language in common with the EPO; and
- in cases of disproportionately low levels of patent activities, compensation should be provided with a view ~~due account must be taken to the need~~ to promote patent activity and facilitate innovation.

*Justification:* Malta would like to strongly emphasize the fact that the granting of a Community Patent anywhere in the EU would implicitly effect the protection of intellectual property in all Member States, despite the fact that the granting of the patent would not necessarily lead to any related industrial investment in all Member States. In this context, there is the need for clear reference to compensation to be included as one of the principles mentioned under this Recital. Consequently, Malta maintains that this fact should be factored in the distribution of revenues arising from the Community Patent amongst Member States.