



**COUNCIL OF  
THE EUROPEAN UNION**

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#### **INFORMATION NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee / Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
implementing enhanced cooperation in the area of the creation of unitary patent  
protection  
- Outcome of the European Parliament's first reading  
(Strasbourg, 10 to 13 December 2012)

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#### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mr Bernhard RAPKAY (S&D/ DE), on behalf of the S&D political group, and the EPP and ALDE political groups presented one compromise amendment (amendment 70) to the proposal for a Regulation. This amendment had been agreed during the informal contacts referred to above.

## II. VOTE

When it voted on 11 December 2012, the plenary adopted the compromise amendment (amendment 70) to the proposal for a Regulation. The Commission's proposal as thus amended and the legislative resolution constitute the European Parliament's position at first reading. It reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve it. The legislative act would then be adopted in the wording which corresponds to the European Parliament's position.

The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## **Creation of unitary patent protection \*\*\*I**

**European Parliament legislative resolution of 11 December 2012 on the proposal for a regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection (COM(2011)0215 – C7-0099/2011 – 2011/0093(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0215),
  - having regard to Article 294(2) and the first paragraph of Article 118 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0099/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Spanish Congress of Deputies and the Spanish Senate and by the Italian Chamber of Deputies, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the undertaking given by the Council representative by letter of 19 November 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Industry, Research and Energy (A7-0001/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Position of the European Parliament adopted at first reading on 11 December 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular the first paragraph of Article 118 thereof,

Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection<sup>1</sup>,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ L 76, 22.3.2011, p. 53.

<sup>2</sup> Position of the European Parliament of 11 December 2012

Whereas:

- (1) The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with greater choice and more opportunities contributes to the attainment of the objectives of the Union set out in Article 3(3) of the Treaty on European Union. Uniform patent protection within the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.
- (2) Pursuant to the first paragraph of Article 118 of the Treaty on the Functioning of the European Union (TFEU), measures to be taken in the context of the establishment and functioning of the internal market include the creation of uniform patent protection throughout the Union and the establishment of centralised Union-wide authorisation, coordination and supervision arrangements.
- (3) On 10 March 2011, the Council adopted Decision 2011/167/EU authorising enhanced cooperation between Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (hereinafter "participating Member States") in the area of the creation of unitary patent protection.

- (4) Unitary patent protection will foster scientific and technological advances and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It will also improve the level of patent protection by making it possible to obtain uniform patent protection in the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to proprietors of a European patent from both the participating Member States and from other States, regardless of their nationality, residence or place of establishment.
- (5) The Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter "EPC"), established the European Patent Organisation and entrusted it with the task of granting European patents. This task is carried out by the European Patent Office (hereinafter "EPO"). A European patent granted by the EPO should, at the request of the patent proprietor, benefit from unitary effect by virtue of this Regulation in the participating Member States. Such a patent is hereinafter referred to as a "European patent with unitary effect".

- (6) In accordance with Part IX of the EPC a group of Contracting States to the EPC may provide that European patents granted for those States have a unitary character. This Regulation constitutes a special agreement within the meaning of Article 142 of the EPC, a regional patent treaty within the meaning of Article 45(1) of the Patent Cooperation Treaty of 19 June 1970 as last modified on 3 February 2001 and a special agreement within the meaning of Article 19 of the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883 and last amended on 28 September 1979.
- (7) Unitary patent protection should be achieved by attributing unitary effect to European patents in the post-grant phase by virtue of this Regulation and in respect of all the participating Member States. The main feature of a European patent with unitary effect should be its unitary character, i.e. providing uniform protection and having equal effect in all the participating Member States. Consequently, a European patent with unitary effect should only be limited, ■ transferred or revoked, or lapse, in respect of all the participating Member States. ***It should be possible for a European patent with unitary effect to be licensed in respect of the whole or part of the territories of the participating Member States.*** To ensure the uniform substantive scope of protection conferred by unitary patent protection, only European patents that have been granted for all the participating Member States with the same set of claims should benefit from unitary effect. ■ Finally, the unitary effect attributed to a European patent should have an accessory nature and should be deemed not to have arisen to the extent that the basic European patent has been revoked or limited.

- (8) In accordance with the general principles of patent law and Article 64(1) of the EPC, unitary patent protection should take effect retroactively in the participating Member States as from the date of publication of the mention of the grant of the European patent in the European Patent Bulletin. Where unitary patent protection takes effect, the participating Member States should ensure that the European patent is deemed not to have taken effect on their territory as a national patent, so as to avoid any duplication of patent protection.
- (9) ***The European patent with unitary effect should confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection. This should be ensured through the establishment of a Unified Patent Court.*** In matters not covered by this Regulation or by Council Regulation (EU) No .../2012 of ... implementing enhanced cooperation in the area of unitary patent protection with regard to the applicable translation arrangements<sup>1\*</sup>, the provisions of the EPC, ***the Agreement on a Unified Patent Court, including its provisions defining the scope of that right and its limitations***, and national law, including rules of private international law, should apply.
- (10) ***Compulsory licences for European patents with unitary effect should be governed by the laws of the participating Member States as regards their respective territories.***

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<sup>1</sup> OJ L ...

\* OJ: Please insert the number and date of the Regulation contained in doc st. 18855/11 and complete the reference in the footnote.



- (11) *In its report on the operation of this Regulation, the Commission should evaluate the functioning of the applicable limitations and, where necessary, make appropriate proposals, taking account of the contribution of the patent system to innovation and technological progress, the legitimate interests of third parties and overriding interests of society. The Agreement on a Unified Patent Court does not preclude the European Union from exercising its powers in this field.*
- (12) In accordance with the case-law of the Court of Justice of the European Union, the principle of the exhaustion of rights should also be applied to European patents with unitary effect. Therefore, rights conferred by a European patent with unitary effect should not extend to acts concerning the product covered by that patent which are carried out within the participating Member States after that product has been placed on the market in the Union by the patent proprietor.
- (13) *The regime applicable to damages should be governed by the laws of the participating Member States, in particular the provisions implementing Article 13 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>1</sup>.*
- (14) As an object of property, a European patent with unitary effect should be dealt with in its entirety, and in all the participating Member States, as a national patent of the participating Member State determined in accordance with specific criteria such as the applicant's residence, principal place of business or place of business.

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<sup>1</sup> *OJ L 157, 30.4.2004, p. 45.*

- (15) In order to promote and facilitate the economic exploitation of an invention protected by a European patent with unitary effect, the proprietor of that patent should be able to offer it to be licensed in return for appropriate consideration. To that end, the patent proprietor should be able to file a statement with the EPO that he is prepared to grant a license in return for appropriate consideration. In that case, the patent proprietor should benefit from a reduction of the renewal fees as from the EPO's receipt of such statement.
- (16) The group of Member States making use of the provisions of Part IX of the EPC may give tasks to the EPO and set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee").
- (17) The participating Member States should give certain administrative tasks relating to European patents with unitary effect to the EPO, in particular as regards the administration of requests for unitary effect, the registration of unitary effect and of any limitation, licence, transfer, revocation or lapse of European patents with unitary effect, the collection and distribution of renewal fees, the publication of translations for information purposes during a transitional period and the administration of a compensation scheme for the reimbursement of translation costs incurred by applicants filing European patent applications in a language other than one of the official languages of the EPO.
- (18) ***In the framework of the Select Committee, the participating Member States should ensure the governance and supervision of the activities related to the tasks entrusted to the EPO by the participating Member States, ensure that requests for unitary effect are filed with the EPO within one month of the date of publication of the mention of the grant in the European Patent Bulletin and ensure that such requests are submitted in the language of the proceedings before the EPO together with the translation prescribed, during a transitional period, by Regulation (EU) No .../2012\* . The participating Member States should also ensure the setting, in accordance with the voting rules laid down in Article 35(2) of the EPC, of 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.***

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\* OJ: Please insert the number of the Regulation contained in doc st. 18855/11.

- (19) Patent proprietors should pay a single annual renewal fee for a European patent 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. The level of the renewal fees should be set with the aim of facilitating innovation and fostering the competitiveness of European businesses, *taking into account the situation of specific entities such as small and medium-sized enterprises, for example in the form of lower fees*. 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 when the level of the renewal fees is first set **█**.
- (20) The appropriate level and distribution of renewal fees should be determined in order to ensure that, in relation to the unitary patent protection, all costs of the tasks entrusted to the EPO are fully covered by the resources generated by the European patents with unitary effect and that, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, the revenues from the renewal fees ensure a balanced budget of the European Patent Organisation.
- (21) Renewal fees should be paid to the European Patent Organisation. *The EPO should retain an amount to cover the expenses generated at the EPO in carrying out tasks in relation to the unitary patent protection in accordance with Article 146 of the EPC. The remaining amount should be distributed among the participating Member States and 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 distributed to each participating Member State in order to maintain a balanced and sustainable functioning of the system.* The distribution should provide compensation for having an official language other than one of the official languages of the EPO, having a disproportionately low level of patenting activity *established on the basis of the European Innovation Scoreboard*, and/or having acquired membership of the European Patent Organisation relatively recently.
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- (22) An enhanced partnership between the EPO and central industrial property offices of the Member States should enable the EPO to make regular use, where appropriate, of the result of any search carried out by central industrial property offices on a national patent application the priority of which is claimed in a subsequent European patent application. All central industrial property offices, including those which do not perform searches in the course of a national patent-granting procedure, can play an essential role under the enhanced partnership, inter alia by giving advice and support to potential patent applicants, in particular small and medium-sized enterprises, by receiving applications, by forwarding applications to the EPO and by disseminating patent information.
- (23) This Regulation is complemented by Regulation (EU) No .../2012<sup>\*</sup>, adopted by the Council in accordance with the second paragraph of Article 118 of the TFEU.
- (24) ***Jurisdiction in respect of European patents with unitary effect should be established and governed by an instrument setting up a unified patent litigation system for European patents and European patents with unitary effect.***

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\* OJ: Please insert the number of the Regulation contained in doc st. 18855/11

- (25) *Establishing a Unified Patent Court to hear cases concerning the European patent with unitary effect is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors. It is therefore of paramount importance that the participating Member States ratify the Agreement on a Unified Patent Court in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to become operational as soon as possible.*
- (26) This Regulation should be without prejudice to the right of the participating Member States to grant national patents and should not replace the participating Member States' laws on patents. Patent applicants should remain free to obtain either a national patent, a European patent with unitary effect, a European patent taking effect in one or more of the Contracting States to the EPC or a European patent with unitary effect validated in addition in one or more other Contracting States to the EPC which are not among the participating Member States.
- (27) Since the objective of this Regulation, namely the creation of unitary patent protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, where appropriate by means of enhanced cooperation, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I  
GENERAL PROVISIONS

Article 1  
Subject-matter

1. This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection, authorised by Decision 2011/167/EU.
2. This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter "EPC").

## Article 2 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "Participating Member State" means a Member State which participates in enhanced cooperation in the area of the creation of unitary patent protection by virtue of Decision 2011/167/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the TFEU, at the time the request for unitary effect as referred to in Article 9 is made;
- (b) "European patent" means a patent granted by the European Patent Office (hereinafter "EPO") under the rules and procedures laid down in the EPC;
- (c) "European patent with unitary effect" means a European patent which benefits from unitary effect in the participating Member States by virtue of this Regulation;
- (d) "European Patent Register" means the register kept by the EPO under Article 127 of the EPC;

- (e) **"Register for unitary patent protection" means the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of a European patent with unitary effect are registered;**
- (f) "European Patent Bulletin" means the periodical publication provided for in Article 129 of the EPC.

### Article 3

#### European patent with unitary effect

1. A European patent granted with ***the same set of claims*** in respect of all ***the*** participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.  
  
A European patent granted with different sets of claims for different participating Member States shall not benefit from unitary effect.
2. A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all the participating Member States.



■ It may only be limited, transferred or revoked, or lapse, in respect of all the participating Member States.

*It may be licensed in respect of the whole or part of the territories of the participating Member States.*

3. The unitary effect of a European patent shall be deemed not to have arisen to the extent that the European patent has been revoked or limited.

#### Article 4

##### Date of effect

1. A European patent with unitary effect shall take effect in the participating Member States on the date of publication by the EPO of the mention of the grant of the European patent in the European Patent Bulletin.
2. The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered *and extends to their territory*, that European patent is deemed not to have taken effect as a national patent in their territory on the date of publication of the mention of the grant in the European Patent Bulletin.

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CHAPTER II  
EFFECTS OF A EUROPEAN PATENT WITH UNITARY EFFECT

*Article 5*  
*Uniform protection*

1. *The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect, subject to applicable limitations.*
2. *The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.*
3. *The acts against which the patent provides protection referred to in paragraph 1 and the applicable limitations shall be those defined by the law applied to European patents with unitary effect in the participating Member State whose national law is applicable to the European patent with unitary effect as an object of property in accordance with Article 7.*
4. *In its report referred to in Article 16(1), the Commission shall evaluate the functioning of the applicable limitations and shall, where necessary, make appropriate proposals.*



## Article 6

### Exhaustion of the rights conferred by a European patent with unitary effect

The rights conferred by a European patent with unitary effect shall not extend to acts concerning a product covered by that patent which are carried out within the participating Member States *in which that patent has unitary effect* after that product has been placed on the market in the Union by, or with the consent of, the patent proprietor, unless there are legitimate grounds for the patent proprietor to oppose further commercialisation of the product.

## CHAPTER III

### A EUROPEAN PATENT WITH UNITARY EFFECT AS AN OBJECT OF PROPERTY

## Article 7

### Treating a European patent with unitary effect as a national patent

1. A European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which *that patent has unitary effect and in which*, according to the European Patent Register:

- (a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or
  - (b) where point (a) does not apply, the applicant had a place of business on the date of filing of the application for the European patent.
2. Where two or more persons are entered in the European Patent Register as joint applicants, point (a) of paragraph 1 shall apply to the joint applicant indicated first. Where this is not possible, point (a) of paragraph 1 shall apply to the next joint applicant indicated in the order of entry. Where point (a) of paragraph 1 does not apply to any of the joint applicants, point (b) of paragraph 1 shall apply accordingly.
  3. Where no applicant had his residence, *principal* place of business *or place of business* in a participating Member State *in which that patent has unitary effect* for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the State where the European Patent Organisation has its headquarters in accordance with Article 6(1) of the EPC.
  4. The acquisition of a right may not be dependent on any entry in a national patent register.

## Article 8

### Licences of right

1. The proprietor of a European patent with unitary effect may file a statement with the EPO to the effect that the proprietor is prepared to allow any person to use the invention as a licensee in return for appropriate consideration.
2. A licence obtained under this Regulation shall be treated as a contractual licence.

## CHAPTER IV

### INSTITUTIONAL PROVISIONS

## Article 9

### *Administrative tasks in the framework of the European Patent Organisation*

1. The participating Member States shall, within the meaning of Article 143 of the EPC, give the EPO the following tasks, to be carried out in accordance with the internal rules of the EPO:

- (a) to administer requests for unitary effect by proprietors of European patents;
- (b) to include the Register for unitary patent protection *within the European Patent Register* and to administer the Register for unitary patent protection ■ ;
- (c) to receive and register statements on licensing referred to in Article 8, their withdrawal and licensing commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies;
- (d) to publish the translations referred to in Article 6 of Regulation (EU) No .../2012\* during the transitional period referred to in that Article;
- (e) to collect and administer renewal fees for European patents with unitary effect, in respect of the years following the year in which the mention of the grant is published in the European Patent Bulletin; to collect and administer additional fees for late payment of renewal fees where such late payment is made within six months of the due date, as well as to distribute part of the collected renewal fees to the participating Member States;

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\* OJ: Please insert the number of the Regulation contained in doc st. 18855/11.

- (f) to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of Regulation (EU) No .../2012\*;
- (g) to ensure that a request for unitary effect by a proprietor of a European patent is submitted 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; and
- (h) *to 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 Regulation (EU) No .../2012\*, has been submitted together with the translations referred to in that Article, and that the EPO is informed of *any* limitations, *licences, transfers* or revocations of European patents with unitary effect.

2. *The participating Member States shall ensure compliance with this Regulation in fulfilling their international obligations undertaken in the EPC and shall cooperate to that end. 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 paragraph 1 of this Article and shall ensure the setting of the level of renewal fees in accordance with Article 12 of this Regulation and the setting of the share of distribution of the renewal fees in accordance with Article 13 of this Regulation.*

To that end they shall set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee") within the meaning of Article 145 of the EPC.

*The Select* Committee shall consist of the representatives of the participating Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or experts.

Decisions of the Select Committee shall be taken with due regard for the position of the Commission and in accordance with the rules laid down *in Article 35(2) of the EPC*.

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\* OJ: Please insert the number of the Regulation contained in doc st. 18855/11.

3. The participating Member States shall ensure effective legal protection before *a competent court of one or several participating Member States* against the decisions of the EPO in carrying out the tasks referred to in paragraph 1.

## CHAPTER V FINANCIAL PROVISIONS

### Article 10

#### Principle on expenses

The expenses incurred by the EPO in carrying out the additional tasks given to it, within the meaning of Article 143 of the EPC, by the participating Member States shall be covered by the fees generated by the European patents with unitary effect.

### Article 11

#### Renewal fees

1. Renewal fees for European patents with unitary effect and additional fees for their late payment shall be paid to the European Patent Organisation by the patent proprietor. Those fees shall be due in respect of the years following the year in which the mention of the grant of the European patent which benefits from unitary effect is published in the European Patent Bulletin.
2. A European patent with unitary effect shall lapse if a renewal fee and, where applicable, any additional fee have not been paid in due time.
3. Renewal fees which fall due after receipt of the statement referred to in Article 8(1) shall be reduced.



Article 12  
Level of renewal fees

1. Renewal fees for European patents with unitary effect shall be:
  - (a) progressive throughout the term of the unitary patent protection,
  - (b) sufficient to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection, and
  - (c) sufficient, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, to ensure a balanced budget of the European Patent Organisation.
  
2. The level of the renewal fees shall be set, taking into account, *among others*, the situation of *specific entities such as small and medium-sized enterprises*, with the aim of:
  - (a) facilitating innovation and fostering the competitiveness of European businesses,
  - (b) reflecting the size of the market covered by the patent, and
  - (c) being similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time the level of the renewal fees is first set **█**.
  
3. In order to attain the objectives set out in this Chapter, **█** the level of renewal fees shall be set at a level that:
  - (a) is equivalent to the level of the renewal fee to be paid for the average geographical coverage of current European patents,
  - (b) reflects the renewal rate of current European patents, and
  - (c) reflects the number of requests for unitary effect.

**█**

Article 13  
Distribution

1. ***The EPO shall retain*** 50 per cent of the renewal fees referred to in Article 11 paid for European patents with unitary effect. ***The remaining amount shall be distributed to the participating Member States in accordance with the share of distribution of the renewal fees set pursuant to Article 9(2).***
  
2. In order to attain the objectives set out in this Chapter, **■** the share of distribution of renewal fees **■** among the participating Member States ***shall be based on*** the following fair, equitable and relevant criteria:
  - (a) the number of patent applications,
  - (b) the size of the market, ***while ensuring a minimum amount to be distributed to each participating Member State,***
  - (c) compensation to the participating Member States which have:
    - (i) an official language other than one of the official languages of the EPO,
    - (ii)*** a disproportionately low level of patenting activity, ***and/or***
    - (iii) acquired membership of the European Patent Organisation relatively recently.

**■**



CHAPTER VI  
FINAL PROVISIONS

Article 14

Cooperation between the Commission and the EPO

The Commission shall establish a close cooperation through a working agreement with the EPO in the fields covered by this Regulation. This cooperation shall include regular exchanges of views on the functioning of the working agreement and, in particular, on the issue of renewal fees and their impact on the budget of the European Patent Organisation.

Article 15

Application of competition law and the law relating to unfair competition

This Regulation shall be without prejudice to the application of competition law and the law relating to unfair competition.

## Article 16

### Report on the operation of this Regulation

1. Not later than **three years** from the date on which the first European patent with unitary effect takes effect, and every five years thereafter, the Commission shall present to the **European Parliament and** the Council a report on the operation of this Regulation and, where necessary, make appropriate proposals for amending it.
2. The Commission shall **regularly submit to the European Parliament and the Council reports** on the functioning of the renewal fees referred to in Article 11, with particular emphasis on compliance with Article 12.

## Article 17

### Notification by the participating Member States

1. The participating Member States shall notify the Commission of the measures adopted in accordance with *Article 9* by the date of application of this Regulation.
2. *Each participating Member State shall notify the Commission of the measures adopted in accordance with Article 4(2) by the date of application of this Regulation or, in the case of a participating Member State in which the Unified Patent Court does not have exclusive jurisdiction with regard to European patents with unitary effect on the date of application of this Regulation, by the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.*

## Article 18

### Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from *1 January 2014 or the date of entry into force of the Agreement on a Unified Patent Court (the "Agreement"), whichever is the later*.

*By way of derogation from Articles 3(1), 3(2) and 4(1), a European patent for which unitary effect is registered in the Register for unitary patent protection shall have unitary effect only in those participating Member States in which the Unified Patent Court has exclusive jurisdiction with regard to European patents with unitary effect at the date of registration.*

3. *Each participating Member State shall notify the Commission of its ratification of the Agreement at the time of deposit of its ratification instrument. The Commission shall publish in the Official Journal of the European Union the date of entry into force of the Agreement and a list of the Member States who have ratified the Agreement at the date of entry into force. The Commission shall thereafter regularly update the list of the participating Member States which have ratified the Agreement and shall publish such updated list in the Official Journal of the European Union.*
4. The participating Member States shall ensure that the measures referred to in Article 9 are in place by the date of application of this Regulation.
5. Each participating Member State shall ensure that the measures referred to in Article 4(2) are in place by the date of application of this Regulation or, in the case of a participating Member State in which the Unified Patent Court does not have exclusive jurisdiction with regard to European patents with unitary effect on the date of application of this Regulation, by the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.
6. Unitary patent protection may be requested for any European patent granted on or after the date of application of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at

*For the European Parliament*  
*The President*

*For the Council*  
*The President*