



**COUNCIL OF
THE EUROPEAN UNION**

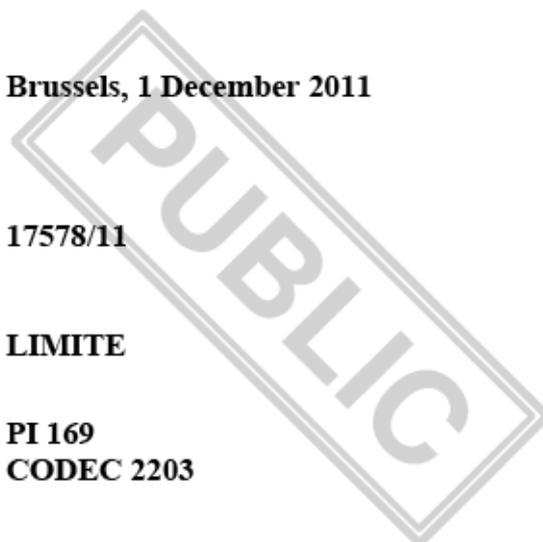
Brussels, 1 December 2011

**Interinstitutional File:
2011/0093 (COD)
2011/0094 (CNS)**

17578/11

LIMITE

**PI 169
CODEC 2203**



NOTE

From: Presidency
To: Permanent Representatives Committee (Part 1)
No. prev. doc.: 16704/11 PI 154 CODEC 1979
No. Cion prop.: 9224/11 PI 31 CODEC 671 + 9226/11 PI 32
Subject: Proposal for a Regulation of the European Parliament and the of the Council
implementing enhanced cooperation in the area of the creation of unitary patent
protection
- Analysis of the final compromise text

Delegations will find in the fourth column of the table contained in the Annex the outcome of the last informal trilogue on the above mentioned Regulation.

The Permanent Representatives Committee is invited to consider whether it can accept this outcome in view of a first reading agreement on this file.

=====

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	Proposal for a	Proposal for a	Proposal for a	Proposal for a
	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
	implementing enhanced cooperation in the area of the creation of unitary patent protection	implementing enhanced cooperation in the area of the creation of unitary patent protection	implementing enhanced cooperation in the area of the creation of unitary patent protection	implementing enhanced cooperation in the area of the creation of unitary patent protection
	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION
	<p>Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union and in particular Article 118(1) thereof,</p> <p>Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection¹,</p>	<p>Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union and in particular Article 118(1) thereof,</p> <p>Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection²,</p>	<p>Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union and in particular Article 118(1) thereof,</p> <p>Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection³,</p>	<p>Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union and in particular Article 118(1) thereof,</p> <p>Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection⁴,</p>

¹ OJ L 76, 22.3.2011, p. 53.

² OJ L 76, 22.3.2011, p. 53.

³ OJ L 76, 22.3.2011, p. 53.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national Parliaments,</p> <p>Acting in accordance with the ordinary legislative procedure,</p>	<p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national Parliaments,</p> <p>Acting in accordance with the ordinary legislative procedure,</p>	<p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national Parliaments,</p> <p>Acting in accordance with the ordinary legislative procedure,</p>	<p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national Parliaments,</p> <p>Acting in accordance with the ordinary legislative procedure,</p>
	Whereas:	Whereas:	Whereas:	Whereas:
Rec 1	<p>In accordance with Article 3(3) of the Treaty on European Union, the Union shall establish an internal market, shall work for the sustainable development of Europe based on balanced economic growth and shall promote scientific and technological advance. The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with more choice and opportunities contributes to attaining these objectives.</p> <p>Uniform patent protection within</p>	<p>In accordance with Article 3(3) of the Treaty on European Union, the Union shall establish an internal market, shall work for the sustainable development of Europe based on balanced economic growth and shall promote scientific and technological advance. The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with more choice and opportunities contributes to attaining these objectives.</p> <p>Uniform patent protection within</p>	<p>In accordance with Article 3(3) of the Treaty on European Union, the Union shall establish an internal market, shall work for the sustainable development of Europe based on balanced economic growth and shall promote scientific and technological advance. The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with more choice and opportunities contributes to attaining these objectives.</p> <p>Uniform patent protection within</p>	<p>In accordance with Article 3(3) of the Treaty on European Union, the Union shall establish an internal market, shall work for the sustainable development of Europe based on balanced economic growth and shall promote scientific and technological advance. The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with more choice and opportunities contributes to attaining these objectives.</p> <p>Uniform patent protection within</p>

⁴ OJ L 76, 22.3.2011, p. 53.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.	the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.	the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.	the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.
Rec 2	Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It should improve the level of patent protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.	Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It should improve the level of patent protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.	Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It should improve the level of patent protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.	Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It should improve the level of patent protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 3	Pursuant to Article 118(1) of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), measures foreseen 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.	Pursuant to Article 118(1) of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), measures foreseen 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.	Pursuant to Article 118(1) of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), measures foreseen 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.	Pursuant to Article 118(1) of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), measures foreseen 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.
Rec 4	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.	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.	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.	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.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 5	<p>The Convention on the Grant of European Patents (European Patent Convention), as amended (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. European patents granted by the European Patent Office under the rules and procedures laid down in the EPC should, on request by the patent proprietor, benefit from unitary effect by virtue of this Regulation in the territories of the participating Member States (hereinafter "European patents with unitary effect").</p>	<p>The Convention on the Grant of European Patents (European Patent Convention), as amended (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. European patents granted by the European Patent Office under the rules and procedures laid down in the EPC should, on request by the patent proprietor, benefit from unitary effect by virtue of this Regulation in the territories of the participating Member States (hereinafter "European patents with unitary effect").</p>	<p>The Convention on the Grant of European Patents (European Patent Convention), as amended (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. European patents granted by the European Patent Office under the rules and procedures laid down in the EPC should, on request by the patent proprietor, benefit from unitary effect by virtue of this Regulation in the territories of the participating Member States (hereinafter "European patents with unitary effect").</p>	<p>The Convention on the Grant of European Patents (European Patent Convention), as amended (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. European patents granted by the European Patent Office under the rules and procedures laid down in the EPC should, on request by the patent proprietor, benefit from unitary effect by virtue of this Regulation in the territories of the participating Member States (hereinafter "European patents with unitary effect").</p>
Rec 6	<p>It is foreseen in Part IX of the EPC that a group of Member States of the European Patent Organisation 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</p>	<p>It is foreseen in Part IX of the EPC that a group of Member States of the European Patent Organisation 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</p>	<p>It is foreseen in Part IX of the EPC that a group of Member States of the European Patent Organisation 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</p>	<p>It is foreseen in Part IX of the EPC that a group of Member States of the European Patent Organisation 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</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	treaty within the meaning of Article 45(1) of the Patent Cooperation Treaty of 19 June 1970 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 revised on 14 July 1967.	treaty within the meaning of Article 45(1) of the Patent Cooperation Treaty of 19 June 1970 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 revised on 14 July 1967.	treaty within the meaning of Article 45(1) of the Patent Cooperation Treaty of 19 June 1970 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 revised on 14 July 1967.	treaty within the meaning of Article 45(1) of the Patent Cooperation Treaty of 19 June 1970 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 revised on 14 July 1967.
Rec 7 Am. 1	The creation of unitary patent protection should be achieved by giving unitary effect to European patents in the post-grant phase by virtue of this Regulation and in respect of the participating Member States. The main feature of European patents with unitary effect should be their unitary character, i.e. providing uniform protection and having equal effect in all participating Member States. Consequently, a European patent with unitary effect should only be limited, licensed, transferred, revoked or lapse in respect of all the participating Member States. To ensure the uniform substantive scope of protection conferred by unitary patent protection, only European	The creation of unitary patent protection should be achieved by giving unitary effect to European patents in the post-grant phase by virtue of this Regulation and in respect of the participating Member States. The main feature of European patents with unitary effect should be their unitary character, i.e. providing uniform protection and having equal effect in all participating Member States. Consequently, a European patent with unitary effect should only be limited, transferred, revoked or lapse in respect of all the participating Member States. A European patent with unitary effect may be licensed in respect of the whole or part of the territories of the participating	The creation of unitary patent protection should be achieved by giving 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 European patents with unitary effect should be their unitary character, i.e. providing uniform protection and having equal effect in all participating Member States. Consequently, a European patent with unitary effect should only be granted, limited, transferred or revoked, or lapse or become subject to law enforcement , in respect of all the participating Member States. It should be possible for a European patent with unitary	The creation of unitary patent protection should be achieved by giving 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 European patents with unitary effect should be their unitary character, i.e. providing uniform protection and having equal effect in all participating Member States. Consequently, a European patent with unitary effect should only be limited, transferred, 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

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<p>patents that have been granted for all the participating Member States with the same set of claims should benefit from unitary effect. However, to ensure legal certainty in the event of a limitation or revocation on the ground of lack of novelty pursuant to Article 54(3) EPC, the limitation or revocation of a European patent with unitary effect should take effect only in respect of the participating Member State(s) designated in the earlier European patent application as published. Finally, the unitary effect attributed to a European patent should have an accessory nature and should cease to exist or be limited to the extent that the basic European patent has been revoked or limited.</p>	<p><i>Member States.</i> 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 cease to exist or be limited to the extent that the basic European patent has been revoked or limited.</p>	<p><i>effect to be licensed in respect of the whole or part of the territories of the participating Member States.</i> 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 cease to exist or be limited to the extent that the basic European patent has been revoked or limited.</p>	<p><i>territories of the participating Member States.</i> 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 cease to exist or be limited to the extent that the basic European patent has been revoked or limited.</p>
Rec 8	<p>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 territories of the participating Member States as of the date of</p>	<p>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 territories of the participating Member States as of the date of</p>	<p>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 territories of the participating Member States as of the date of</p>	<p>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 territories of the participating Member States as of the date of</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<p>the publication of the mention of the grant of the European patent in the European Patent Bulletin. Where unitary effect takes effect, the participating Member States should ensure that the European patent is deemed not to have taken effect on their territory on the date of the publication of the mention of the grant as a national patent to avoid any duplication of patent protection on their territories stemming from the same European patent granted by the European Patent Office.</p>	<p>the publication of the mention of the grant of the European patent in the European Patent Bulletin. Where unitary effect takes effect, the participating Member States should ensure that the European patent is deemed not to have taken effect on their territory on the date of the publication of the mention of the grant as a national patent to avoid any duplication of patent protection on their territories stemming from the same European patent granted by the European Patent Office.</p>	<p>the publication of the mention of the grant of the European patent in the European Patent Bulletin. Where unitary effect takes effect, the participating Member States should ensure that the European patent is deemed not to have taken effect on their territory on the date of the publication of the mention of the grant as a national patent to avoid any duplication of patent protection on their territories stemming from the same European patent granted by the European Patent Office.</p>	<p>the publication of the mention of the grant of the European patent in the European Patent Bulletin. Where unitary effect takes effect, the participating Member States should ensure that the European patent is deemed not to have taken effect on their territory on the date of the publication of the mention of the grant as a national patent to avoid any duplication of patent protection on their territories stemming from the same European patent granted by the European Patent Office.</p>
Rec 9	<p>In matters not covered by this Regulation or Council Regulation .../... [translation arrangements], the provisions of the EPC and national law including rules of private international law shall apply.</p>	<p>In matters not covered by this Regulation or Council Regulation .../... [translation arrangements], the provisions of the EPC and national law including rules of private international law shall apply.</p>	<p>In matters not covered by this Regulation or Council Regulation .../... [translation arrangements], the provisions of the EPC and national law including rules of private international law shall apply.</p>	<p>In matters not covered by this Regulation or Council Regulation .../... [translation arrangements], the provisions of the EPC and national law including rules of private international law shall apply.</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 9a	-	<i>The matter of compulsory licences is not covered by this Regulation. Compulsory licences for European patents with unitary effect should be governed by the national legislations of the participating Member States on their respective territories.</i>	-	<i>The matter of compulsory licences is not covered by this Regulation. Compulsory licences for European patents with unitary effect should be governed by the national legislations of the participating Member States on their respective territories.</i>
Rec 10	The rights conferred by the European patent with unitary effect should enable the patent proprietor to prevent any third party not having his consent from the direct and indirect use of the invention on the territories of the participating Member States. However, a number of limitations of the patent proprietor's rights should enable third parties to use the invention, for instance for private and for non-commercial purposes, for experimental purposes, for acts allowed specifically under Union law (in the area of veterinary medicinal products, medicinal products for human use, plant variety rights, the legal protection of computer programs by copyright and the	The rights conferred by the European patent with unitary effect should enable the patent proprietor to prevent any third party not having his consent from the direct and indirect use of the invention on the territories of the participating Member States. However, a number of limitations of the patent proprietor's rights should enable third parties to use the invention, for instance for private and for non-commercial purposes, for experimental purposes, for acts allowed specifically under Union law (in the area of veterinary medicinal products, medicinal products for human use, plant variety rights, the legal protection of computer programs by copyright and the	The rights conferred by the European patent with unitary effect should enable the patent proprietor to prevent any third party not having his consent from the direct and indirect use of the invention on the territories of the participating Member States. However, a number of limitations of the patent proprietor's rights should enable third parties to use the invention, for instance for private and for non-commercial purposes, for experimental purposes, for acts allowed specifically under Union law (in the area of veterinary medicinal products, medicinal products for human use, plant variety rights, the legal protection of computer programs by copyright and the	The rights conferred by the European patent with unitary effect should enable the patent proprietor to prevent any third party not having his consent from the direct and indirect use of the invention on the territories of the participating Member States. However, a number of limitations of the patent proprietor's rights should enable third parties to use the invention, for instance for private and for non-commercial purposes, for experimental purposes, for acts allowed specifically under Union law (in the area of veterinary medicinal products, medicinal products for human use, plant variety rights, the legal protection of computer programs by copyright and the

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	legal protection of biotechnological inventions) under international law and for the use by a farmer of protected livestock for farming purposes.	legal protection of biotechnological inventions) under international law and for the use by a farmer of protected livestock for farming purposes.	legal protection of biotechnological inventions) under international law and for the use by a farmer of protected livestock for farming purposes.	legal protection of biotechnological inventions) under international law and for the use by a farmer of protected livestock for farming purposes.
Rec 11	In accordance with the case law of the Court of Justice of the European Union, the principle of the exhaustion of rights should be applied also in relation to European patents with unitary effect. Therefore, rights conferred by a European patent with unitary effect should also not extend to acts concerning the product covered by that patent, which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent.	In accordance with the case law of the Court of Justice of the European Union, the principle of the exhaustion of rights should be applied also in relation to European patents with unitary effect. Therefore, rights conferred by a European patent with unitary effect should also not extend to acts concerning the product covered by that patent, which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent.	In accordance with the case law of the Court of Justice of the European Union, the principle of the exhaustion of rights should be applied also in relation to European patents with unitary effect. Therefore, rights conferred by a European patent with unitary effect should also not extend to acts concerning the product covered by that patent, which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent.	In accordance with the case law of the Court of Justice of the European Union, the principle of the exhaustion of rights should be applied also in relation to European patents with unitary effect. Therefore, rights conferred by a European patent with unitary effect should also not extend to acts concerning the product covered by that patent, which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
<u>Rec 11a</u>				<u><i>The regime applicable to damages should be governed by the law 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.</i></u>
Rec 12	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 in which, according to the European Patent Register, the proprietor of the patent had his residence or principal place of business on the date of filing of the patent application. If the proprietor of the patent did not have his residence or a place of business in any of the participating Member State, the European patent with unitary effect should be dealt with as a national patent of the Member	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 in which, according to the European Patent Register, the proprietor of the patent had his residence or principal place of business on the date of filing of the patent application. If the proprietor of the patent did not have his residence or a place of business in any of the participating Member State, the European patent with unitary effect should be dealt with as a national patent of the Member	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 in which, according to the European Patent Register, the proprietor of the patent had his residence or principal place of business on the date of filing of the patent application. If the proprietor of the patent did not have his residence or a place of business in any of the participating Member State, the European patent with unitary effect should be dealt with as a national patent of the Member	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 in which, according to the European Patent Register, the proprietor of the patent had his residence or principal place of business on the date of filing of the patent application. If the proprietor of the patent did not have his residence or a place of business in any of the participating Member State, the European patent with unitary effect should be dealt with as a national patent of the Member

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	State where the European Patent Organisation has its headquarters.	State where the European Patent Organisation has its headquarters.	State where the European Patent Organisation has its headquarters.	State where the European Patent Organisation has its headquarters.
Rec 13	In order to promote and facilitate the economic exploitation of inventions protected by European patents with unitary effect, the patent proprietor should be able to offer its patent to be licensed to anyone complying with the terms and conditions set out by the patent proprietor in return for appropriate compensation. To that end the patent proprietor may file a statement with the European Patent Office that he is prepared to grant a license in return for appropriate compensation. In that case, the proprietor should, after receipt of that statement, benefit from a reduction of the renewal fees.	In order to promote and facilitate the economic exploitation of inventions protected by European patents with unitary effect, the patent proprietor should be able to offer its patent to be licensed to anyone complying with the terms and conditions set out by the patent proprietor in return for appropriate compensation. To that end the patent proprietor may file a statement with the European Patent Office that he is prepared to grant a license in return for appropriate compensation. In that case, the proprietor should, after receipt of that statement, benefit from a reduction of the renewal fees.	In order to promote and facilitate the economic exploitation of inventions protected by European patents with unitary effect, the patent proprietor should be able to offer its patent to be licensed to anyone complying with the terms and conditions set out by the patent proprietor in return for appropriate compensation. To that end the patent proprietor may file a statement with the European Patent Office that he is prepared to grant a license in return for appropriate compensation. In that case, the proprietor should, after receipt of that statement, benefit from a reduction of the renewal fees.	In order to promote and facilitate the economic exploitation of inventions protected by European patents with unitary effect, the patent proprietor should be able to offer its patent to be licensed to anyone complying with the terms and conditions set out by the patent proprietor in return for appropriate compensation. To that end the patent proprietor may file a statement with the European Patent Office that he is prepared to grant a license in return for appropriate compensation. In that case, the proprietor should, after receipt of that statement, benefit from a reduction of the renewal fees.
Rec 14	The group of Member States making use of Part IX of the EPC may give tasks to the European Patent Office and set up a Select Committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee").	The group of Member States making use of Part IX of the EPC may give tasks to the European Patent Office and set up a Select Committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee").	The group of Member States making use of Part IX of the EPC may give tasks to the European Patent Office and set up a Select Committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee").	The group of Member States making use of Part IX of the EPC may give tasks to the European Patent Office and set up a Select Committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee").

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 15 Am. 2	<p>The participating Member States should give the European Patent Office certain administrative tasks relating to European patents with unitary effect, in particular as regards 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 redistribution of renewal fees, the publication of translations for information purposes during a transitional period and the administration of a compensation scheme of translation costs for applicants filing European patent applications in a language other than one of the official languages of the European Patent Office.</p> <p><i>The participating Member States should 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 that they are</i></p>	<p>The participating Member States should give the European Patent Office certain administrative tasks relating to European patents with unitary effect, in particular as regards 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 redistribution of renewal fees, the publication of translations for information purposes during a transitional period and the administration of a compensation scheme of translation costs for applicants filing European patent applications in a language other than one of the official languages of the European Patent Office.</p>	<p>The participating Member States should give the European Patent Office certain administrative tasks relating to European patents with unitary effect, in particular as regards 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 redistribution of renewal fees, the publication of translations for information purposes during a transitional period and the administration of a compensation scheme of translation costs for applicants filing European patent applications in a language other than one of the official languages of the European Patent Office.</p>	<p>The participating Member States should give the European Patent Office certain administrative tasks relating to European patents with unitary effect, in particular as regards 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 redistribution of renewal fees, the publication of translations for information purposes during a transitional period and the administration of a compensation scheme of translation costs for applicants filing European patent applications in a language other than one of the official languages of the European Patent Office.</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>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].</i>			
Rec 15a Am. 3	-	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 European Patent Office 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]. The participating Member States should also ensure	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 European Patent Office by the participating Member States, they should 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]. The participating Member States should also ensure	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 European Patent Office 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]. The participating Member States should also ensure

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
		the setting, in accordance with the voting arrangements 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.	the setting, in accordance with the voting arrangements 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, <i>paying due regard to the position of the Commission.</i>	the setting, in accordance with the voting arrangements 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.
Rec 16 Am. 4	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. The level of the renewal fees should be fixed with the aim of 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	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. The level of the renewal fees should be fixed with the aim of 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	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. The level of the renewal fees should be fixed with the aim of facilitating innovation and fostering the competitiveness of European businesses <i>and should take into account the specific situation of small and medium enterprises in the form</i>	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. The level of the renewal fees should be fixed with the aim of facilitating innovation and fostering the competitiveness of European businesses <i>taking into account the situation of specific entities such as small and medium-sized enterprises for</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	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 by the Commission.	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.	<i>of lower fees.</i> 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.	<u><i>example in the form of lower fees.</i></u> 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.
Rec 17	In order to determine the appropriate level and distribution of renewal fees and to ensure that all costs of the tasks in relation to the unitary patent protection entrusted on the European Patent Office 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.	In order to determine the appropriate level and distribution of renewal fees and to ensure that all costs of the tasks in relation to the unitary patent protection entrusted on the European Patent Office 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.	In order to determine the appropriate level and distribution of renewal fees and to ensure that all costs of the tasks in relation to the unitary patent protection entrusted on the European Patent Office 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.	In order to determine the appropriate level and distribution of renewal fees and to ensure that all costs of the tasks in relation to the unitary patent protection entrusted on the European Patent Office 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.
Rec 18	Renewal fees should be paid to the European Patent Organisation. 50 percent thereof minus expenses incurred by the European Patent	Renewal fees should be paid to the European Patent Organisation. The European Patent Office shall retain an amount to cover	-	Renewal fees should be paid to the European Patent Organisation. The European Patent Office shall retain an amount to cover

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

Commission proposal	Council general approach	Parliament draft report	Compromise proposals
<p><i>Office in carrying out tasks in relation to the unitary patent protection shall be distributed among the participating Member States, which should be used for patent-related purposes.</i> 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. 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 and having acquired membership of the European Patent Organisation relatively recently.</p>	<p><i>the expenses generated at the European Patent Office in carrying out tasks in relation to the unitary patent protection in accordance with Article 146 EPC. The remaining amount shall be distributed among the participating Member States, which should be used for patent-related purposes.</i> 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 <i>and should guarantee a minimum amount to be redistributed to each participating Member State in order to maintain a balanced and sustainable functioning of the system.</i> 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 <i>established on the basis of the European Innovation Scoreboard (EIS) and</i> having</p>		<p><i>the expenses generated at the European Patent Office in carrying out tasks in relation to the unitary patent protection in accordance with Article 146 EPC. The remaining amount shall be distributed among the participating Member States, which should be used for patent-related purposes.</i> 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 <i>and should guarantee a minimum amount to be redistributed to each participating Member State in order to maintain a balanced and sustainable functioning of the system.</i> 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 <i>established on the basis of the European Innovation Scoreboard (EIS) and</i> having</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
		acquired membership of the European Patent Organisation relatively recently.		acquired membership of the European Patent Organisation relatively recently.
Rec 19 Am. 5	In order to ensure the appropriate level and distribution of renewal fees in compliance with the principles set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the level of the renewal fees for European patents with unitary effect and the distribution of such fees between the European Patent Organisation and the participating Member States. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 20	<p>An Enhanced partnership between the European Patent Office and central industrial property offices of the Member States should enable the European Patent Office 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 have 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 European Patent Office and by disseminating patent information.</p>	<p>An Enhanced partnership between the European Patent Office and central industrial property offices of the Member States should enable the European Patent Office 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 have 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 European Patent Office and by disseminating patent information.</p>	<p>An Enhanced partnership between the European Patent Office and central industrial property offices of the Member States should enable the European Patent Office 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 have 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 European Patent Office and by disseminating patent information.</p>	<p>An Enhanced partnership between the European Patent Office and central industrial property offices of the Member States should enable the European Patent Office 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 have 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 European Patent Office and by disseminating patent information.</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 21	This Regulation should be complemented by Council Regulation .../... implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, adopted by the Council in accordance with Article 118(2) of the TFEU.	This Regulation should be complemented by Council Regulation .../... implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, adopted by the Council in accordance with Article 118(2) of the TFEU.	This Regulation should be complemented by Council Regulation .../... implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, adopted by the Council in accordance with Article 118(2) of the TFEU.	This Regulation should be complemented by Council Regulation .../... implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, adopted by the Council in accordance with Article 118(2) of the TFEU.
Rec 21a	-	<i>The jurisdiction for 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.</i>	-	<i>The jurisdiction for 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.</i>
<u>Rec 21a</u> <i>(new)</i>				In order to ensure the proper functioning of the the European Patent with unitary effect, <i>the consistency of the case-law and hence legal certainty, and the cost effectiveness for patent holders, the establishment of a Unified Patent Court to hear cases concerning the European Patnet with unitary effect is essential.</i> It is therefore of

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
				paramount importance that the participating Member States ratify the Agreement on a Unified Patent Court <i>in accordance with their national constitutional and parliamentary procedures</i> and take the necessary steps for that Court to be operational as soon as possible.
Rec 22	This Regulation should be without prejudice to the right of Member States to grant national patents and should not replace 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.	This Regulation should be without prejudice to the right of Member States to grant national patents and should not replace 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.	This Regulation should be without prejudice to the right of Member States to grant national patents and should not replace 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.	This Regulation should be without prejudice to the right of Member States to grant national patents and should not replace 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.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Rec 23	<p>Since the objective of this Regulation, namely the creation of uniform patent protection, can, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures by means of enhanced cooperation where appropriate, 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 this objective.</p>	<p>Since the objective of this Regulation, namely the creation of uniform patent protection, can, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures by means of enhanced cooperation where appropriate, 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 this objective.</p>	<p>Since the objective of this Regulation, namely the creation of uniform patent protection, can, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures by means of enhanced cooperation where appropriate, 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 this objective.</p>	<p>Since the objective of this Regulation, namely the creation of uniform patent protection, can, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures by means of enhanced cooperation where appropriate, 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 this objective.</p>
	HAVE ADOPTED THIS REGULATION:			

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Chapter I General provisions</i> <i>Article 1</i> <i>Subject matter</i>			
Art 1	<p>This Regulation implements the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision 2011/167/EU.</p> <p>This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents (European Patent Convention), as amended (hereinafter "the EPC").</p>	<p>This Regulation implements the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision 2011/167/EU.</p> <p>This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents (European Patent Convention), as amended (hereinafter "the EPC").</p>	<p>This Regulation implements the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision 2011/167/EU.</p> <p>This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents (European Patent Convention), as amended (hereinafter "the EPC").</p>	<p>This Regulation implements the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision 2011/167/EU.</p> <p>This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents (European Patent Convention), as amended (hereinafter "the EPC").</p>
	<i>Article 2</i> <i>Definitions</i>	<i>Article 2</i> <i>Definitions</i>	<i>Article 2</i> <i>Definitions</i>	<i>Article 2</i> <i>Definitions</i>
Art 2 introd. phrase	For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:
Art 2 point a	"Participating Member State" means a Member State which participates, at the time when the request for unitary effect as referred to in Article 12 is made, in enhanced cooperation in the	"Participating Member State" means a Member State which participates, at the time when the request for unitary effect as referred to in Article 12 is made, in enhanced cooperation in	"Participating Member State" means a Member State which participates, at the time when the request for unitary effect as referred to in Article 12 is made, in enhanced cooperation in	"Participating Member State" means a Member State which participates, at the time when the request for unitary effect as referred to in Article 12 is made, in enhanced cooperation in

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	area of the creation of unitary patent protection by virtue of Council 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;	the area of the creation of unitary patent protection by virtue of Council 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;	the area of the creation of unitary patent protection by virtue of Council 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;	the area of the creation of unitary patent protection by virtue of Council 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;
Art 2 point b	"European patent" means a patent granted by the European Patent Office under the rules and procedures laid down in the EPC;	"European patent" means a patent granted by the European Patent Office under the rules and procedures laid down in the EPC;	"European patent" means a patent granted by the European Patent Office under the rules and procedures laid down in the EPC;	"European patent" means a patent granted by the European Patent Office under the rules and procedures laid down in the EPC;
Art 2 point c Am. 6	"European patent with unitary effect" means a European patent which benefits from unitary effect in the territories of the participating Member States by virtue of this Regulation;	"European patent with unitary effect" means a European patent which benefits from unitary effect in the territories of the participating Member States by virtue of this Regulation;	"European patent with unitary effect" means a European patent which benefits from unitary effect in the territories of <i>all</i> the participating Member States by virtue of this Regulation;	"European patent with unitary effect" means a European patent which benefits from unitary effect in the territories of <i>all</i> the participating Member States by virtue of this Regulation;
Art 2 point d	"European Patent Register" means the register kept by the European Patent Office under Article 127 of the EPC;	"European Patent Register" means the register kept by the European Patent Office under Article 127 of the EPC;	"European Patent Register" means the register kept by the European Patent Office under Article 127 of the EPC;	"European Patent Register" means the register kept by the European Patent Office under Article 127 of the EPC;

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 2 point da Am. 7	-	-	<i>"Register for unitary patent protection" means the register constituting part of the European Patent Register in which the unitary effect and any limitation, license, transfer revocation or lapse of a European patent with unitary effect are registered;</i>	<i>"Register for unitary patent protection" means the register constituting part of the European Patent Register in which the unitary effect and any limitation, license, transfer revocation or lapse of a European patent with unitary effect are registered;</i>
Art 2 point e	"European Patent Bulletin" means the periodical publication provided for in Article 129 of the EPC.	"European Patent Bulletin" means the periodical publication provided for in Article 129 of the EPC.	"European Patent Bulletin" means the periodical publication provided for in Article 129 of the EPC.	"European Patent Bulletin" means the periodical publication provided for in Article 129 of the EPC.
	<i>Article 3</i> <i>European patent with unitary effect</i>	<i>Article 3</i> <i>European patent with unitary effect</i>	<i>Article 3</i> <i>European patent with unitary effect</i>	<i>Article 3</i> <i>European patent with unitary effect</i>
Art 3(1) Am. 8	European patents granted with <i>an identical scope of protection</i> in respect of all participating Member States shall benefit from unitary effect in the participating Member States provided that their unitary effect has been registered in the Register for unitary patent protection <i>referred to in Article 12(1)(b)</i> . European patents that were granted with different sets of claims for different participating	European patents granted with <i>an identical scope of protection</i> in respect of all participating Member States shall benefit from unitary effect in the participating Member States provided that their unitary effect has been registered in the Register for unitary patent protection <i>referred to in Article 12(1)(b)</i> . European patents that were granted with different sets of claims for different participating	European patents granted with <i>the same set of claims</i> in respect of all <i>the</i> participating Member States shall benefit from unitary effect in the participating Member States provided that their unitary effect has been registered in the Register for unitary patent protection. European patents that were granted with different sets of claims for different participating Member States shall not benefit	European patents granted with <i>the same set of claims</i> in respect of all <i>the</i> participating Member States shall benefit from unitary effect in the participating Member States provided that their unitary effect has been registered in the Register for unitary patent protection <i>referred to in Article 2(da)</i> . European patents that were granted with different sets of claims for different participating

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	Member States shall not benefit from unitary effect.	Member States shall not benefit from unitary effect.	from unitary effect.	Member States shall not benefit from unitary effect.
Art 3(2) Am. 9	<p>A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all participating Member States.</p> <p><i>Without prejudice to Article 5, a European patent with unitary effect may only be limited, licensed, transferred, revoked or lapse in respect of all the participating Member States.</i></p>	<p>A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all participating Member States.</p> <p><i>A European patent with unitary effect may only be limited, transferred, revoked or lapse in respect of all the participating Member States.</i></p> <p><i>A European patent with unitary effect may be licensed in respect of the whole or part of the territories of the participating Member States.</i></p>	<p>A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all participating Member States.</p> <p>European <i>patents</i> with unitary effect may only be <i>granted</i>, limited, transferred <i>or</i> revoked, or lapse <i>or become subject to law enforcement</i>, in respect of all the participating Member States.</p> <p><i>A European patent with unitary effect may be licensed in respect of the whole or part of the territories of the participating Member States.</i></p>	<p>A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all participating Member States.</p> <p><i>A European patent with unitary effect may only be limited, transferred, revoked or lapse in respect of all the participating Member States.</i></p> <p><i>A European patent with unitary effect may be licensed in respect of the whole or part of the territories of the participating Member States.</i></p>
Art 3(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.	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.	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.	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.
	<i>Article 4</i> <i>Date of effect</i>	<i>Article 4</i> <i>Date of effect</i>	<i>Article 4</i> <i>Date of effect</i>	<i>Article 4</i> <i>Date of effect</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 4(1)	A European patent with unitary effect shall take effect in the territories of the participating Member States on the date of the publication, by the European Patent Office, of the mention of the grant of the European patent in the European Patent Bulletin.	A European patent with unitary effect shall take effect in the territories of the participating Member States on the date of the publication, by the European Patent Office, of the mention of the grant of the European patent in the European Patent Bulletin.	A European patent with unitary effect shall take effect in the territories of the participating Member States on the date of the publication, by the European Patent Office, of the mention of the grant of the European patent in the European Patent Bulletin.	A European patent with unitary effect shall take effect in the territories of the participating Member States on the date of the publication, by the European Patent Office, of the mention of the grant of the European patent in the European Patent Bulletin.
Art 4(2)	The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered, the European patent is deemed not to have taken effect as a national patent in their territory on the date of the publication of the mention of the grant in the European Patent Bulletin.	The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered, the European patent is deemed not to have taken effect as a national patent in their territory on the date of the publication of the mention of the grant in the European Patent Bulletin.	The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered, the European patent is deemed not to have taken effect as a national patent in their territory on the date of the publication of the mention of the grant in the European Patent Bulletin.	The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered, <u>and extends to their territory</u> , the European patent is deemed not to have taken effect as a national patent in their territory on the date of the publication of the mention of the grant in the European Patent Bulletin.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Article 5</i> <i>Prior rights</i>	<i>Article 5</i> <i>Prior rights</i>	<i>Article 5</i> <i>Prior rights</i>	<i>Article 5</i> <i>Prior rights</i>
Art 5 Am. 10	In the event of a limitation or a revocation on the ground of lack of novelty pursuant to Article 54(3) of the EPC, the limitation or revocation of a European patent with unitary effect shall take effect only in respect of the participating Member State(s) designated in the earlier European patent application as published.	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
	<i>Article 5a</i> <i>Law applicable to a European patent with unitary effect</i>	<i>Article 5a</i> <i>Law applicable to a European patent with unitary effect</i>	<i>Article 5a</i> <i>Applicable law</i>	<i>Article 5a</i> <i>Law applicable to a European patent with unitary effect</i>
Art 5a Am. 11	-	-	<i>The following shall apply, in the following order of priority, to the European patent with unitary effect:</i> <i>a) this Regulation and Regulation (EU) No .../... implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements and directly</i>	-

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
			<i>applicable Union law;</i> <i>b) in matters not covered by (a), the EPC;</i> <i>c) in matters not covered by (a) and (b),</i> <i>national law of the participating Member States including their private international law;</i>	
	<i>Chapter II Effects of the European patent with unitary effect</i> <i>Article 6</i> <i>Right to prevent the direct use of the invention</i>	<i>Chapter II Effects of the European patent with unitary effect</i> <i>Article 6</i> <i>Right to prevent the direct use of the invention</i>	<i>Chapter II Effects of the European patent with unitary effect</i> <i>Article 6</i> <i>Right to prevent the direct use of the invention</i>	<i>Chapter II Effects of the European patent with unitary effect</i> <i>Article 6</i> <i>Right to prevent the direct use of the invention</i>
Art 6 introd. phrase	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from the following:	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from the following:	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from the following:	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from the following:
Art 6 point a	making, offering, placing on the market or using a product which is the subject matter of the patent, or importing or storing the product for those purposes;	making, offering, placing on the market or using a product which is the subject matter of the patent, or importing or storing the product for those purposes;	making, offering, placing on the market or using a product which is the subject matter of the patent, or importing or storing the product for those purposes;	making, offering, placing on the market or using a product which is the subject matter of the patent, or importing or storing the product for those purposes;

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 6 point b Am. 12	using a process which is the subject matter of the patent or, where the third party knows, or should have known, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the <i>participating</i> Member States;	using a process which is the subject matter of the patent or, where the third party knows, or should have known, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the Member States;	using a process which is the subject matter of the patent or, where the third party knows, or should have known, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the <i>territory of the participating</i> Member States;	using a process which is the subject matter of the patent or, where the third party knows, or should have known, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the <i>territory of the participating</i> Member States <i>in which that patent has unitary effect</i> ;
Art 6 point c	offering, placing on the market, using, importing or storing for those purposes a product obtained directly by a process which is the subject matter of the patent.	offering, placing on the market, using, importing or storing for those purposes a product obtained directly by a process which is the subject matter of the patent.	offering, placing on the market, using, importing or storing for those purposes a product obtained directly by a process which is the subject matter of the patent.	offering, placing on the market, using, importing or storing for those purposes a product obtained directly by a process which is the subject matter of the patent.
	<i>Article 7</i> <i>Right to prevent the indirect use of the invention</i>	<i>Article 7</i> <i>Right to prevent the indirect use of the invention</i>	<i>Article 7</i> <i>Right to prevent the indirect use of the invention</i>	<i>Article 7</i> <i>Right to prevent the indirect use of the invention</i>
Art 7(1) Am. 13	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from supplying or offering to supply within the participating Member States any person <i>without the proprietor's consent</i> , other than <i>a party</i> entitled to exploit the patented	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from supplying or offering to supply within the participating Member States any person <i>without the proprietor's consent</i> , other than <i>a party</i> entitled to exploit the patented	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party <i>not having the proprietor's consent</i> from supplying or offering to supply, within the participating Member States, any person other than <i>the one</i> entitled to exploit the	The European patent with unitary effect shall confer on its proprietor the right to prevent any third party <i>not having the proprietor's consent</i> from supplying or offering to supply, within the participating Member States <i>in which that patent has unitary effect</i> , any person other

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or should have known, that those means are suitable and intended for putting that invention into effect.	invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or should have known, that those means are suitable and intended for putting that invention into effect.	patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or should have known, that those means are suitable and intended for putting that invention into effect.	than <i>a party</i> entitled to exploit the patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or should have known, that those means are suitable and intended for putting that invention into effect.
Art 7(2)	Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to perform any of the acts prohibited by Article 6.	Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to perform any of the acts prohibited by Article 6.	Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to perform any of the acts prohibited by Article 6.	Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to perform any of the acts prohibited by Article 6.
Art 7(3)	Persons performing the acts referred to in Article 8(a) to (d) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.	Persons performing the acts referred to in Article 8(a) to (d) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.	Persons performing the acts referred to in Article 8(a) to (d) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.	Persons performing the acts referred to in Article 8(a) to (d) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.
<i>Art 8a</i> Am. 14	-	-	<i>Article 8a</i> <i>Damages</i> <i>1. In the event of unlawful direct use, the patent proprietor shall have the right in accordance with Article 6 to claim damages from the third party.</i>	-

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
			<p><i>2. He may at his discretion claim from the third party:</i></p> <p><i>a) compensation for lost profit and other damages,</i></p> <p><i>b) a reasonable royalty, or</i></p> <p><i>c) surrender of the profit derived from the patent infringement.</i></p> <p><i>3. The royalty referred to in paragraph 2(b) shall be such as would have been set by reasonable parties to a licence agreement at the time the patent was first infringed, but in full knowledge of all the circumstances of the patent infringement, including the unauthorised use.</i></p> <p><i>4. Interest shall be charged on the sum to be paid in compensation at 5% over the ECB rate for each year of use. The claim shall lapse five years after the patent proprietor first learns of the patent infringement.</i></p> <p><i>5. The patent proprietor's entitlement to information and</i></p>	

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
			<p><i>other entitlements shall be determined under the national law of the participating Member States adopted pursuant to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.</i></p> <p><i>6. Paragraphs 1 to 5 shall apply in cases of indirect use of a patent in accordance with Article 5 only where the act leads to a direct infringement of the patent.</i></p>	
	<p><i>Article 8</i></p> <p><i>Limitation of the effects of the European patent with unitary effect</i></p>	<p><i>Article 8</i></p> <p><i>Limitation of the effects of the European patent with unitary effect</i></p>	<p><i>Article 8</i></p> <p><i>Limitation of the effects of the European patent with unitary effect</i></p>	<p><i>Article 8</i></p> <p><i>Limitation of the effects of the European patent with unitary effect</i></p>
Art 8	The rights conferred by the European patent with unitary effect shall not extend to any of the following:	The rights conferred by the European patent with unitary effect shall not extend to any of the following:	The rights conferred by the European patent with unitary effect shall not extend to any of the following	The rights conferred by the European patent with unitary effect shall not extend to any of the following:
Art 8 point a	acts done privately and for non-commercial purposes;	acts done privately and for non-commercial purposes;	acts done privately and for non-commercial purposes;	acts done privately and for non-commercial purposes;
Art 8 point b	acts done for experimental purposes relating to the subject matter of the patented invention;	acts done for experimental purposes relating to the subject matter of the patented invention;	acts done for experimental purposes relating to the subject matter of the patented invention;	acts done for experimental purposes relating to the subject matter of the patented invention;

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
<i>Art 8 point ba</i> Am. 15	-	-	<i>acts relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the patent.</i>	-
Art 8 point 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.	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.	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.	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.
Art 8 point 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;	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;	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;	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;
Art 8 point 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,	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,	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,	the use on board vessels of countries other than participating Member States <i>in which that patent has unitary effect</i> 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

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	provided that the invention is used there exclusively for the needs of the vessel;	provided that the invention is used there exclusively for the needs of the vessel;	provided that the invention is used there exclusively for the needs of the vessel;	participating Member States <i>in which that patent has unitary effect</i> , provided that the invention is used there exclusively for the needs of the vessel;
Art 8 point f Am. 16	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;	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;	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 <i>the territory of the</i> participating Member States;	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 <i>in which that patent has unitary effect</i> , or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter <i>the territory of the</i> participating Member States <i>in which that patent has unitary effect</i> ;
Art 8 point 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;	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;	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;	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 <i>in which that patent has unitary effect</i> ;

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 8 point h Am. 17	<i>acts as covered by the farmers privilege pursuant to Article 14 of Regulation (EC) No. 2100/94 which applies mutatis mutandis;</i>	<i>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;</i>	<i>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 such use are laid down in Article 14 of Regulation (EC) No. 2100/94;</i>	<i>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;</i>
Art 8 point 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;	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;	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;	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;

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 8 point j Am. 18	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	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	the acts and the use of the obtained information as allowed under Articles 5 and 6 of Directive 2009/24/EC , in particular, by its provisions on decompilation and interoperability; and	the acts and the use of the obtained information as allowed under Articles 5 and 6 of Directive 2009/24/EC , in particular, by its provisions on decompilation and interoperability; and
Art 8 point k	the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council.	the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council.	the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council.	the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council.
	<i>Article 9</i> <i>Exhaustion of the rights conferred by the European patent with unitary effect</i>	<i>Article 9</i> <i>Exhaustion of the rights conferred by the European patent with unitary effect</i>	<i>Article 9</i> <i>Exhaustion of the rights conferred by the European patent with unitary effect</i>	<i>Article 9</i> <i>Exhaustion of the rights conferred by the European patent with unitary effect</i>
Art 9	The rights conferred by a European patent with unitary effect shall not extend to acts concerning the product covered by that patent which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent or with his/her consent, unless there are legitimate grounds for the proprietor to oppose further	The rights conferred by a European patent with unitary effect shall not extend to acts concerning the product covered by that patent which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent or with his/her consent, unless there are legitimate grounds for the proprietor to oppose further	The rights conferred by a European patent with unitary effect shall not extend to acts concerning the product covered by that patent which are carried out within the territories of the participating Member States after that product has been put on the market in the Union by the proprietor of the patent or with his/her consent, unless there are legitimate grounds for the proprietor to oppose further	The rights conferred by a European patent with unitary effect shall not extend to acts concerning the product covered by that patent which are carried out within the territories of the participating Member States <i>in which that patent has unitary effect</i> after that product has been put on the market in the Union by the proprietor of the patent or with his/her consent, unless there are legitimate grounds for the

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	commercialisation of the product.	commercialisation of the product.	commercialisation of the product.	proprietor to oppose further commercialisation of the product.
	<i>Chapter III A European patent with unitary effect as an object of property</i> <i>Article 10</i> <i>Treating a European patent with unitary effect as a national patent</i>	<i>Chapter III A European patent with unitary effect as an object of property</i> <i>Article 10</i> <i>Treating a European patent with unitary effect as a national patent</i>	<i>Chapter III A European patent with unitary effect as an object of property</i> <i>Article 10</i> <i>Treating a European patent with unitary effect as a national patent</i>	<i>Chapter III A European patent with unitary effect as an object of property</i> <i>Article 10</i> <i>Treating a European patent with unitary effect as a national patent</i>
Art 10(1) introd. phrase	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, according to the European Patent Register:	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, according to the European Patent Register:	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, according to the European Patent Register:	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 <i>in which that patent has unitary effect</i> in which, according to the European Patent Register:
Art 10(1) point a	the patent proprietor had his/her residence or principal place of business on the date of filing of the application for the patent; or	the patent proprietor had his/her residence or principal place of business on the date of filing of the application for the patent; or	the patent proprietor had his/her residence or principal place of business on the date of filing of the application for the patent; or	the patent proprietor had his/her residence or principal place of business on the date of filing of the application for the patent; or
Art 10(1) point b	where subparagraph (a) does not apply, the proprietor had a place of business on that date.	where subparagraph (a) does not apply, the proprietor had a place of business on that date.	where subparagraph (a) does not apply, the proprietor had a place of business on that date.	where subparagraph (a) does not apply, the proprietor had a place of business on that date.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 10(2)	Where two or more persons are mentioned in the European Patent Register as joint proprietors, paragraph 1(a) shall apply to the joint proprietor indicated first. Where this is not possible, paragraph 1(a) shall apply to the next joint proprietor indicated in the order of entry. Where paragraph 1(a) does not apply to any of the joint proprietors, paragraph 1(b) shall apply accordingly.	Where two or more persons are mentioned in the European Patent Register as joint proprietors, paragraph 1(a) shall apply to the joint proprietor indicated first. Where this is not possible, paragraph 1(a) shall apply to the next joint proprietor indicated in the order of entry. Where paragraph 1(a) does not apply to any of the joint proprietors, paragraph 1(b) shall apply accordingly.	Where two or more persons are mentioned in the European Patent Register as joint proprietors, paragraph 1(a) shall apply to the joint proprietor indicated first. Where this is not possible, paragraph 1(a) shall apply to the next joint proprietor indicated in the order of entry. Where paragraph 1(a) does not apply to any of the joint proprietors, paragraph 1(b) shall apply accordingly.	Where two or more persons are mentioned in the European Patent Register as joint proprietors, paragraph 1(a) shall apply to the joint proprietor indicated first. Where this is not possible, paragraph 1(a) shall apply to the next joint proprietor indicated in the order of entry. Where paragraph 1(a) does not apply to any of the joint proprietors, paragraph 1(b) shall apply accordingly.
Art 10(3) Am. 19	Where no proprietor has his/her residence or <i>a place</i> of business in a participating Member State for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be dealt with 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.	Where no proprietor has his/her residence or <i>a place</i> of business in a participating Member State for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be dealt with 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.	Where no proprietor has his/her residence, <i>principal place of business</i> or place of business in a participating Member State for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be dealt with 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.	Where no proprietor has his/her residence, <i>principal place of business</i> or place of business in a participating Member State <u><i>in which that patent has unitary effect</i></u> for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be dealt with 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.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 10(4)	The acquisition of a right may not be dependent on any entry in a national patent register.	The acquisition of a right may not be dependent on any entry in a national patent register.	The acquisition of a right may not be dependent on any entry in a national patent register.	The acquisition of a right may not be dependent on any entry in a national patent register.
	<i>Article 11</i> <i>Licenses of right</i>			
Art 11(1)	The proprietor of a European patent with unitary effect may file a statement with the European Patent Office that he/she is prepared to allow any person to use the invention as a licensee in return for appropriate compensation.	The proprietor of a European patent with unitary effect may file a statement with the European Patent Office that he/she is prepared to allow any person to use the invention as a licensee in return for appropriate compensation.	The proprietor of a European patent with unitary effect may file a statement with the European Patent Office that he/she is prepared to allow any person to use the invention as a licensee in return for appropriate compensation.	The proprietor of a European patent with unitary effect may file a statement with the European Patent Office that he/she is prepared to allow any person to use the invention as a licensee in return for appropriate compensation.
Art 11(2)	A license obtained under this Regulation shall be treated as a contractual license.	A license obtained under this Regulation shall be treated as a contractual license.	A license obtained under this Regulation shall be treated as a contractual license.	A license obtained under this Regulation shall be treated as a contractual license.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Am. 20	<i>Chapter IV Institutional provisions</i> <i>Article 12</i> <i>Implementation by the participating Member States</i>	<i>Chapter IV Institutional provisions</i> <i>Article 12</i> <i>Implementation by the participating Member States</i>	<i>Chapter IV Institutional provisions</i> <i>Article 12</i> Tasks given to the European Patent Office	<i>Chapter IV Institutional provisions</i> <i>Article 12</i> Administrative tasks in the framework of the European Patent Organisation
Art 12(1) introd. phrase	The participating Member States shall give, within the meaning of Article 143 of the EPC, the European Patent Office the following tasks to be carried out in conformity with the internal rules of the European Patent Office:	The participating Member States shall give, within the meaning of Article 143 of the EPC, the European Patent Office the following tasks to be carried out in conformity with the internal rules of the European Patent Office:	The participating Member States shall give, within the meaning of Article 143 of the EPC, the European Patent Office the following tasks to be carried out in conformity with the internal rules of the European Patent Office:	The participating Member States shall give, within the meaning of Article 143 of the EPC, the European Patent Office the following tasks to be carried out in conformity with the internal rules of the European Patent Office:
Art 12(1) point a	the administration of requests for unitary effect by proprietors of European patents;	the administration of requests for unitary effect by proprietors of European patents;	the administration of requests for unitary effect by proprietors of European patents;	the administration of requests for unitary effect by proprietors of European patents;
Art 12(1) point b Am. 21	the <i>inclusion and</i> administration of <i>a</i> Register for unitary patent protection <i>registering unitary effect as well as any limitation, license, transfer, revocation or lapse of a European patent with unitary effect, within the European Patent Register;</i>	the <i>inclusion and</i> administration of <i>a</i> Register for unitary patent protection <i>registering unitary effect as well as any limitation, license, transfer, revocation or lapse of a European patent with unitary effect, within the European Patent Register;</i>	the <i>inclusion within the European Patent Register</i> and the administration of <i>the</i> Register for unitary patent protection;	the <i>inclusion within the European Patent Register</i> and the administration of <i>the</i> Register for unitary patent protection;

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 12(1) point c	receiving and registering statements on licensing referred to in Article 11, their withdrawal and licensing commitments undertaken in international standardisation bodies;	receiving and registering statements on licensing referred to in Article 11, their withdrawal and licensing commitments undertaken in international standardisation bodies;	receiving and registering statements on licensing referred to in Article 11, their withdrawal and licensing commitments undertaken in international standardisation bodies;	receiving and registering statements on licensing referred to in Article 11, their withdrawal and licensing commitments undertaken in international standardisation bodies;
Art 12(1) point d	the publication of the translations referred to in Article 6 of Council Regulation .../... [translation arrangements] during the transitional period referred to in that Article;	the publication of the translations referred to in Article 6 of Council Regulation .../... [translation arrangements] during the transitional period referred to in that Article;	the publication of the translations referred to in Article 6 of Council Regulation .../... [translation arrangements] during the transitional period referred to in that Article;	the publication of the translations referred to in Article 6 of Council Regulation .../... [translation arrangements] during the transitional period referred to in that Article;
Art 12(1) point e Am. 22	the collection and administration of renewal fees for European patents with unitary effect, in respect of the years following the year in which the Register referred to in point b) mentions their grant ; the collection and administration of additional fees paid in cases of late payment of renewal fees within six months of the due date, as well as the distribution of a part of the collected renewal fees to the participating Member States; and	the collection and administration of renewal fees for European patents with unitary effect, in respect of the years following the year in which the Register referred to in point b) mentions their grant ; the collection and administration of additional fees paid in cases of late payment of renewal fees within six months of the due date, as well as the distribution of a part of the collected renewal fees to the participating Member States; and	the collection and administration of renewal fees for European patents with unitary effect, in respect of the years following the year in which the European Patent Register mentions the grant of such a patent ; the collection and administration of additional fees paid in cases of late payment of renewal fees within six months of the due date, as well as the distribution of a part of the collected renewal fees to the participating Member States; and	the collection and administration of renewal fees for European patents with unitary effect, in respect of the years following the year in which the European Patent Bulletin mentions their grant ; the collection and administration of additional fees paid in cases of late payment of renewal fees within six months of the due date, as well as the distribution of a part of the collected renewal fees to the participating Member States; and

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 12(1) point f	the administration of a compensation scheme of translation costs for applicants filing European patent applications in one of the official languages of the Union that is not an official language of the European Patent Office.	the administration of a compensation scheme of translation costs for applicants filing European patent applications in one of the official languages of the Union that is not an official language of the European Patent Office.	the administration of a compensation scheme of translation costs for applicants filing European patent applications in one of the official languages of the Union that is not an official language of the European Patent Office.	the administration of a compensation scheme of translation costs for applicants filing European patent applications in one of the official languages of the Union that is not an official language of the European Patent Office.
Art 12(1) point g	-	<i>ensuring 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;</i>	-	ensuring that requests by the patent proprietor for unitary effect for a European patent are 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;
Art 12(1) point h	-	<i>ensuring 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</i>	-	ensuring 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 any

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
		<i>Patent Office is informed of limitations and revocations of European patents with unitary effect.</i>		limitations, <i>licenses, transfers</i> and revocations of European patents with unitary effect <i>on the basis of Article 138(3) of the EPC.</i>
Art 12(1) second subpar. Am. 23	For the purposes of point a), the participating Member States shall ensure that requests by <i>the patent proprietor</i> 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.	-	For the purposes of point a) of <i>the first subparagraph</i> , the participating Member States shall ensure that requests for unitary effect for a European patent are filed <i>by the patent proprietor</i> 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 <i>of the European patent</i> is published in the European Patent Bulletin.	-
Art 12(1), third subpar. Am. 24	For the purposes of point b), the participating Member States shall 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	-	For the purposes of point b) <i>of the first subparagraph</i> , the participating Member States shall 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	-

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	Article; and that the European Patent Office is informed of limitations <i>and</i> revocations of European <i>patents</i> with unitary effect.		translations referred to in that Article. <i>Member States shall ensure</i> that the European Patent Office is informed of <i>any</i> limitations, <i>license, transfer, revocations or lapse of a European patent</i> with unitary effect.	
Art 12(2) Am. 25	<i>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 by the European Patent Office.</i> 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.	<i>Member States shall ensure compliance with the provisions of this Regulation in implementing their international obligations undertaken in the EPC and shall cooperate amongst themselves 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 by the European Patent Office and shall ensure the setting of the level of renewal fees in accordance with Article 15 and the setting of the share of distribution of the renewal fees in accordance with Article 16.</i> To that end they shall set up a Select Committee of the	<i>deleted</i>	Member States shall ensure compliance with the provisions of this Regulation in implementing their international obligations undertaken in the EPC and shall cooperate amongst themselves 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 by the European Patent Office and shall ensure the setting of the level of renewal fees in accordance with Article 15 and the setting of the share of distribution of the renewal fees in accordance with Article 16. To that end they shall set up a Select Committee of the

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
		<p>Administrative Council of the European Patent Organisation within the meaning of Article 145 of the EPC.</p>		<p>Administrative Council of the European Patent Organisation within the meaning of Article 145 of the EPC.</p> <p>The Select Committee of the Administrative Council shall consist of the representatives of the 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 by experts.</p> <p>Decisions of the Select Committee of the Administrative Council shall be taken with due regard for the position of the Commission and in accordance with the rules set out in Article 35(2) of the EPC.</p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 12(3)	The participating Member States shall ensure effective legal protection before a national court against the decisions of the European Patent Office in carrying out the tasks referred to in paragraph 1.	The participating Member States shall ensure effective legal protection before the competent court against the decisions of the European Patent Office in carrying out the tasks referred to in paragraph 1.	The participating Member States shall ensure effective legal protection before the competent court against the decisions of the European Patent Office in carrying out the tasks referred to in paragraph 1.	The participating Member States shall ensure effective legal protection before the competent court against the decisions of the European Patent Office in carrying out the tasks referred to in paragraph 1.
	-	-	<i>Article 12a</i> <i>Select Committee of the Administrative Council</i>	-
Art 12a Am. 26	-	-	<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 paragraph 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</p>	-

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
			<p><i>the European Patent Office to carry out the tasks referred to in Article 12(1);</i></p> <p><i>b) ensure that requests by the patent proprietor for unitary effect are 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;</i></p> <p><i>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 of European patents with unitary effect on the basis of Article 138(3) of the EPC;</i></p> <p><i>d) set the level of the renewal</i></p>	

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
			<p><i>fees in accordance with Article 15; and</i></p> <p><i>e) set the share of distribution of the renewal fees in accordance with Article 16.</i></p> <p><i>3. The Select Committee of the Administrative Council shall consist of the representatives of the Member States participating in enhanced cooperation and a representative of the Commission, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or by experts.</i></p> <p><i>4. Decisions of the Select Committee of the Administrative Council shall be taken with due regard for the position of the Commission and in accordance with the rules set out in Article 35(2) of the EPC.</i></p>	

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Chapter V Financial provisions Article 13 Principle</i>			
Art 13	The expenses incurred by the European Patent Office in carrying out the additional tasks given, within the meaning of Article 143 of the EPC, by Member States to the European Patent Office shall be covered by the fees generated by the European patents with unitary effect.	The expenses incurred by the European Patent Office in carrying out the additional tasks given, within the meaning of Article 143 of the EPC, by Member States to the European Patent Office shall be covered by the fees generated by the European patents with unitary effect.	The expenses incurred by the European Patent Office in carrying out the additional tasks given, within the meaning of Article 143 of the EPC, by Member States to the European Patent Office shall be covered by the fees generated by the European patents with unitary effect.	The expenses incurred by the European Patent Office in carrying out the additional tasks given, within the meaning of Article 143 of the EPC, by Member States to the European Patent Office shall be covered by the fees generated by the European patents with unitary effect.
	<i>Article 14 Renewal fees</i>	<i>Article 14 Renewal fees</i>	<i>Article 14 Renewal fees</i>	<i>Article 14 Renewal fees</i>
Art 14(1)	Renewal fees and additional fees for the late payment of renewal fees for European patents with unitary effect 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 European Patent Register mentions the grant of the European patent which benefits from unitary effect by virtue of	Renewal fees and additional fees for the late payment of renewal fees for European patents with unitary effect 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 European Patent Register mentions the grant of the European patent which benefits from unitary effect by virtue of	Renewal fees and additional fees for the late payment of renewal fees for European patents with unitary effect 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 European Patent Register mentions the grant of the European patent which benefits from unitary effect by virtue of	Renewal fees and additional fees for the late payment of renewal fees for European patents with unitary effect 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 European Patent Register mentions the grant of the European patent which benefits from unitary effect by virtue of

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	this Regulation.	this Regulation.	this Regulation.	this Regulation.
Art 14(2) Am. 27	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.	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.	A European patent with unitary effect shall lapse if a renewal fee and, where applicable, any additional fee <i>for late payment of a renewal fee</i> have not been paid in due time.	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.
Art 14(3)	In the case of Article 11(1), renewal fees for the patent which fall due after receipt of the statement shall be reduced.	In the case of Article 11(1), renewal fees for the patent which fall due after receipt of the statement shall be reduced.	In the case of Article 11(1), renewal fees for the patent which fall due after receipt of the statement shall be reduced.	In the case of Article 11(1), renewal fees for the patent which fall due after receipt of the statement shall be reduced.
	<i>Article 15</i> Level of renewal fees	<i>Article 15</i> Level of renewal fees	<i>Article 15</i> Level of renewal fees	<i>Article 15</i> Level of renewal fees
Art 15(1) introd. phrase	Renewal fees for European patents with unitary effect shall be:	Renewal fees for European patents with unitary effect shall be:	Renewal fees for European patents with unitary effect shall be:	Renewal fees for European patents with unitary effect shall be:
Art 15(1) point a	progressive throughout the term of the unitary patent protection, and	progressive throughout the term of the unitary patent protection, and	progressive throughout the term of the unitary patent protection, and	progressive throughout the term of the unitary patent protection, and
Art 15(1) point b	sufficient not only to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection but also,	sufficient not only to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection but also,	sufficient not only to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection but also,	sufficient not only to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection but also,

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 15(1) point 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.	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.	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.	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.
Art 15(2) introd. phrase	The level of the renewal fees shall be fixed with the aim of	The level of the renewal fees shall be fixed with the aim of	The level of the renewal fees shall be fixed with the aim of	The level of the renewal fees, shall be fixed, taking into account, <i>among others,</i> the situation of specific entities such as small and medium sized enterprises, with the aim of
Art 15(2) point a	facilitating innovation and fostering the competitiveness of European businesses,	facilitating innovation and fostering the competitiveness of European businesses,	facilitating innovation and fostering the competitiveness of European businesses,	facilitating innovation and fostering the competitiveness of European businesses,
Art 15(2) point b	reflecting the size of the market covered by the patent and	reflecting the size of the market covered by the patent and	reflecting the size of the market covered by the patent and	reflecting the size of the market covered by the patent and
Art 15(2) point ba Am. 28	-	-	<i>taking into account the specific situation of small and medium-sized enterprises in the form of lower fees,</i>	-

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 15(2) point c Am. 29	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 where the level of the renewal fees is first fixed <i>by the Commission</i> .	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 where the level of the renewal fees is first fixed.	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 where the level of the renewal fees is first fixed.	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 where the level of the renewal fees is first fixed.
Art 15(3) introd. phrase Am. 30	In order to reach <i>these</i> objectives set out in this Chapter, the <i>Commission</i> shall set the level of renewal fees at a level that	In order to reach <i>these</i> objectives set out in this Chapter, <i>the level of renewal fees</i> shall <i>be set at a</i> level that	In order to reach <i>the</i> objectives set out in this Chapter, the <i>Select Committee</i> shall, <i>taking due account of the position of the Commission</i> , set the level of renewal fees at a level that:	In order to reach <i>these</i> objectives set out in this Chapter, <i>the level of renewal fees</i> shall <i>be set at a</i> level that:
Art 15(3) point a	is equivalent to the level of renewal fee to be paid for the average geographical coverage of current European patents,	is equivalent to the level of renewal fee to be paid for the average geographical coverage of current European patents,	is equivalent to the level of renewal fee to be paid for the average geographical coverage of current European patents,	is equivalent to the level of renewal fee to be paid for the average geographical coverage of current European patents,
Art 15(3) point b	reflects the renewal rate of current European patents, and	reflects the renewal rate of current European patents, and	reflects the renewal rate of current European patents, and	reflects the renewal rate of current European patents, and
Art 15(3) point c	the number of requests for unitary protection.	the number of requests for unitary protection.	the number of requests for unitary protection.	the number of requests for unitary protection.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 15(4) Am. 31	The Commission shall be empowered to adopt delegated acts in accordance with paragraphs 1-3 and Article 17 concerning the fixing of the level of the renewal fees for European patents with unitary effect.	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
	<i>Article 16 Distribution</i>	<i>Article 16 Distribution</i>	<i>Article 16 Distribution</i>	<i>Article 16 Distribution</i>
Art 16(1)	<i>The part of the collected renewal fees to be distributed to the participating Member States referred to in Article 12(1)(e) shall be 50 percent of the renewal fees referred to in Article 14 paid for European patents with unitary effect minus the costs associated with the administration of the unitary patent protection referred to in Article 12.</i>	<i>The European Patent Office shall retain 50 percent of the renewal fees referred to in Article 14 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 in accordance with Article 12(2).</i>	<i>The part of the collected renewal fees to be distributed to the participating Member States referred to in Article 12(1)(e) shall be 50 percent of the renewal fees referred to in Article 14 paid for European patents with unitary effect minus the costs associated with the administration of the unitary patent protection referred to in Article 12.</i>	<i>The European Patent Office shall retain 50 percent of the renewal fees referred to in Article 14 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 in accordance with Article 12(2).</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 16(2) introd. phrase Am. 32	In order to reach <i>these</i> objectives set out in this Chapter, <i>the Commission shall set</i> the share of distribution of renewal fees <i>referred to in paragraph 1</i> among the participating Member States <i>on the basis of</i> the following fair, equitable and relevant criteria:	In order to reach these objectives set out in this Chapter, the share of distribution of renewal fees <i>referred to in paragraph 1</i> among the participating Member States <i>shall be set on the basis of</i> the following fair, equitable and relevant criteria:	In order to reach <i>the</i> objectives set out in this Chapter, the share of distribution of renewal fees among the participating Member States <i>shall be based on</i> the following fair, equitable and relevant criteria:	In order to reach <i>the</i> objectives set out in this Chapter, the share of distribution of renewal fees among the participating Member States <i>shall be based on</i> the following fair, equitable and relevant criteria:
Art 16(2) point a	the number of patent applications,	the number of patent applications,	the number of patent applications,	the number of patent applications,
Art 16(2) point b Am. 33	the size of the market <i>expressed in the number of population,</i>	the size of the market, <i>while ensuring a minimum amount to be distributed to each participating Member State,</i>	the size of the market, <i>while ensuring a minimum amount to be distributed to each participating Member State,</i>	the size of the market, <i>while ensuring a minimum amount to be distributed to each participating Member State,</i>
Art 16(2) point c Am. 34	provision of compensation to Member States 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 <i>and</i> having acquired membership of the European Patent Organisation relatively recently.	provision of compensation to Member States for having an official language other than one of the official languages of the European Patent Office, <i>and/or</i> having a disproportionately low level of patenting activity <i>and/or</i> having acquired membership of the European Patent Organisation relatively recently.	provision of compensation to Member States for having an official language other than one of the official languages of the European Patent Office <i>and/or</i> having a disproportionately low level of patenting activity <i>and/or</i> having acquired membership of the European Patent Organisation relatively recently.	provision of compensation to Member States for having an official language other than one of the official languages of the European Patent Office, <i>and/or</i> having a disproportionately low level of patenting activity <i>and/or</i> having acquired membership of the European Patent Organisation relatively recently.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
Art 16(3) Am. 35	The participating Member States shall use the amount allocated to them in accordance with paragraph 1 to patent-related purposes.	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
Art 16(4) Am. 36	The Commission shall be empowered to adopt delegated acts in accordance with paragraphs 1-3 and Article 17 concerning the setting of the distribution of renewal fees between the participating Member States.	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Article 17</i> <i>Excercise of delegation</i>	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>
Art 17 Am. 37	<p>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</p> <p>2. The delegation of power referred to in Articles 15 and 16 shall be conferred for an indeterminate period of time from the [date of entry into force of this Regulation].</p> <p>3. The delegation of powers referred to in Articles 15 and 16 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	<i>deleted</i>	<i>deleted</i>	<i>deleted</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> <p>5. A delegated act adopted pursuant to Articles 15 and 16 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.</p>			

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Chapter VI Final provisions Article 18 Cooperation between the Commission and the European Patent Office</i>	<i>Chapter VI Final provisions Article 18 Cooperation between the Commission and the European Patent Office</i>	<i>Chapter VI Final provisions Article 18 Cooperation between the Commission and the European Patent Office</i>	<i>Chapter VI Final provisions Article 18 Cooperation between the Commission and the European Patent Office</i>
Art 18	The Commission shall establish a close cooperation through a working agreement with the European Patent Office 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 the impact on the budget of the European Patent Organisation.	The Commission shall establish a close cooperation through a working agreement with the European Patent Office 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 the impact on the budget of the European Patent Organisation.	The Commission shall establish a close cooperation through a working agreement with the European Patent Office 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 the impact on the budget of the European Patent Organisation.	The Commission shall establish a close cooperation through a working agreement with the European Patent Office 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 the impact on the budget of the European Patent Organisation.
	<i>Article 19 Application of competition law and the law relating to unfair competition</i>	<i>Article 19 Application of competition law and the law relating to unfair competition</i>	<i>Article 19 Application of competition law and the law relating to unfair competition</i>	<i>Article 19 Application of competition law and the law relating to unfair competition</i>
Art 19	This Regulation is without prejudice to the application of competition law and the law relating to unfair competition.	This Regulation is without prejudice to the application of competition law and the law relating to unfair competition.	This Regulation is without prejudice to the application of competition law and the law relating to unfair competition.	This Regulation is without prejudice to the application of competition law and the law relating to unfair competition.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Article 20</i> <i>Report on the operation of this Regulation</i>	<i>Article 20</i> <i>Report on the operation of this Regulation</i>	<i>Article 20</i> <i>Report on the operation of this Regulation</i>	<i>Article 20</i> <i>Report on the operation of this Regulation</i>
Art 20(1) Am. 38	Not later than six years from the date on which the first European patent with unitary effect takes effect in the territories of the participating Member States, the Commission shall present to the Council a report on the operation of this Regulation and, where necessary, make appropriate proposals for amending it. Subsequent reports on the operation of this Regulation shall be presented by the Commission every six years.	Not later than six years from the date on which the first European patent with unitary effect takes effect in the territories of the participating Member States, the Commission shall present to the Council a report on the operation of this Regulation and, where necessary, make appropriate proposals for amending it. Subsequent reports on the operation of this Regulation shall be presented by the Commission every six years.	Not later than three years from the date on which the first European patent with unitary effect takes effect in the territories of the participating Member States, 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. Subsequent reports on the operation of this Regulation shall be presented by the Commission every five years.	Not later than three years from the date on which the first European patent with unitary effect takes effect in the territories of the participating Member States, 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. Subsequent reports on the operation of this Regulation shall be presented by the Commission every five years.
Art 20(2) Am. 39	The Commission shall submit reports regularly on the functioning of the renewal fees referred to in Article 14 with particular emphasis on the continued compliance with the principles set out in Article 15.	The Commission shall submit reports regularly on the functioning of the renewal fees referred to in Article 14 with particular emphasis on the continued compliance with the principles set out in Article 15.	The Commission shall regularly submit to the European Parliament and the Council reports on the functioning of the renewal fees referred to in Article 14 with particular emphasis on the continued compliance with the principles set out in Article 15.	The Commission shall regularly submit to the European Parliament and the Council reports on the functioning of the renewal fees referred to in Article 14 with particular emphasis on the continued compliance with the principles set out in Article 15.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Article 21</i> <i>Notification by the participating Member States</i>	<i>Article 21</i> <i>Notification by the participating Member States</i>	<i>Article 21</i> <i>Notification by the participating Member States</i>	<i>Article 21</i> <i>Notification by the participating Member States</i>
Art 21 Am. 40	The participating Member States shall notify the Commission of the measures adopted in accordance with Articles 4(2) and 12 by the date set in Article 22(2).	The participating Member States shall notify the Commission of the measures adopted in accordance with Articles 4(2) and 12 by the date set in Article 22(2).	The participating Member States shall notify the Commission of the measures adopted in accordance with Articles 4(2), 12 and 12a by the date set in Article 22(2).	<p>1. The participating Member States shall notify the Commission of the measures adopted in accordance with <u>Article 12 by the date set in Article 22(2).</u></p> <p>2. <u>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, the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.</u></p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	<i>Article 22</i> <i>Entry into force and application</i>	<i>Article 22</i> <i>Entry into force and application</i>	<i>Article 22</i> <i>Entry into force and application</i>	<i>Article 22</i> <i>Entry into force and application</i>
Art 22(1)	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
Art 22(2) Am. 41	It shall apply <i>from [a specific date will be set and it will coincide with the date of application of Council Regulation .../... on the implementation of enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements]</i> .	It shall apply <i>from [a specific date will be set and it will coincide with the date of application of Council Regulation .../... on the implementation of enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements] or the date of the entry into force of the instrument creating a unified patent litigation system and the setting up of such a system, whichever is the later.</i>	It shall apply <i>once:</i> <i>(a) Regulation .../... on the implementation of enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements has become applicable, and</i> <i>(b) a minimum of nine contracting Member States, including the three Member States in which the highest number of European patents was in force in the year preceding the year in which the Diplomatic Conference for the signature of the agreement on the patent litigation system takes place, have ratified that agreement.</i>	2. It shall apply from <u>1 January 2014</u> or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later. <u>By way of derogation from Articles 3(1)-(2) and 4(1),</u> a European patent for which unitary effect is registered in the Register for unitary patent protection referred to in article 2 (da) shall have unitary effect only in those participating Member States in which the Unified Patent Court has <u>exclusive jurisdiction at the date of Registration.</u> 3. Each participating Member State shall notify <i>the Commission of its ratification of the Agreement at the time of</i>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
				<p><i>deposit of its ratification instrument. <u>The Commission shall publish 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 in the Official Journal of the European Union.</u> The Commission shall thereafter regularly update the list of the participating Member States <i>which have ratified the Agreement and publish it in the Official Journal</i></i></p>
Art 22(3) Am. 42	The participating Member States shall ensure that the rules referred to in Articles 4(2) and 12 are in place prior to or on the date set in paragraph 2.	The participating Member States shall ensure that the rules referred to in Articles 4(2) and 12 are in place prior to or on the date set in paragraph 2.	<i>deleted</i>	<p><i><u>4(a). The participating Member States shall ensure that the rules referred to in Article 12 are in place prior to or on the date set in paragraph 2.</u></i></p> <p><i><u>4(b). Each participating Member State shall ensure that the rules referred to in Article 4(2) are in place prior to or on 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</u></i></p>

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
				<i><u>regard to European patents with unitary effect on the date of application of this Regulation, the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.</u></i>
<i>Art 22(3a) Am. 43</i>	-	-	<i>During a transitional period pending the entry into force of the agreement on the patent litigation system in all contracting Member States, the unitary effect of the European patents shall be limited to those participating Member States in which the agreement on the patent litigation system is in force at the time of registering the unitary effect in accordance with Article 3(1).</i>	-
<i>Art 22(4) Am. 44</i>	Unitary patent protection may be requested for any European patent granted on or after the date set out in paragraph 2.	Unitary patent protection may be requested for any European patent granted on or after the date set out in paragraph 2.	Unitary patent protection may be requested for any European patent granted on or after the date set out in paragraph 2 <i>and 3a</i> .	5. Unitary patent protection may be requested for any European patent granted on or after the date set out in paragraph 2.

ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Working document for Coreper (Part 1) on 2 December 2011

	Commission proposal	Council general approach	Parliament draft report	Compromise proposals
	This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties. Done at Brussels,	This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties. Done at Brussels,	This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties. Done at Brussels,	6. This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties. Done at Brussels,

Proposal for a Regulation of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

Article 4(4)

In the case of a dispute concerning a claim for damages, the court hearing the dispute shall assess and take into consideration whether the alleged infringer, *in particular if it is a small or medium-sized enterprise, a natural person, a non profit organisation, a university or a public research organisation* has acted without knowing or having reasonable grounds to know that it was infringing the patent before having been provided with the translation referred to in paragraph 1.

Article 5

2. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 13 of Regulation xx/xx [substantive provisions] and shall be available only for small and medium-sized enterprises, natural persons, non profit organisations, universities and public research organisations having their residence or principal place of business within a Member State of the Union.