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***I
REPORT

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

Committee on Legal Affairs

Rapporteur: Bernhard Rapkay

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: **[...]**.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2011)0215),

– having regard to Article 294(2) and Article 118(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0099/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Industry, Research and Energy (A7-0001/2012),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Recital 7

Text proposed by the Commission	*Amendment*
(7) 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	(7) 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 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.	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 territories of the participating Member States.*** To ensure the uniform substantive scope of protection conferred by unitary patent protection, only European patents that have been granted for all the participating Member States with the same set of claims should benefit from unitary effect. Finally, the unitary effect attributed to a European patent should have an accessory nature and should cease to exist or be limited to the extent that the basic European patent has been revoked or limited.

Amendment 2

Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	(9a) 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 legislation of the participating Member States on their respective territories.

Amendment 3

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission	*Amendment*
	(11a) 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.

Amendment 4

Proposal for a regulation
Recital 15

Text proposed by the Commission	*Amendment*
(15) 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. ***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***	(15) 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.

the grant in the European Patent Bulletin and 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].

Amendment 5

Proposal for a regulation
Recital 15 a (new)

Text proposed by the Commission	*Amendment*
	(15a) 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 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.

Amendment 6

Proposal for a regulation
Recital 16

Text proposed by the Commission	*Amendment*
(16) 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 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***.	(16) 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 ***taking into account the situation of specific entities such as small and medium-sized enterprises for example in the form of lower fees***. It should also reflect the size of the market covered by the patent and be similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time where the level of the renewal fees is first fixed.

Amendment 7

Proposal for a regulation
Recital 18

Text proposed by the Commission	*Amendment*
(18) Renewal fees should be paid to the European Patent Organisation. ***50 percent thereof minus expenses incurred by the European Patent 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. The share of distribution should be set on the	(18) Renewal fees should be paid to the European Patent Organisation. ***The European Patent Office shall retain an amount to cover the expenses generated at the European Patent Office in carrying out tasks in relation to the unitary patent protection in accordance with Article 146 EPC. The remaining amount shall*** be distributed among the participating

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.

Member States, which should be used for patent-related purposes. The share of distribution should be set on the basis of fair, equitable and relevant criteria namely the level of patent activity and the size of the market ***and should guarantee a minimum amount to be redistributed to each participating Member State in order to maintain a balanced and sustainable functioning of the system***. The distribution should provide compensation for having an official language other than one of the official languages of the European Patent Office, having a disproportionately low level of patenting activity ***established on the basis of the European Innovation Scoreboard (EIS)*** and having acquired membership of the European Patent Organisation relatively recently.

Amendment 8

Proposal for a regulation
Recital 19

Text proposed by the Commission	*Amendment*
(19) 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	***deleted***

documents to the European Parliament and Council.

Amendment 9

Proposal for a regulation
Recital 21 a (new)

Text proposed by the Commission	*Amendment*
	(21a) 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.

Amendment 10

Proposal for a regulation
Recital 21 b (new)

Text proposed by the Commission	*Amendment*
	(21b) In order to ensure the proper functioning of the European patent with unitary effect, 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 patent with unitary effect is essential. It is therefore of paramount importance that the participating Member States ratify the Agreement on a Unified Patent Court in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to be operational as soon as possible.

Amendment 11

Proposal for a regulation
Article 2 – point c

Text proposed by the Commission	*Amendment*
(c) "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;	(c) "European patent with unitary effect" means a European patent which benefits from unitary effect in the territories of ***all*** the participating Member States by virtue of this Regulation;

Amendment 12

Proposal for a regulation
Article 2 – point d a (new)

Text proposed by the Commission	*Amendment*
	(da) "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;

Amendment 13

Proposal for a regulation
Article 3 – paragraph 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
European patents granted with ***an identical scope of protection*** 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 referred to in ***Article 12(1)(b)***.	European patents granted with ***the same set of claims*** in respect of all ***the*** participating Member States shall benefit from unitary effect in the participating Member States provided that their unitary effect has been registered in the Register for unitary patent protection referred to in ***Article 2(da)***.

Amendment 14

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission	*Amendment*
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.	A European patent with unitary effect may 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 Member States.***

Amendment 15

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	2. The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered ***and extends to their territory,*** 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.

Amendment 16

Proposal for a regulation
Article 5

Text proposed by the Commission	*Amendment*
Article 5 ***Prior rights*** ***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***	***deleted***

unitary effect shall take effect only in respect of the participating Member State(s) designated in the earlier European patent application as published.

Amendment 17

Proposal for a regulation
Article 6 – point b

Text proposed by the Commission	*Amendment*
(b) 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 participating Member States;	(b) 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 ***territory of the*** participating Member States ***in which that patent has unitary effect***;

Amendment 18

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. 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 ***without the proprietor's consent,*** other than a party 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.	1. 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 supplying or offering to supply***,*** within the participating Member States ***in which that patent has unitary effect,*** any person other than a party 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.

Amendment 19

Proposal for a regulation
Article 8 – point e

Text proposed by the Commission	*Amendment*
(e) the use on board vessels of countries other than participating Member States ***of the patented invention***, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of participating Member States, provided that the invention is used there exclusively for the needs of the vessel;	(e) the use on board vessels of countries other than participating Member States ***in which that patent has unitary effect 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 ***in which that patent has unitary effect***, provided that the invention is used there exclusively for the needs of the vessel;

Amendment 20

Proposal for a regulation
Article 8 – point f

Text proposed by the Commission	*Amendment*
(f) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of States other than participating Member States, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter participating Member States;	(f) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of States other than participating Member States ***in which that patent has unitary effect***, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter ***the territory of the*** participating Member States ***in which that patent has unitary effect;***

Amendment 21

Proposal for a regulation
Article 8 – point g

Text proposed by the Commission	*Amendment*
(g) the acts specified in Article 27 of the Convention on International Civil Aviation	(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;	of 7 December 1944, where these acts concern the aircraft of a country other than a participating Member State ***in which that patent has unitary effect;***

Amendment 22

Proposal for a regulation
Article 8 – point h

Text proposed by the Commission	*Amendment*
(h) ***acts as covered by the farmers privilege pursuant to*** Article 14 of Regulation (EC) *No.* 2100/94 ***which applies mutatis mutandis***;	(h) ***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 commercialised 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;

Justification

This formulation is clearer than that in the text proposed by the Commission, which refers merely to Regulation No 2100/04 as applying mutatis mutandis.

Amendment 23

Proposal for a regulation
Article 8 – point j

Text proposed by the Commission	*Amendment*
(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of ***Council Directive 91/250/EEC***[1], in particular, by its provisions on decompilation and interoperability; and	(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of ***Directive 2009/24/EC***[1], in particular, by its provisions on decompilation and interoperability; and

[1] ***Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ L 122, 17.5.1991, p. 42).***

[1] ***Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16).***

Amendment 24

Proposal for a regulation
Article 9

Text proposed by the Commission	*Amendment*
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 commercialisation of the product.	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 ***in which that patent has unitary effect*** 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 commercialisation of the product.

Amendment 25

Proposal for a regulation
Article 10 – paragraph 1 – introductory wording

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

Amendment 26

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Where no proprietor has his/her residence or ***a*** place of business in a	3. Where no proprietor has his/her residence***, principal place of business*** or

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.	place of business in a participating Member State ***in which that patent has unitary effect*** for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be 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.

Amendment 27

Proposal for a regulation
Article 12 – title

Text proposed by the Commission	*Amendment*
Implementation by the participating Member States	***Administrative tasks in the framework of the European Patent Organisation***

Amendment 28

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) the inclusion and administration of ***a*** Register for unitary patent protection ***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***;	(b) the inclusion ***within the European Patent Register*** and ***the*** administration of ***the*** Register for unitary patent protection;

Amendment 29

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission	*Amendment*
(e) the collection and administration of	(e) 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	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

Amendment 30

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1 – point f a (new)

Text proposed by the Commission	*Amendment*
	(fa) 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;

Amendment 31

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1 – point f b (new)

Text proposed by the Commission	*Amendment*
	(fb) 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 limitations, licenses, transfers and revocations of European patents with

unitary effect.

Amendment 32

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
For the purposes of point a), the participating Member States shall ensure that requests by the patent proprietor for unitary effect for a European patent are filed in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin.	***deleted***

Amendment 33

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 3

Text proposed by the Commission	*Amendment*
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 Article; and that the European Patent Office is informed of limitations and revocations of European patents with unitary effect.	***deleted***

Amendment 34

Article 12 – paragraph 2

Text proposed by the Commission	*Amendment*
2. 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. 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.	2. ***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 Administrative Council of the European Patent Organisation within the meaning of Article 145 of the EPC. ***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.*** ***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.***

Amendment 35

Proposal for a regulation
Article 12 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The participating Member States shall ensure effective legal protection before a	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.	***competent*** court ***of one or several participating Member States*** against the decisions of the European Patent Office in carrying out the tasks referred to in paragraph 1.

Amendment 36

Proposal for a regulation
Article 15 – paragraph 2 – introductory wording

Text proposed by the Commission	*Amendment*
2. The level of the renewal fees shall be fixed with the aim of	2. The level of the renewal fees, shall be fixed***, taking into account, among others, the situation of specific entities such as small and medium-sized enterprises,*** with the aim of

Amendment 37

Proposal for a regulation
Article 15 – paragraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) being similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time where the level of the renewal fees is first fixed ***by the Commission***.	(c) being similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time where the level of the renewal fees is first fixed.

Amendment 38

Proposal for a regulation
Article 15 – paragraph 3 – introductory wording

Text proposed by the Commission	*Amendment*
3. In order to reach these objectives set out in this Chapter, ***the Commission shall set*** the level of renewal fees at a level that:	3. In order to reach these objectives set out in this Chapter, the level of renewal fees ***shall be set*** at a level that:

Amendment 39

Proposal for a regulation
Article 15 – paragraph 4

Text proposed by the Commission	*Amendment*
4. 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.	***deleted***

Amendment 40

Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission	*Amendment*
1. ***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***.	1. ***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).***

Amendment 41

Proposal for a regulation
Article 16 – paragraph 2 – introductory wording

Text proposed by the Commission	*Amendment*
2. In order to reach ***these*** objectives set out in this Chapter***, the Commission shall set*** the share of distribution of renewal fees ***referred to in paragraph 1*** among the participating Member States ***on the basis of*** the following fair, equitable and relevant criteria:	2. In order to reach ***the*** objectives set out in this Chapter, the share of distribution of renewal fees among the participating Member States ***shall be based on*** the following fair, equitable and relevant criteria:

Amendment 42

Proposal for a regulation
Article 16 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the size of the market ***expressed in the number of population***,	(b) the size of the market***, while ensuring a minimum amount to be distributed to each participating Member State***,

Amendment 43

Proposal for a regulation
Article 16 – paragraph 2 – point c

Text proposed by the Commission	*Amendment*
(c) 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 ***and*** having acquired membership of the European Patent Organisation relatively recently.	(c) provision of compensation to Member States for having an official language other than one of the official languages of the European Patent Office ***and/or*** having a disproportionately low level of patenting activity ***and/or*** having acquired membership of the European Patent Organisation relatively recently.

Amendment 44

Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The participating Member States shall use the amount allocated to them in accordance with paragraph 1 to patent-related purposes.	***deleted***

Amendment 45

Proposal for a regulation
Article 16 – paragraph 4

Text proposed by the Commission	*Amendment*
4. 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.	***deleted***

Amendment 46

Proposal for a regulation
Article 17

Text proposed by the Commission	*Amendment*
Article 17	***deleted***
Exercise of the delegation	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
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].	
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.	
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously	

to the European Parliament and to the Council.

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.

Amendment 47

Proposal for a regulation
Article 20 – paragraph 1

Text proposed by the Commission	*Amendment*
1. 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.	1. 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.

Amendment 48

Proposal for a regulation
Article 20 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The Commission shall submit reports ***regularly*** on the functioning of the renewal	2. The Commission shall ***regularly*** submit ***to the European Parliament and the***

fees referred to in Article 14 with particular emphasis on the continued compliance with the principles set out in Article 15.	***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.

Amendment 49

Proposal for a regulation
Article 21

Text proposed by the Commission	*Amendment*
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).	***1.*** The participating Member States shall notify the Commission of the measures adopted in accordance with ***Article 12*** by the date set in Article 22(2). ***1a. 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.***

Amendment 50

Proposal for a regulation
Article 22 – paragraph 2

Text proposed by the Commission	*Amendment*
2. It shall apply ***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]***.	2. It shall apply from ***1 January 2014 or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later***.

By way of derogation from Articles 3(1)-(2) and 4(1), 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 exclusive jurisdiction with regard to European patents with unitary effect at the date of registration.

2a. Each participating Member State shall notify the Commission of its ratification of the Agreement at the time of deposit of its ratification instrument. The Commission shall publish 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. The Commission shall thereafter regularly update the list of the participating Member States which have ratified the Agreement and publish it in the Official Journal.

Amendment 51

Proposal for a regulation
Article 22 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Unitary patent protection may be requested for any European patent granted on or after the date set out in paragraph 2.	***4a.*** Unitary patent protection may be requested for any European patent granted on or after the date set out in ***the first subparagraph of*** paragraph 2.

25.11.2011

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Legal Affairs

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

Rapporteur: Alajos Mészáros

SHORT JUSTIFICATION

Since 2000 the European Union has tried, without success, to adopt a unitary European patent system (before the entry into force of the Lisbon Treaty called Community patent) which could co-exist with national patents granted by national patent offices of the Member States (MSs) and the European patents granted under the European Patent Convention (EPC) by the European Patent Office (EPO).

Due to insurmountable difficulties in reaching a unanimous agreement within the Council on the language arrangements, negotiations failed several times. At the end of 2010 the Competitiveness Council declared it impossible to establish unitary patent protection in the entire EU within a reasonable period or in a foreseeable future.

Following this declaration, 12 MSs asked the Commission to submit a proposal for authorising enhanced cooperation in the area of unitary patent protection in order to be able to move forward in this very important matter. On 10 March 2011, following the consent given by the European Parliament on 15 February, the Competitiveness Council adopted the authorising decision to establish unitary patent protection in the territories of the 25 participating MSs. On 19 March 2011 the EP gave its consent to the launch of the enhanced cooperation. Three weeks later, on 13 April, the Commission presented a package of two

legislative proposals that, if adopted, would allow any company or individual to protect their inventions through a single European patent which is valid in 25 MSs.

The creation of a truly unitary patent system will first and foremost bring about a highly needed simplification of the current system. This will allow users to cut administrative burdens and reduce patent costs in Europe of up to 80% thus improving the functioning and the protection of the free movement of goods in the Internal market and enabling innovation and entrepreneurship in Europe.

The high costs and complexity of validating European patents in several MSs represent the main reasons why patent proprietors appear to refrain from seeking EU-wide patent coverage. For instance, the total validation cost (including direct translation costs and estimated costs such as patent agent fees and publication fees) for a European patent of typical length is estimated to cost between EUR22.000 and 26.000 for an EU-wide coverage. Figures demonstrate that each year across all EU Member States companies spent between EUR205 and 230 million on translations, validations and professional charges. Creating an EU patent will help not only to reduce these costs to EUR680 per single patent, but also to create more favourable conditions for investment in R&D facilitating to reach the 3% target of GDP invested in R&D affirmed by Europe 2020.

Moreover, the current legislative proposal establishing the enhanced cooperation procedure and the linked to it expected proposal by the Commission on the creation of a European patent litigation system will bring about a much needed legal certainty in the field of patents in Europe.

The current proposal is the most significant and concrete step towards realising this long-overdue step. The European Parliament has been an ardent supporter of it calling for the creation of a true European patent for many years. To this end, your rapporteur warmly welcomes the Commission proposal, which offers a well-balanced and workable solution which has already been largely endorsed by the Council.

To this end, your rapporteur further considers that the delicate agreement achieved until this stage should be brought to fruition without delay with only some non-essential changes that might further improve the proposal without unravelling progress achieved so far.

One such improvement would be to disconnect the unitary effect of licensing and limiting/ transferring/revoking or lapsing of European patents, i.e. while these should be issued/terminated etc with respect to the territories of all participating MSs, licensing should be possible in only a selected number of MSs should that be a company's wish.

Furthermore, the Commission proposal quite rightly acknowledges the importance of a

partnership between the EPO and the national industrial property centres (recital 20), particularly with regards the benefit such partnership could offer to small and medium-sizes enterprises in their patent activities. Thus your rapporteur believes that such partnership should be encouraged and the Commission should be allowed to stay informed about the development of such cooperation via its formal collaboration wit the EPO.

Last but not least, it should be reiterated that any rights borne out of a European patent with unitary effect should be in full compliance with rights conferred by the Treaties and Union law.

Finally, in its capacity as a co-legislator, it is essential that the Parliament is kept duly informed on any aspects of the Commission's obligations towards the legislators to this Regulation.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation
Recital 1

Text proposed by the Commission	*Amendment*
(1) 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. Uniform patent protection within the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.	(1) 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 ***the dissemination of information on*** 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. Uniform patent protection within the internal market, or at least a significant part thereof, should feature amongst the legal instruments

which undertakings have at their disposal.

Amendment 2

Proposal for a regulation
Recital 7

Text proposed by the Commission	*Amendment*
(7) 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 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.	(7) 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 ***or*** revoked***,*** or lapse***,*** in respect of all the participating Member States. ***It should be possible for a European patent with unitary effect to be licensed in respect of the whole or part of the territories of the participating Member States.*** To ensure the uniform substantive scope of protection conferred by unitary patent protection, only European patents that have been granted for all the participating Member States with the same set of claims should benefit from unitary effect. Finally, the unitary effect attributed to a European patent should have an accessory nature and should cease to exist or be limited to the extent that the basic European patent has been revoked or limited.

Justification

Indeed, the issuing and termination of an European patent with unitary effect should happen with respect to all participating Member States, however, with regards its licensing, it should be possible to do that only for the territories of a few and not all participating states.

Amendment 3

Proposal for a regulation
Recital 16

Text proposed by the Commission	*Amendment*
(16) 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 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***.	(16) 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 ***the*** 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 ***and should take into account the status and financing capacities of micro-, small and medium-sized enterprises***[1]. 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.

[1] As defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Amendment 4

Proposal for a regulation
Recital 18

Text proposed by the Commission	*Amendment*
(18) Renewal fees should be paid to the European Patent Organisation. 50 percent thereof minus expenses incurred by the European Patent 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. 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.	(18) Renewal fees should be paid to the European Patent Organisation. 50 percent thereof minus expenses incurred by the European Patent 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 ***the enforcement of this Regulation and for other patent and innovation-related*** purposes***, including for the provision of advice and support to small and medium-sized enterprises***. 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.

Justification

In order to ensure that the distributed renewal fees serve the goal of the Regulation and benefit the enhanced patent system in Europe, it has to be stated for which purposes the participating Member States can use them.

Amendment 5

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission	*Amendment*
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.	Without prejudice to Article 5, a European patent with unitary effect may only be limited, transferred ***or*** revoked**,** or lapse**,** in respect of all the participating Member States.

Justification

Indeed, the issuing and termination of an European patent with unitary effect should happen with respect to all participating Member States, however, with regards its licensing, it should be possible to do that only for the territories of a few and not all participating states.

Amendment 6

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission	*Amendment*
	A European patent with unitary effect may however be licensed in respect of the whole or part of the territories of the participating Member States.

Justification

Indeed, the issuing and termination of an European patent with unitary effect should happen with respect to all participating Member States, however, with regards its licensing, it should be possible to do that only for the territories of a few and not all participating states.

Amendment 7

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
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.	1. A European patent with unitary effect shall take effect in the territories of the participating Member States on the ***fourteenth day following that*** of the publication, by the European Patent Office, of the mention of the grant of the European patent in the European Patent Bulletin.

Justification

This amendment seeks to bring in a transition period in the countries in which the European patent concerned will be coming into effect, making it possible for publishing queries to be addressed.

Amendment 8

Proposal for a regulation
Article 5

Text proposed by the Commission	*Amendment*
Article 5	***deleted***
Prior rights	
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.	

Justification

Since the amendment of the European Patent Convention in 2000, such possibility as provided for by this article is not longer possible to which end it might as well be deleted from the regulation.

Amendment 9

Proposal for a regulation
Article 6 – paragraph 1 – introductory wording

Text proposed by the Commission	*Amendment*
1. 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***:	1. The European patent with unitary effect shall confer on its proprietor ***a legally enforceable*** right ***ruling out the lawfulness of the following for*** any third party not having the proprietor's consent:

Amendment 10

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The European patent with unitary effect shall confer on its proprietor ***the*** right ***to prevent*** any third ***party from*** supplying or	1. The European patent with unitary effect shall confer on its proprietor ***a legally enforceable*** right ***ruling out the***

offering to supply within the participating Member States any person without the proprietor's consent, other than a party 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.	***lawfulness of*** any third ***party's*** supplying or offering to supply within the participating Member States any person without the proprietor's consent, other than a party 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.

Amendment 11

Proposal for a regulation
Article 8 – introductory wording

Text proposed by the Commission	*Amendment*
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 ***accord with rights conferred by the Treaties and by Union law and shall*** not extend to any of the following:

Justification

Rights conferred by European patents with unitary effect could sometimes conflict with other areas of EU policy and thus ensuring compliance with EU law is compulsory as provided for by Article 326 TFEU ("Any enhanced cooperation shall comply with the Treaties and Union law").

Amendment 12

Proposal for a regulation
Article 8 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) the use of biological material for the purpose of breeding, discovering and developing any new plant variety;

Justification

It is important to provide for a limited breeders' privilege in order to ensure the freedom to

operate with regard to biological material for the purpose of the development and discovery of a new plant variety.

Amendment 13

Proposal for a regulation
Article 8 – point h

Text proposed by the Commission	*Amendment*
(h) ***acts as covered*** by the ***farmers privilege pursuant*** to Article 14 of Regulation (EC) No. 2100/94 ***which applies mutatis mutandis***;	(h) ***the use*** by ***a farmer of*** the ***product of his harvest for propagation or multiplication by him on his own holding, where there has been a sale of plant propagating material to that farmer by the proprietor of the patent or with his consent for agricultural use, corresponding*** to Article 14 of Regulation (EC) No. 2100/94;

Justification

With regard to the farmer's privilege, it is important to align the wording of the limitation to the wording of Directive 98/44/EC on the legal protection of biotechnological inventions.

Amendment 14

Proposal for a regulation
Article 8 – point i

Text proposed by the Commission	*Amendment*
(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;	(i) the use of ***an animal*** or animal reproductive material ***by a*** farmer ***for an agricultural purpose, where there has been a sale*** by the proprietor ***of the patent*** or with ***his*** consent ***to*** the ***farmer*** of ***breeding stock*** or other animal reproductive material ***which constitutes or contains*** the ***patented invention. This does*** not ***include any*** sale ***within*** the framework of or for the purpose of commercial ***reproduction*** activity;

Justification

With regard to the farmer's privilege, it is important to align the wording of the limitation to the wording of Directive 98/44/EC on the legal protection of biotechnological inventions.

Amendment 15

Proposal for a regulation
Article 15 – paragraph 1 – point c a (new)

Text proposed by the Commission	*Amendment*
	(ca) such as to take into account the status and financing capacities of small and medium-sized enterprises.

Amendment 16

Proposal for a regulation
Article 15 – paragraph 2 – point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) taking into account the specific situation of small and medium-sized enterprises as defined in Commission Recommendation 2003/361/EC;

Amendment 17

Proposal for a regulation
Article 16 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(b) the size of the market ***expressed in the number of population***,	(b) the size of the market***, while ensuring a minimum amount to be distributed to each participating Member State***,

Justification

In the distribution of renewal fees among Member States it might be more practical to ensure a distribution based on the size of the market (not in terms of population but in terms of market covered by the patent) but at the same time ensuring nonetheless some form of minimum payment to all participating MSs.

Amendment 18

Proposal for a regulation
Article 18

Text proposed by the Commission	*Amendment*
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***,*** in particular on the issue of renewal fees and the impact on the budget of the European Patent Organisation***, as well as on the cooperation between the European Patent Office and the central industrial property offices of the participating Member States, in particular as regards the provision of support for patent activities to small and medium-sized enterprises***.

Justification

As reflected in recital 20, there could be a clear benefit of "an enhanced partnership" between the EPO and the national central industrial property offices in particular with regards the patent activities of SMEs. Such cooperation should be encouraged and the Commission should be kept informed in the framework of its cooperation with the EPO.

Amendment 19

Proposal for a regulation
Article 20 - paragraph 1

Text proposed by the Commission	*Amendment*
1. 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	1. 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

proposals for amending it. Subsequent reports on the operation of this Regulation shall be presented by the Commission every ***six*** years.

necessary, make appropriate proposals for amending it. Subsequent reports on the operation of this Regulation shall be presented by the Commission every ***three*** years.

PROCEDURE

Title	Enhanced cooperation in the area of the creation of unitary patent protection
References	COM(2011)0215 – C7-0099/2011 – 2011/0093(COD)
Committee responsible Date announced in plenary	JURI 10.5.2011
Committee(s) asked for opinion(s) Date announced in plenary	ITRE 7.7.2011
Rapporteur(s) Date appointed	Alajos Mészáros 1.9.2011
Discussed in committee	5.10.2011
Date adopted	23.11.2011
Result of final vote	+: 45 –: 4 0: 0
Members present for the final vote	Jean-Pierre Audy, Ivo Belet, Bendt Bendtsen, Jan Březina, Giles Chichester, Pilar del Castillo Vera, Christian Ehler, Vicky Ford, Adam Gierek, Norbert Glante, Robert Goebbels, Fiona Hall, Jacky Hénin, Edit Herczog, Kent Johansson, Romana Jordan Cizelj, Lena Kolarska-Bobińska, Béla Kovács, Philippe Lamberts, Angelika Niebler, Jaroslav Paška, Aldo Patriciello, Anni Podimata, Herbert Reul, Teresa Riera Madurell, Paul Rübig, Amalia Sartori, Francisco Sosa Wagner, Konrad Szymański, Patrizia Toia, Evžen Tošenovský, Ioannis A. Tsoukalas, Vladimir Urutchev, Kathleen Van Brempt, Alejo Vidal-Quadras, Henri Weber
Substitute(s) present for the final vote	Francesco De Angelis, Satu Hassi, Jolanta Emilia Hibner, Yannick Jadot, Ivailo Kalfin, Seán Kelly, Holger Krahmer, Werner Langen, Alajos Mészáros, Mario Pirillo, Vladimír Remek
Substitute(s) under Rule 187(2) present for the final vote	Cristian Silviu Buşoi, Anna Hedh

PROCEDURE

Title	Enhanced cooperation in the area of the creation of unitary patent protection
References	COM(2011)0215 – C7-0099/2011 – 2011/0093(COD)
Date submitted to Parliament	13.4.2011
Committee responsible Date announced in plenary	JURI 10.5.2011
Committee(s) asked for opinion(s) Date announced in plenary	ITRE 7.7.2011
Rapporteur(s) Date appointed	Bernhard Rapkay 11.4.2011
Discussed in committee	21.6.2011 11.10.2011 21.11.2011
Date adopted	20.12.2011
Result of final vote	+: 17 –: 4 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Jan Philipp Albrecht, Jean-Marie Cavada, Luis de Grandes Pascual, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger
Date tabled	11.1.2012