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Committee on Legal Affairs

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*****I**

DRAFT 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 (A7-0000/2011),
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

(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

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 ***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, ***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.

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 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.

Or. en

Amendment 2

Proposal for a regulation Recital 15

Text proposed by the Commission

(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,

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 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].***

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.

Or. en

Amendment 3

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; 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, 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, paying due regard to the position of the Commission.

Or. de

Amendment 4

Proposal for a regulation

Recital 16

Text proposed 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. 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*.

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 ***and should take into account the specific situation of small and medium-sized enterprises 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.

Or. en

Amendment 5

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 documents to the European Parliament and Council.

deleted

Or. en

Amendment 6

Proposal for a regulation

Article 2 – point c

Text proposed by the Commission

Amendment

(c) "European patent with unitary effect"

(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;

means a European patent which benefits from unitary effect in the territories of **all** the participating Member States by virtue of this Regulation;

Or. en

Amendment 7

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;

Or. en

Amendment 8

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

Text proposed by the Commission

Amendment

1. 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).***

1. 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.

Or. en

Amendment 9

Proposal for a regulation

Article 3 – paragraph 2 – subparagraph 2

Text proposed by the Commission

*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.*

Amendment

European **patents** with unitary effect may only be **granted**, limited, transferred **or** revoked, or lapse **or become subject to law enforcement**, 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.

Or. en

Amendment 10

Proposal for a regulation

Article 5

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 11

Proposal for a regulation Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Applicable law

The following shall apply, in the following order of priority, to the European patent with unitary effect:

- 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 applicable Union law;*
- b) in matters not covered by (a), the EPC;*
- c) in matters not covered by (a) and (b), national law of the participating Member States including their private international law;*

Or. de

Amendment 12

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;

Or. en

Amendment 13

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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.

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 supplying or offering to supply, within the participating Member States, any person other than *the one* 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.

Or. en

Amendment 14

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Damages

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.

2. He may at his discretion claim from the third party:

a) compensation for lost profit and other damages,

b) a reasonable royalty, or

c) surrender of the profit derived from the patent infringement.

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.

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.

5. The patent proprietor's entitlement to information and 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 rights¹.

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.

¹ OJ L 157, 30.04.04, p. 45.

Or. de

Justification

This proposed wording corresponds to the legislation on Article 13 of Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights

Amendment 15

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

Text proposed by the Commission

Amendment

(ba) 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;

Or. en

Amendment 16

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, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter ***the territory of the*** participating Member States;

Or. en

Amendment 17

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;

Or. xm

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 18

Proposal for a regulation Article 8 – point j

Text proposed by the Commission

(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of **Council Directive 91/250/EEC¹**, 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).

Amendment

(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of **Directive 2009/24/EC¹**, in particular, by its provisions on decompilation and interoperability; and

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).

Or. en

Amendment 19

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

3. Where no proprietor has his/her residence or **a** place of business in a participating Member State for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an

Amendment

3. Where no proprietor has his/her residence, **principal place of business** or place of business in a participating Member State for the purposes of paragraphs 1 or 2, the European patent

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.

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.

Or. en

Amendment 20

Proposal for a regulation Article 12 – title

Text proposed by the Commission

***Implementation by the participating
Member States***

Amendment

***Tasks given to the European Patent
Office***

Or. en

Amendment 21

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

Text proposed by the Commission

(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;***

Amendment

(b) the inclusion ***within the European Patent Register,*** and ***the*** administration, of ***the*** Register for unitary patent protection;

Or. en

Amendment 22

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(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

Amendment

(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 **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

Or. en

Justification

See the wording of Article 14 paragraph 1.

Amendment 23

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

2. For the purposes of point a) of **the first subparagraph**, the participating Member States shall ensure that requests for unitary effect for a European patent are filed **by the patent proprietor** 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 **of the European patent** is published in the European Patent Bulletin.

Or. en

Amendment 24

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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.

Amendment

3. For the purposes of point b) **of the first subparagraph**, 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.

Member States shall ensure that the European Patent Office is informed of **any** limitations, **license, transfer**, revocations **or lapse** of **a** European **patent** with unitary effect.

Or. en

Amendment 25

Proposal for a regulation

Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

deleted

Patent Organisation within the meaning of Article 145 of the EPC.

Or. en

Amendment 26

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Select Committee of the Administrative Council

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.

2. The participating Member States in the framework of the Select Committee shall:

- a) set the conditions of entrusting the European Patent Office to carry out the tasks referred to in Article 12(1);***
- 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;***
- 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;

d) set the level of the renewal fees in accordance with Article 15; and

e) set the share of distribution of the renewal fees in accordance with Article 16.

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.

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.

Or. xm

Justification

Article 145 EPC provides that the composition, powers and functions of the Select Committee shall be determined by the group of Contracting States. This Regulation should however ensure that the Commission can actively participate in the work of the Select Committee.

Amendment 27

Proposal for a regulation Article 14 – paragraph 2

Text proposed by the Commission

2. A European patent with unitary effect shall lapse if a renewal fee and, where applicable, any additional fee have not

Amendment

2. A European patent with unitary effect shall lapse if a renewal fee and, where applicable, any additional fee *for late*

been paid in due time.

payment of a renewal fee have not been paid in due time.

Or. en

Amendment 28

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 in the form of lower fees,

Or. en

Amendment 29

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.

Or. en

Amendment 30

Proposal for a regulation

Article 15 – paragraph 3 – introductory wording

Text proposed by the Commission

Amendment

In order to reach *these* objectives set out in

In order to reach *the* objectives set out in

this Chapter, the **Commission** shall set the level of renewal fees at a level that

this Chapter, the **Select Committee** shall, **taking due account of the position of the Commission**, set the level of renewal fees at a level that:

Or. en

Amendment 31

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

Or. en

Amendment 32

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:

Or. en

Amendment 33

Proposal for a regulation

Article 16 – paragraph 2 – point b

Text proposed by the Commission

(b) the size of the market *expressed in the number of population*,

Amendment

(b) the size of the market, *while ensuring a minimum amount to be distributed to each participating Member State*,

Or. en

Amendment 34

Proposal for a regulation

Article 16 – paragraph 2 – point c

Text proposed by the Commission

(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.

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 *and/or* having a disproportionately low level of patenting activity *and/or* having acquired membership of the European Patent Organisation relatively recently.

Or. en

Amendment 35

Proposal for a regulation

Article 16 – paragraph 3

Text proposed by the Commission

3. The participating Member States shall use the amount allocated to them in accordance with paragraph 1 to patent-related purposes.

Amendment

deleted

Or. en

Amendment 36

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*

Or. en

Amendment 37

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.

Or. en

Amendment 38

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

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.

Amendment

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.

Or. en

Amendment 39

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

2. 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.

Amendment

2. The Commission shall ***regularly*** submit ***to the European Parliament and the Council*** reports on the functioning of the renewal fees referred to in Article 14 with particular emphasis on the continued compliance with the principles set out in Article 15.

Or. en

Amendment 40

Proposal for a regulation Article 21

Text proposed by the Commission

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).

Amendment

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).

Or. en

Amendment 41

Proposal for a regulation Article 22 – paragraph 2

Text proposed by the Commission

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***

Amendment

2. It shall apply ***once:***
(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 translation arrangements].

applicable, and

(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.

Or. en

Amendment 42

Proposal for a regulation Article 22 – paragraph 3

Text proposed by the Commission

Amendment

3. 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.

deleted

Or. en

Justification

Superfluous; see Article 21.

Amendment 43

Proposal for a regulation Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. 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).

Or. en

Amendment 44

Proposal for a regulation Article 22 – paragraph 4

Text proposed by the Commission

4. Unitary patent protection may be requested for any European patent granted on or after the date set out in *paragraph 2*.

Amendment

4. Unitary patent protection may be requested for any European patent granted on or after the date set out in *paragraphs 2 and 3a*.

Or. en