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Committee on Legal Affairs

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**2011/0093(COD)**

27.10.2011

# **AMENDMENTS**

## **45 - 94**

**Draft report**  
**Bernhard Rapkay**  
(PE472.059v02-00)

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

Proposal for a regulation  
(COM(2011)0215 – C7-0099/2011 – 2011/0093(COD))

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PE475.775v01-00

**EN**

*United in diversity*

**EN**



**Amendment 45**  
**Raffaele Baldassarre**

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It should improve the level of patent protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.

*Amendment*

(2) Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure, ***in particular for small and medium-sized enterprises, natural persons, non-profit organisations and academic institutions***. It should improve the level of patent protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.

Or. en

**Amendment 46**  
**Rolandas Paksas**

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It should improve the level of patent protection by providing the possibility to obtain uniform

*Amendment*

(2) Unitary patent protection should foster scientific and technological advance and the functioning of the internal market by making access to the patent system easier, less costly and legally secure ***for everyone participating in the patent system***. It should improve the level of patent

patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.

protection by providing the possibility to obtain uniform patent protection in the territories of the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to patent applicants from both participating Member States and other States, regardless of nationality, residence or place of establishment.

Or. It

**Amendment 47**  
**Ramon Tremosa i Balcells**

**Proposal for a regulation**  
**Recital 4**

*Text proposed by the Commission*

(4) On 10 March 2011, the Council adopted Decision 2011/167/EU authorising enhanced cooperation between Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (hereinafter ‘participating Member States’) in the area of the creation of unitary patent protection.

*Amendment*

(4) On 10 March 2011, the Council adopted Decision 2011/167/EU authorising enhanced cooperation between Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (hereinafter ‘participating Member States’) in the area of the creation of unitary patent protection. ***Spain and Italy should be called upon to join the enhanced cooperation procedure in order to make the unitary patent a fully European patent that enhances the single market and increases Europe’s competitiveness.***

Or. en

**Amendment 48**  
**Cecilia Wikström**

**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, 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].

*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 **three months** 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].

Or. en

**Amendment 49**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Recital 16**

*Text proposed by the Commission*

(16) Patent proprietors should pay one

*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*.

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, natural persons and non-profit organisations 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 50**  
**Raffaele Baldassarre**

**Proposal for a regulation**  
**Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

*(16a) In order to support patenting activities by small and medium-sized enterprises, natural persons, non-profit organisations and academic institutions, applicants falling into these categories should benefit of a reduction of renewal fees. To this extent, renewal fees for such applicants should be reduced by 50% for the first six years following the grant of the European patent with unitary effect.*

**Amendment 51**  
**Alajos Mészáros**

**Proposal for a regulation**  
**Recital 18**

*Text proposed by the Commission*

(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.

*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 *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.

Or. en

*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 52**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Recital 18**

*Text proposed by the Commission*

(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.

*Amendment*

(18) Renewal fees should be paid to the European Patent Organisation. **The European Patent Office should 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 of the EPC. The remaining amount** 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 **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.

Or. en

**Amendment 53**  
**Raffaele Baldassarre**

**Proposal for a regulation**  
**Recital 18**

*Text proposed by the Commission*

(18) Renewal fees should be paid to the

*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.

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 ***and in order to implement targeted measures aiming at providing legal and technical advice to applicants such as small and medium-sized enterprises, natural persons, non-profit organisations and academic institutions during the research phase and the preparation of a patent application.*** 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.

Or. en

**Amendment 54**  
**Dimitar Stoyanov, Slavi Binev**

**Proposal for a regulation**  
**Recital 19**

*Text proposed by the Commission*

(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

*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.

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 **with experts and representatives of all the parties concerned** during its preparatory work. 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.

Or. bg

**Amendment 55**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Recital 20**

*Text proposed by the Commission*

(20) An Enhanced partnership between the European Patent Office and central industrial property offices of the Member States should enable the European Patent Office to make regular use, where appropriate, of the result of any search carried out by central industrial property offices on a national patent application the priority of which is claimed in a subsequent European patent application. All central industrial property offices, including those which do not perform searches in the course of a national patent granting procedure, can have an essential role under the enhanced partnership, inter alia by giving advice and support to potential patent applicants, in particular small and medium-sized enterprises, by receiving applications, by forwarding applications to the European Patent Office and by disseminating patent information.

*Amendment*

(20) An Enhanced partnership between the European Patent Office and central industrial property offices of the Member States should enable the European Patent Office to make regular use, where appropriate, of the result of any search carried out by central industrial property offices on a national patent application the priority of which is claimed in a subsequent European patent application. All central industrial property offices, including those which do not perform searches in the course of a national patent granting procedure, can have an essential role under the enhanced partnership, inter alia by giving advice and support to potential patent applicants, in particular small and medium-sized enterprises, **natural persons and non-profit organisations** by receiving applications, by forwarding applications to the European Patent Office and by disseminating patent

information.

Or. en

**Amendment 56**  
**Ramon Tremosa i Balcells**

**Proposal for a regulation**  
**Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

***(20a) In order to make this Regulation more efficient, it should be applied in all Member States, deepening the single market and extending its economic benefits for all Union citizens and businesses.***

Or. en

**Amendment 57**  
**Françoise Castex**

**Proposal for a regulation**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) In view of the current European Patent Convention and the importance of Article 53 thereof, which relates to exceptions to patentability, notably in the field of living things, a clause providing for the automatic inclusion of any future changes to EU law should be inserted into that Convention;***

Or. fr

**Amendment 58**  
**Eva Lichtenberger, Christian Engström**

**Proposal for a regulation**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents (European Patent Convention), as amended (hereinafter ‘the EPC’).***

***deleted***

Or. en

*Justification*

*A Regulation of the European Parliament and the Council is a normative act included in EU internal law and it cannot be governed by international law. Therefore, this Regulation cannot constitute a special agreement within the meaning of article 142 of the Convention on the Grant of European Patents. Article 118.1 TFEU should be the legal basis for this Regulation.*

**Amendment 59**

**Eva Lichtenberger, Christian Engström**

**Proposal for a regulation**  
**Article 3 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all participating Member States.***

***A European patent with unitary effect is a patent title of the European Union that has effects throughout the territories of the participating Member States.***

Or. en

*Justification*

*The European patent with unitary effect should be a title of the EU in compliance with Article 118.1 TFEU, which is the legal basis for the present Regulation.*

**Amendment 60**  
**Eva Lichtenberger, Christian Engström**

**Proposal for a regulation**  
**Article 3 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***A European patent with unitary effect shall have an autonomous character. It shall be subject only to the provisions of this Regulation, to the general principles of Union law, and, to the extent that this Regulation does not provide for specific rules, to those provisions of the European Patent Convention which are binding upon every European patent and which shall consequently be deemed to be provisions of this Regulation.***

Or. en

*Justification*

*The autonomous character of the unitary patent is included in the measures implementing enhanced cooperation outlined by the Commission in its explanatory memorandum of the proposal for a Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection (COM(2010) 790). This measure is important to be implemented in order to guarantee the legal certainty of this regulation implementing enhanced cooperation.*

**Amendment 61**  
**Esther de Lange**

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

*Text proposed by the Commission*

*Amendment*

***European patents with unitary effect shall not be granted for biological materials produced by an essentially biological process;***

Or. en

### *Justification*

*In order to achieve that freedom-to-operate in the field of crossing and selection is ensured and routine breeding work is not hindered, the Regulation should clarify that European patents with unitary effect should not be granted on biological material produced by essentially biological processes.*

#### **Amendment 62**

**Eva Lichtenberger, Christian Engström**

#### **Proposal for a regulation**

##### **Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

##### *Article 3a*

##### ***Harmonisation of substantive patent law***

***By ..., the Commission shall present a proposal for a directive of the European Parliament and of the Council, along with an impact assessment, for harmonisation of substantive patent law relevant for European patents with unitary effect.***

Or. en

### *Justification*

*The European Parliament and the Council shall exercise their legislative powers for the substantive patent law with regard to the European patent with unitary effect. Rights conferred by patents could conflict with other areas of EU policy, and could harm important freedom interests, as it has been acknowledged by the Advocates General of the Court of Justice of the European Union, in Opinion 1/09 on the Creation of a unified patent litigation system. The validation of European patents with unitary effect cannot be left to the European Patent Office or courts, but need a regular oversight by the EU legislator.*

#### **Amendment 63**

**Eva Lichtenberger, Christian Engström**

#### **Proposal for a regulation**

##### **Article 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 3b**

***Patentability of inventions***

***1. European patents with unitary effect shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.***

***2. The following in particular shall not be regarded as inventions within the meaning of paragraph 1:***

***(a) discoveries, scientific theories and mathematical methods;***

***(b) aesthetic creations;***

***(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;***

***(d) presentations of information.***

Or. en

*Justification*

*The goal of this amendment is to codify into EU Law, provisions defining an invention as set up by the European Patent Convention (EPC) and other international agreements (TRIPS). The wordings of the amendment is perfectly compliant with the EPC, and moreover is enhancing the EPC own wordings, by clarifying some difficulties that have resulted in divergent interpretations by various national courts. Hence, this amendment contributes to the goal of having a unified enforcement of European patents with unitary effect.*

**Amendment 64**

**Eva Lichtenberger, Christian Engström**

**Proposal for a regulation**

**Article 3 c (new)**

*Text proposed by the Commission*

*Amendment*

**Article 3c**

*Patentability of computer-implemented inventions*

*1. A set of instructions for solving a problem by means of an automated system consisting only of generic data processing hardware (universal computer), also called “program for computers” or “computer-implemented solution”, is not an invention within the meaning of substantive patent law applicable to a European patent with unitary effect, regardless of the form under which it is claimed.*

*2. A claimed object can be an invention in the sense of substantive patent law applicable to the European patent with unitary effect only if it contributes knowledge to the state of the art in a field of applied natural science; an invention is a teaching about cause-and-effect relations in the use of controllable forces of nature.*

Or. en

*Justification*

*This amendment defines some rules of patentability in the same way as voted by the European Parliament on September 24th 2003 on its first reading of the Directive on the patentability of computer-implemented inventions (2002/0047 (COD)). The wordings of the amendment is compliant with the EPC, and moreover is enhancing the EPC own wordings, by clarifying some difficulties that have resulted in divergent interpretations by various national courts. Hence, this amendment contributes to goal of having a unified enforcement of European patents with unitary effect.*

**Amendment 65**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Article 6**

*Text proposed by the Commission*

*Amendment*

*Article 6*

*deleted*



***Right to prevent the direct use of the invention***

***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:***

***(a) making, offering, placing on the market or using a product which is the subject matter of the patent, or importing or storing the product for those purposes;***

***(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;***

***(c) offering, placing on the market, using, importing or storing for those purposes a product obtained directly by a process which is the subject matter of the patent.***

Or. en

***Justification***

*Art 6-9 should be moved to the agreement on the jurisdictional system. Art 14f - 14i of the proposed judicial agreement are identical to art 6-8 of this proposed regulation but cover only existing European Patents whereas art 6-8 of this proposal cover only new patents with unitary effect. By expanding the scope of the judicial agreement to also include patents with unitary effect and removing them here we avoid the risk of diverging interpretations of these articles.*

**Amendment 66**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Article 7**

*Text proposed by the Commission*

*Amendment*

***Article 7***

***deleted***

***Right to prevent the indirect use of the invention***

***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.***

***2. Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to perform any of the acts prohibited by Article 6.***

***3. Persons performing the acts referred to in Article 8(a) to (d) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.***

Or. en

*Justification*

*Art 6-9 should be moved to the agreement on the jurisdictional system. Art 14f - 14i of the proposed judicial agreement are identical to art 6-8 of this proposed regulation but cover only existing European Patents whereas art 6-8 of this proposal cover only new patents with unitary effect. By expanding the scope of the judicial agreement to also include patents with unitary effect and removing them here we avoid the risk of diverging interpretations of these articles.*

**Amendment 67**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Article 8**

**Article 8**

**deleted**

***Limitation of the effects of the European patent with unitary effect***

***The rights conferred by the European patent with unitary effect shall not extend to any of the following:***

***(a) acts done privately and for non-commercial purposes;***

***(b) acts done for experimental purposes relating to the subject matter of the patented invention;***

***(c) acts carried out solely for the purpose of conducting the necessary tests and trials in accordance with Article 13(6) of Directive 2001/82/EC or Article 10(6) of Directive 2001/83/EC in respect of any patent covering the product within the meaning of either of those Directives;***

***(d) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription nor acts concerning the medicine so prepared;***

***(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;***

***(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;***

***(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;***

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

***(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;***

***(j) the acts and the use of the obtained information as allowed under Articles 5 and 6 of Council Directive 91/250/EEC , in particular, by its provisions on decompilation and interoperability; and***

***(k) the acts allowed pursuant to Article 10 of Directive 98/44/EC of the European Parliament and of the Council .***

Or. en

#### *Justification*

*Art 6-9 should be moved to the agreement on the jurisdictional system. Art 14f - 14i of the proposed judicial agreement are identical to art 6-8 of this proposed regulation but cover only existing European Patents whereas art 6-8 of this proposal cover only new patents with unitary effect. By expanding the scope of the judicial agreement to also include patents with unitary effect and removing them here we avoid the risk of diverging interpretations of these articles.*

**Amendment 68**  
**Eva Lichtenberger, Christian Engström**

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

*Text proposed by the Commission*

*Amendment*

***(aa) the acts allowed pursuant to the  
Treaties and Union law***

Or. en

*Justification*

*Compliance with EU Law is mandatory for the legal certainty of rights conferred by the European patent with unitary effect. Such compliance is mandatory according to Article 326 TFEU and Article 334 TFEU. Hence, it should be guaranteed that the European patent with unitary effect does not prevent acts authorized by any existing or future EU legislation.*

**Amendment 69**  
**Esther de Lange**

**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, or discovering and  
developing other plant varieties;***

Or. en

*Justification*

*To ensure guaranteed access to all genetic resources for further breeding, a (limited) breeders' exemption allowing for the use of biological material for further breeding must be inserted. Some EU Member States (e.g. Germany, France), have already introduced such exemptions into their patent laws. Such an exemption also exists in Switzerland and is to be implemented in Dutch law. Without a similar exemption in the Regulation these efforts to safeguard freedom to breed remain without effect.*

**Amendment 70**  
**Esther de Lange**

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

*Text proposed by the Commission*

*Amendment*

***(bb) acts with the plant varieties developed in accordance with point (ba);***

Or. en

*Justification*

*In order to ensure that the breeders' exemption of the International Union for the Protection of New Varieties of Plants (UPOV) becomes fully implemented it has to be ensured that also the commercial acts with the newly developed plant varieties remain freely possible.*

**Amendment 71**  
**Esther de Lange**

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

*Text proposed by the Commission*

*Amendment*

***(bc) acts in respect of biological material having the same properties as patented biological material but produced by an essentially biological process and without using the patented biological material;***

Or. en

*Justification*

*In order to keep the incentive for independent developments and the possibility of quick and continuous innovation in the field of crossing and selection, it has to be ensured that the development and commercialization of material produced by an essentially biological process (i.e. by a breeding process based on crossing of whole plant genomes and subsequent selection) and without the use of patented material is not hindered by the effect of any patent granted on biological material.*

**Amendment 72**  
**Esther de Lange**

**Proposal for a regulation**  
**Article 8 – point h**

*Text proposed by the Commission*

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

*Amendment*

(h) acts as covered by the *agricultural exemption* pursuant to Article 14 of *Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights<sup>1</sup> and Commission Regulation (EC) No 1768/95 of 24 July 1995<sup>2</sup> implementing rules on that exemption*, which applies mutatis mutandis;

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<sup>1</sup> OJ L 227, 1.9.1994, p. 1.

<sup>2</sup> OJ L 173, 25.7.1995, p. 14.

Or. en

*Justification*

*This Regulation should avoid any misinterpretations of the exemption provided in Article 8, point (h), and should align the terminology with that used in Council Regulation (EC) No. 2100/94.*

**Amendment 73**  
**Françoise Castex**

**Proposal for a regulation**  
**Article 8 – point k**

*Text proposed by the Commission*

(k) the acts allowed pursuant to Article 10 of Directive 98/44/EC *of the European Parliament and of the Council*.

*Amendment*

(k) the acts allowed pursuant to *Article 2(2), Article 4(1)(b) and Article 10* of Directive 98/44/EC.

Or. en

**Amendment 74**  
**Toine Manders**

**Proposal for a regulation**  
**Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The Commission shall investigate how the existing plant breeders' rights system and the plants breeders' exemption, based on the 1991 International Convention for the Protection of New Varieties of Plants, and biological material resulting from the application of essentially biological processes, can be brought into line with this Regulation, and shall come up with proposals where appropriate.*

Or. en

**Amendment 75**  
**Cecilia Wikström**

**Proposal for a regulation**  
**Article 9**

*Text proposed by the Commission*

*Amendment*

*Article 9*

*deleted*

*Exhaustion of the rights conferred by the European patent with unitary effect*

*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.*

Or. en



## *Justification*

*Art 6-9 should be moved to the agreement on the jurisdictional system. Art 14f - 14i of the proposed judicial agreement are identical to art 6-8 of this proposed regulation but cover only existing European Patents whereas art 6-8 of this proposal cover only new patents with unitary effect. By expanding the scope of the judicial agreement to also include patents with unitary effect and removing them here we avoid the risk of diverging interpretations of these articles.*

### **Amendment 76**

**Diana Wallis, Cecilia Wikström**

#### **Proposal for a regulation**

#### **Article 10 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) The application of this Article shall not prejudice the application of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)<sup>1</sup> and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)<sup>2</sup>.***

<sup>1</sup> OJ L 177, 4.7.2008, p. 6.

<sup>2</sup> OJ L 199, 31.7.2007, p. 40.

Or. en

### **Amendment 77**

**Eva Lichtenberger, Christian Engström**

#### **Proposal for a regulation**

#### **Article 12 – paragraph 1 – subparagraph 1 – introductory wording**

*Text proposed by the Commission*

*Amendment*

1. The participating Member States shall give, ***within the meaning of Article 143 of the EPC, the*** European Patent Office the

1. The participating Member States shall give the European Patent Office the following tasks to be carried out in

following tasks to be carried out in conformity with the internal rules of the European Patent Office:

conformity with the *Treaties and Union law, and the* internal rules of the European Patent Office:

Or. en

### *Justification*

*Compliance with EU Law is mandatory for the legal certainty of rights conferred by the European patent with unitary effect. Such compliance is mandatory according to Article 326 TFEU and Article 334 TFEU. Hence, it should be guaranteed that the European patent with unitary effect does not prevent acts authorized by any existing or future EU legislation.*

### **Amendment 78**

**Ramon Tremosa i Balcells**

#### **Proposal for a regulation**

#### **Article 12 – paragraph 1 – subparagraph 1 – point f**

##### *Text proposed by the Commission*

(f) the administration of a compensation scheme of translation costs for applicants filing European patent applications in one of the official languages of *the Union* that is not an official language of the European Patent Office.

##### *Amendment*

(f) the administration of a compensation scheme of translation costs for applicants filing European patent applications in one of the official *or co-official* languages of *Member States* that is not an official language of the European Patent Office.

Or. en

### **Amendment 79**

**Cecilia Wikström**

#### **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

##### *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.

than **three months** after the mention of the grant is published in the European Patent Bulletin.

Or. en

#### *Justification*

*Users have indicated that a deadline for registering the unitary effect of a patent of one month could be too short, especially for SME:s and that this period could be increased to three months.*

#### **Amendment 80**

**Eva Lichtenberger, Christian Engström**

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

##### *Amendment*

2. In their capacity as Contracting States to the EPC, the participating Member States ***together with the European Parliament*** 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. ***That Select Committee shall take decisions pursuant to a mandate given by the European Parliament and shall report to the European Parliament. The Select Committee members shall be submitted to a hearing prior to their being approved by the European Parliament.***

Or. en

#### *Justification*

*The European Parliament shall be associated in the governance and the supervision of the administrative acts accomplished by the European Patent Office. Additionally, in conformity*

*with amendment 1 above, the reference to Article 143 EPC should be deleted.*

## **Amendment 81**

**Eva Lichtenberger, Christian Engström**

### **Proposal for a regulation**

#### **Article 12 – paragraph 3**

*Text proposed by the Commission*

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*.

*Amendment*

3. The participating Member States shall ensure effective legal protection before a national court against *any administrative* decisions of the European Patent Office.

Or. en

*Justification*

*In compliance with objections raised by the Advocates General of the Court of Justice of the European Union, in Opinion 1/09 on the Creation of a unified patent litigation system, the European Union should not either delegate powers to an international body or transform into its legal system acts issued by an international body without ensuring that effective judicial control exists, exercised by an independent court that is required to observe Union law and is authorized to refer a preliminary question to the Court of Justice for a ruling, where appropriate.*

## **Amendment 82**

**Cecilia Wikström**

### **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, natural persons and non-profit organisations in the form of lower fees,*

Or. en

**Amendment 83**  
**Raffaele Baldassarre**

**Proposal for a regulation**  
**Article 15 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Small and medium-sized enterprises, natural persons, non-profit organisations and academic institutions which are under no contractual or legal obligation to assign, grant or license any rights in the invention shall be entitled to a reduction of 50% of the renewal fees during the six years following the grant of the European patent with unitary effect.***

Or. en

**Amendment 84**  
**Tadeusz Zwiefka**

**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).***

Or. en

**Amendment 85**  
**Raffaele Baldassarre**

**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*

3. The participating Member States shall use the amount allocated to them in accordance with paragraph 1 to patent-related purposes, ***including measures aimed at providing legal and technical advice to applicants, in particular small and medium-sized enterprises, natural persons, non-profit organisations and academic institutions.***

Or. en

**Amendment 86**  
**Eva Lichtenberger, Christian Engström**

**Proposal for a regulation**  
**Article 17 – paragraph 1**

*Text proposed by the Commission*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

*Amendment*

1. The power to adopt delegated acts ***pursuant to Articles 15 and 16*** is conferred on the Commission subject to the conditions laid down in this Article.

Or. en

*Justification*

*Like in paragraphs 2,3 and 5 of the same article, acts referred to in this paragraph 1 are those defined by articles 15 and 16.*

**Amendment 87**  
**Dimitar Stoyanov, Slavi Binev**

**Proposal for a regulation**  
**Article 17 – paragraph 2**

*Text proposed by the Commission*

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].

*Amendment*

2. The delegation of power referred to in Articles 15 and 16 shall be conferred for ***a*** period of ***five years*** from the [date of entry into force of this Regulation].

Or. bg

**Amendment 88**

**Raffaele Baldassarre**

**Proposal for a regulation**

**Article 18 – paragraph 1**

*Text proposed by the Commission*

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.

*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, ***including regular assessments of specific provisions aimed at supporting patenting activities.***

Or. en

**Amendment 89**

**Eva Lichtenberger, Christian Engström**

**Proposal for a regulation**

**Article 19 – paragraph 1**

*Text proposed by the Commission*

This Regulation is without prejudice to the application of competition law and the law

*Amendment*

This Regulation is without prejudice to the application of ***the Treaties and Union law,***

relating to unfair competition.

**including** competition law and the law relating to unfair competition.

Or. en

*Justification*

*Compliance with EU Law is mandatory for the legal certainty of rights conferred by the European patent with unitary effect.*

**Amendment 90**

**Eva Lichtenberger, Christian Engström**

**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 **two** 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 **two** years.

Or. en

*Justification*

*The European Parliament shall be associated in the review of this regulation. A shorter period for reviews allows a better scrutiny.*

**Amendment 91**

**Rolandas Paksas**

**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 **four** 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.

Or. It

**Amendment 92**

**Dimitar Stoyanov, Slavi Binev**

**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 **two** 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 **five** years.

Or. bg

**Amendment 93**

**Sajjad Karim**

**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 applicable translation arrangements].

*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] ***or the date of the entry into force of the instrument creating a unified patent litigation system and the setting-up of such a system, whichever is the later.***

Or. en

**Amendment 94**  
**Alajos Mészáros**

**Proposal for a regulation**  
**Article 22 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

Unitary patent protection may be requested for any European patent granted on ***the basis of a European patent application filed on*** or after the date set out in paragraph 2.

Or. en

*Justification*

*This addition is about to strengthen the legal certainty and to assure an appropriate preparation period for the Member States.*