

| Basic information   |                     |
|---|---------------------|
| <p><b>2011/0093(COD)</b></p> <p>COD - Ordinary legislative procedure (ex-codecision procedure)<br/>Regulation</p>   | Procedure completed |
| <p>Enhanced cooperation in the area of the creation of unitary patent protection: implementation</p> <p>See also <a href="#">2010/0384(NLE)</a><br/>See also <a href="#">2013/0268(COD)</a></p> <p><b>Subject</b></p> <p>3.50.16 Industrial property, European patent, Community patent, design and pattern</p> |                     |

| Key players                   |  |  |                  |
|-------------------------------|--|--|------------------|
| European Parliament           | <b>Committee responsible</b>   | <b>Rapporteur</b>  | <b>Appointed</b> |
|                               | <span style="border: 1px solid red; padding: 2px;">JURI</span> Legal Affairs                 | RAPKAY Bernhard (S&D)  | 11/04/2011       |
|                               |  | Shadow rapporteur<br>BALDASSARRE Raffaele (PPE)<br>WIKSTRÖM Cecilia (ALDE)<br>ENGSTRÖM Christian (Verts/ALE)<br>KARIM Sajjad (ECR) |                  |
|                               | <b>Committee for opinion</b>   | <b>Rapporteur for opinion</b>  | <b>Appointed</b> |
|                               | <span style="border: 1px solid red; padding: 2px;">ITRE</span> Industry, Research and Energy | MÉSZÁROS Alajos (PPE)  | 01/09/2011       |
| Council of the European Union | <b>Council configuration</b>   | <b>Meetings</b>  | <b>Date</b>      |
|                               | Competitiveness (Internal Market, Industry, Research and Space)                              | 3113   | 2011-09-29       |
|                               | Competitiveness (Internal Market, Industry, Research and Space)                              | 3169   | 2012-05-30       |
|                               | Competitiveness (Internal Market, Industry, Research and Space)                              | 3094   | 2011-05-30       |
|                               | Competitiveness (Internal Market, Industry, Research and Space)                              | 3147   | 2012-02-20       |
|                               | Competitiveness (Internal Market, Industry, Research and Space)                              | 3208   | 2012-12-10       |
|                               | Environment  | 3211   | 2012-12-17       |
| European Commission           | <b>Commission DG</b>   | <b>Commissioner</b>  |                  |

## Key events

| Date       | Event   | Reference  | Summary |
|------------|---|--|---------|
| 13/04/2011 | Legislative proposal published                          | COM(2011)0215<br> | Summary |
| 10/05/2011 | Committee referral announced in Parliament, 1st reading |  |         |
| 30/05/2011 | Debate in Council                                       |  | Summary |
| 27/06/2011 | Debate in Council                                       |  | Summary |
| 29/09/2011 | Debate in Council                                       |  | Summary |
| 20/12/2011 | Vote in committee, 1st reading                          |  |         |
| 11/01/2012 | Committee report tabled for plenary, 1st reading        | A7-0001/2012   | Summary |
| 20/02/2012 | Debate in Council                                       |  | Summary |
| 30/05/2012 | Debate in Council                                       |  | Summary |
| 11/12/2012 | Decision by Parliament, 1st reading                     | T7-0474/2012   | Summary |
| 11/12/2012 | Results of vote in Parliament                           |                   |         |
| 11/12/2012 | Debate in Parliament                                    |                  |         |
| 17/12/2012 | Act adopted by Council after Parliament's 1st reading   |  |         |
| 17/12/2012 | Final act signed  |  |         |
| 17/12/2012 | End of procedure in Parliament                          |  |         |
| 31/12/2012 | Final act published in Official Journal                 |  |         |

## Technical information

|                            |  |
|----------------------------|--|
| Procedure reference        | 2011/0093(COD)   |
| Procedure type             | COD - Ordinary legislative procedure (ex-codecision procedure)                     |
| Procedure subtype          | Legislation  |
| Legislative instrument     | Regulation   |
| Amendments and repeals     | See also <a href="#">2010/0384(NLE)</a><br>See also <a href="#">2013/0268(COD)</a> |
| Legal basis                | Treaty on the Functioning of the European Union TFEU 118-p1                        |
| Stage reached in procedure | Procedure completed  |
| Committee dossier          | JURI/7/05848   |

## Documentation gateway

European Parliament

| Document type   | Committee | Reference    | Date       | Summary |
|---|-----------|--------------|------------|---------|
| Committee draft report  |           | PE472.059    | 04/10/2011 |         |
| Amendments tabled in committee                                  |           | PE475.775    | 27/10/2011 |         |
| Committee opinion   | ITRE      | PE472.085    | 25/11/2011 |         |
| Amendments tabled in committee                                  |           | PE478.394    | 08/12/2011 |         |
| Committee report tabled for plenary, 1st reading/single reading |           | A7-0001/2012 | 11/01/2012 | Summary |
| Text adopted by Parliament, 1st reading/single reading          |           | T7-0474/2012 | 11/12/2012 | Summary |

#### Council of the EU

| Document type   | Reference      | Date       | Summary |
|-----------------|----------------|------------|---------|
| Draft final act | 00072/2011/LEX | 17/12/2012 |         |

#### European Commission

| Document type                                  | Reference  | Date       | Summary |
|--|--|------------|---------|
| Legislative proposal                           | COM(2011)0215<br>   | 13/04/2011 | Summary |
| Document attached to the procedure             | SEC(2011)0482<br>  | 13/04/2011 |         |
| Document attached to the procedure             | SEC(2011)0483<br> | 13/04/2011 |         |
| Commission response to text adopted in plenary | SP(2013)111  | 13/02/2013 |         |

#### National parliaments

| Document type | Parliament /Chamber | Reference     | Date       | Summary |
|---------------|---------------------|---------------|------------|---------|
| Contribution  | PT_PARLIAMENT       | COM(2011)0215 | 23/05/2011 |         |

#### Additional information

| Source               | Document | Date |
|----------------------|----------|------|
| National parliaments | IPEX     |      |
| European Commission  | EUR-Lex  |      |

#### Final act

|  |         |
|--|---------|
| Regulation 2012/1257<br>OJ L 361 31.12.2012, p. 0001 | Summary |
|--|---------|

# Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 11/01/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Bernhard RAPKAY (S&D, DE) 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.

It recommends that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

**Definitions:** it is stipulated that a "European patent with unitary effect" means a European patent which benefits from unitary effect in the **territories of all the participating Member States** by virtue of this Regulation. The definition of "**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.

**European unitary patent:** 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.

In addition, a European patent with unitary effect may be licensed in respect of the **whole or part of the territories of the participating Member States**.

**Prior rights:** Members **deleted Article 5** of the proposal which stated that 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.

**Administrative tasks in the framework of the European Patent Organisation (governance):** the participating Member States shall entrust the following tasks to the EPO:

- the inclusion within the European Patent Register and the administration of the Register for unitary patent protection
- the collection and administration of renewal fees for European patents with unitary effect, in respect of the years following the year in which the European Patent Bulletin mentions their grant;
- ensuring that requests by the patent proprietor for unitary effect for a European patent are submitted in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin;
- ensuring that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in [Council Regulation on translation arrangements](#), has been submitted together with the translations referred to in that Article and that the European Patent Office is informed of any limitations, licenses, transfers and revocations of European patents with unitary effect.

Members suggest that the **Member States shall ensure compliance with the provisions of this Regulation** in implementing their international obligations undertaken in the EPC and shall cooperate amongst themselves to that end. The participating Member States shall ensure the setting of the level of renewal fees in accordance with Article 15 and the setting of the share of distribution of the renewal fees.

**The Select Committee of the Administrative Council** shall consist of the representatives of the Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or by experts. Decisions of the Select Committee of the Administrative Council shall be taken with due regard for the position of the Commission and in accordance with the rules set out in Article 35(2) of the EPC.

The participating Member States shall **ensure effective legal protection** before a competent court of one or several participating Member States against the decisions of the European Patent Office.

**Level of renewal fees:** the level of the renewal fees, shall be fixed, taking into account, among others, the situation of specific entities such as **small and medium-sized enterprises**.

**Distribution:** the amended text stipulates that the **European Patent Office shall retain 50% of the renewal fees** 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.

**The share of distribution** of renewal fees among the participating Member States shall be based on fair, equitable and relevant criteria which include the size of the market, while ensuring a minimum amount to be distributed to each participating Member State.

**Delegated acts:** Members are opposed to the idea of the Commission being empowered to adopt delegated acts concerning the fixing of the level of the renewal fees for European patents with unitary effect.

**Report:** not later than **three years** (rather than six) 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. The Commission shall regularly submit to the European Parliament and the Council reports on the functioning of the renewal fees.

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

**Entry into force and application:** Members propose that the Regulation shall apply **from 1 January 2014** or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

In this context, the report stresses that in order to ensure the proper functioning of the European patent with unitary effect, the consistency of the case-law and hence legal certainty, and the cost effectiveness for patent holders, the **establishment of a Unified Patent Court** to hear cases concerning the European patent with unitary effect is essential. It is therefore of paramount importance that the participating Member States ratify the Agreement on a Unified Patent Court in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to be **operational as soon as possible**.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 20/02/2012

The Presidency recalled the statement made on 30 January by the Heads of State or Government of the Member States participating in the enhanced cooperation for the creation of unitary patent protection in which they committed to reaching a final agreement on the last outstanding issue in the patent package in June 2012 at the latest.

The Presidency highlighted the significant benefits that the new system will provide to European companies in terms of innovation potential, economic savings and legal certainty, and committed itself to striving to facilitate a final compromise.

Several delegations and the Commission urged the finalisation of a draft agreement by Member States for establishing a Unified Patent Court.

Last December the Council and the Parliament reached a provisional agreement on the two draft regulations implementing enhanced cooperation in the area of unitary patent protection ([CNS/2011/0094](#)).

The third pillar of the patent system, **the creation of a Unified Patent Court** that would judge patent litigation cases, is **still pending final agreement** on the seat of the Court.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 30/05/2012

Ministers addressed the last outstanding issue in the draft agreement for the creation of a Unified Patent Court, with a view to **finalising the "patent package" without delay**, with a view to the European Council reaching a successful decision on the matter at its meeting on 28-29 June 2012.

The debate showed that **further work was needed to reach consensus** on the location of the Central Division of the Court of First instance for the future unitary patent jurisdiction.

The debate followed the statement issued by the Heads of State or Government of the EU Member States participating in enhanced cooperation on the creation of unitary patent protection in which they made a commitment to reach a final agreement on the last outstanding issue in the patent package in June 2012 at the latest.

In December 2011 the Council and the Parliament reached a provisional agreement on the two draft regulations implementing enhanced cooperation in the area of unitary patent protection (see also [CNS/2011/0094](#)).

With regard to the third pillar of the patent system, the creation of a Unified Patent Court that would judge patent litigation cases, final agreement on the seat of the Court is still pending.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 30/05/2011

The Council exchanged views at a public session on the creation of unitary patent protection. The outcome of the debate provides a political orientation for the implementation of enhanced cooperation among 25 Member States towards the creation of a unitary patent title. It paves the way for further work with a view to reaching a general approach at the extraordinary Competitiveness Council meeting devoted to unitary patent protection in Luxembourg on 27 June 2011.

The debate was conducted on the basis of a Presidency compromise text, following the two proposals submitted by the Commission on 13 April with provisions to implement enhanced cooperation in the area of the creation of unitary patent protection:

- the first proposal prescribes how patent holders can obtain European patents with unitary effect that ensures uniform protection for their invention;
- the [second proposal](#) contains the translation arrangements.

**Key issues:** despite their general support, delegations identified three key matters where they wish to depart from the Commission's proposal, in order to better reflect the conditions set out in their requests and the Council's authorising decision. The draft proposals were also adjusted to accommodate the additional technical issues raised by delegations.

A) All delegations are **strongly opposed to empowering the Commission to adopt delegated acts on the level of renewal fees for European patents with unitary effect**, as well as the distribution of renewal fees between the participating Member States. Delegations argued that this proposal represents a significant departure from the content of their request for launching enhanced cooperation since point 38 of the 2009 Council conclusions on an Enhanced patent system in Europe which sets out that a "Select Committee of the Administrative Council of the European Patent Organisation should [...] fix both the exact level of the renewal fees and the distribution key for their allocation". One delegation raised some concerns relating to the proposed solution and argued that the tasks entrusted to the Select Committee, including setting the level of the renewal fees and their distribution could also be regulated by implementing acts in accordance with Article 291(2) of the TFEU. The Commission, on the other hand, considers any solution other than the use of delegated acts illegal and insists on the use of the latter instrument for determining the level of renewal fees and their distribution. The Presidency compromise proposals acknowledge the concerns of the delegations and propose that the level of renewal fees and their distribution should be set by the Select Committee. The Presidency suggests that the draft Regulation should be modified in accordance with the wording set out in Articles 12 and 12a, of the compromise proposal in the Annex.

B) Almost all delegations underlined the need to reflect the political link between the creation of unitary patent protection and the unified patent litigation system. Consequently, they consider it necessary to establish a legal link between application of the regulations on unitary patent protection and the setting up of the unified jurisdiction. Some delegations underlined that the establishment of such a link should not hinder or block progress in either area. The Commission expressed its understanding towards the request to highlight the political link between the projects through appropriate wording in the draft Regulations. The Presidency suggests that the draft Regulations should be modified accordingly.

C) A majority of delegations requested the proper reflection of the criteria for the **distribution of renewal fees to the national patent offices**. One delegation requested the deletion of all provisions on renewal fees and their distribution from the draft Regulation.

Several delegations wished to reopen the discussion on the criteria and requested adding a new element, i.e. "an equal amount per participating Member State determined on the basis of an established percentage of the annual renewal fees". A significant number of delegations as well as the Commission were against this proposal, insisting that such direct transfer had not been foreseen in the compromise achieved under the Swedish Presidency.

These conclusions state that, according to which the "distribution key should be fixed taking into account a basket of fair, equitable and relevant criteria such as for instance the level of patent activity and the size of the market. The distribution key should provide compensation for, among other things, having an official language other than one of the official languages of the European Patent Office, for having disproportionately low levels of patent activity and for more recent EPC-membership". One delegation requested the deletion of all provisions on renewal fees and their distribution from the draft Regulation. The Presidency is of the opinion that the proposals in the Annex represent a balanced compromise between the different positions and respect the agreement enshrined in the 2009 Council conclusions without reopening the principles set therein.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 13/04/2011 - Legislative proposal

**PURPOSE:** to implement enhanced cooperation in the area of the creation of unitary patent protection.

**PROPOSED ACT:** Council Regulation.

**BACKGROUND:** the current patent system in the EU, in particular in terms of translation requirements, involves very high costs and complexity. The overall cost of validation of an average European patent reaches 12 500 EUR if validated only in 13 Member States and over 32 000 EUR if validated in the whole EU. It is estimated that the actual validation costs are around 193 million EUR per year in the EU.

Despite broad recognition of the competitive disadvantage European business faces in the absence of unitary patent protection, the Union has not been able to establish unitary patent protection.

The Commission first proposed a [Council Regulation on the Community patent](#) in August 2000. On 30 June 2010 the Commission adopted a [proposal for a Council Regulation on the translation arrangements for the EU patent](#).

It was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed, making a decision requiring unanimity impossible now and in the foreseeable future.

25 Member States then asked for recourse enhanced cooperation in the area of unitary patent protection (all Member States except Italy and Spain) in the area of the creation of unitary patent protection.

The proposal for the authorising decision was adopted by the Council, after obtaining the consent of the European Parliament, on 10 March 2011. The present regulation implements the enhanced cooperation in the area of the creation of unitary patent protection as authorised by Council Decision 2011/167/EU..

IMPACT ASSESSMENT : the proposal is accompanied by an impact assessment which analyses the impacts of the following options:

**Option 1 (base-line scenario):** the Commission takes no action;

**Option 2:** the Commission continues to work with the other institutions towards an EU patent covering 27 Member States;

**Option 3:** the Commission presents proposals for regulations implementing enhanced cooperation:

- **Sub-option 3.1** - the Commission proposes translation arrangements applicable in the area of unitary patent protection that correspond to its proposal of 30 June 2010, or
- **Sub-option 3.2** - the Commission proposes translation arrangements applicable in the area of unitary patent protection based on its proposal of 30 June 2010 and incorporating elements of a compromise proposal discussed by the Council.

The analysis carried out in the impact assessment has demonstrated that **option 3 with sub-option 3.2 is the preferred option.**

LEGAL BASIS: Article 118 (1) TFEU provides for the legal basis for creating European intellectual property rights providing uniform protection throughout the Union by means of a regulation adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure.

CONTENT: the proposal aims to implement enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision No 2011/167/EU. The main provisions are as follows :

**European patent with unitary effect:** in comparison to the Commission's proposal in 2000, this proposal builds on the existing system of European patents by providing unitary effect to European patents granted for the territories of the participating Member States. The unitary patent protection will be optional and co-exist with national and European patents. The proprietors of European patents granted by the EPO, may submit a request to the EPO within one month after the publication of the mention of the grant of the European patent, asking for the registration of the unitary effect. Once it is registered, the unitary effect will provide uniform protection and will have equal effect throughout the territories of all participating Member States. European patents with unitary effect may only be granted, transferred, revoked or may lapse in respect of those territories as a whole. The participating Member States shall give the task of administrating European patents with unitary effect to the EPO.

**Rights and limitations:** the rights conferred by the European patent with unitary effect should enable the patent proprietor to prevent any third party not having his consent from the direct and indirect use of the invention on the territories of the participating Member States. However, a number of limitations of the patent proprietor's rights should enable third parties to use the invention, for instance for private and for non-commercial purposes, for experimental purposes, for acts allowed specifically under Union law (in the area of veterinary medicinal products, medicinal products for human use, plant variety rights, the legal protection of computer programs by copyright and the legal protection of biotechnological inventions) under international law and for the use by a farmer of protected livestock for farming purposes.

**Treating a European patent with unitary effect as a national patent:** a European patent with unitary effect shall be dealt with in its entirety, and in all the participating Member States, as a national patent of the participating Member State in which, according to the European Patent Register, the proprietor of the patent had his residence or principal place of business on the date of filing of the application for the patent. Where no proprietor has his residence or a place of business in a participating Member State, the European patent with unitary effect as an object of property shall be dealt with as a national patent of the State where the European Patent Organisation has its seat.

**Licenses of right:** the draft regulation enables the proprietor of a European patent with unitary effect to file a statement with the EPO that he is prepared to allow any person to use the invention as a licensee in return for appropriate compensation (contractual license).

**Renewal fees:** renewal fees in respect of European patents with unitary effect shall be paid to the European Patent Organisation. If a renewal fee is not been paid in due time, the European patent with unitary effect shall lapse. The proposal provides that renewal fees for European patents with unitary effect shall be progressive throughout the term of the patent and shall be sufficient not only to cover all costs associated with the grant and administration of the unitary patent protection but also, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, to ensure a balanced budget for the Organisation.

The share for distributing 50% of the amount of the renewal fees paid for European patents with unitary effect minus the costs associated with the administration of the unitary patent protection among the participating Member States shall be set by the Commission on the basis of fair, equitable and relevant criteria, i.e the number of patent applications and the size of the market. Participating Member States shall use the amount of the renewal fees allocated to them for patent-related purposes.

BUDGETARY IMPLICATIONS: the proposal has no impact on the Union budget.

DELEGATED ACTS: the proposal contains provisions delegating to the Commission the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union 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.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 29/09/2011

The Council **exchanged views** on a draft agreement aimed at establishing a unified patent litigation system in the context of the creation of unitary patent protection.

The outcome of the debate provides the Presidency with political guidance for continuing work with a view to **reaching a political agreement on the patent package before the end of the year**.

The draft package is made of legislative measures on how to obtain European patent titles with unitary effect that ensure uniform protection for inventions together with the translation arrangements, and the creation of a unified patent litigation system.

The debate focused on the **main principles of a future agreement** for creating a common patent court that would ensure compliance with the EU treaties, as requested by the Court of Justice of the EU in its Opinion 1/09 on the compatibility of the envisaged system with EU law.

The vast majority of delegations supported the creation of a cost-effective and legally sound system that would include the following main features:

- the future court will be common to EU Member States and thus part of the judicial order of the EU, including the arrangements for requesting a preliminary ruling from the Court of Justice of the EU;
- third countries will not participate in the agreement setting up the unified patent court;
- the new court will apply EU law in its entirety and respect its primacy;
- the draft agreement will contain guarantees for the protection of individuals' rights in the case of infringements of Union law committed by the future unified patent court.

On 27 June 2011 the Council agreed on **general approaches** on two draft regulations implementing enhanced cooperation in the area of unitary patent protection:

- [proposal for a Regulation](#) implementing enhanced cooperation in the area of the creation of unitary patent protection;
- [proposal for a Regulation](#) implementing enhanced cooperation in the area of unitary patent protection with regard to the applicable translation arrangements.

On 30 May 2011, a large majority of member states endorsed the way forward proposed by the Commission of setting up a common jurisdiction by means of an agreement to be concluded between Member States.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 11/12/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 484 votes to 164, with 35 abstentions, a 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.

Parliament reached its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the proposal as follows:

**Definitions:** it is stipulated that a "**European patent with unitary effect**" means a European patent which benefits from unitary effect in the territories of all the participating Member States by virtue of this Regulation. The definition of "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.

**European unitary patent:** 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.

In addition, a European patent with unitary effect may be licensed in respect of the whole or part of the territories of the participating Member States.

Uniform protection: according to the amended text, the European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect, subject to applicable limitations. The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.

In its report on the operation of the Regulation, the Commission shall evaluate the functioning of the applicable limitations and shall, where necessary, make appropriate proposals.

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

- (a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or
- (b) where point (a) does not apply, the applicant had a place of business on the date of filing of the application for the European patent.

**Administrative tasks in the framework of the European Patent Organisation (governance):** the participating Member States shall entrust the following tasks to the EPO:

- the inclusion within the European Patent Register and the administration of the Register for unitary patent protection
- the collection and administration of renewal fees for European patents with unitary effect, in respect of the years following the year in which the European Patent Bulletin mentions their grant;
- ensuring that requests by the patent proprietor for unitary effect for a European patent are submitted in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin;
- ensuring that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in [Council Regulation on translation arrangements](#), has been submitted together with the translations referred to in that Article and that the European Patent Office is informed of any limitations, licenses, transfers and revocations of European patents with unitary effect.

As requested by Members, the Member States shall ensure compliance with the provisions of this Regulation in implementing their international obligations undertaken in the EPC and shall cooperate amongst themselves to that end. The participating Member States shall ensure the setting of the level of renewal fees in accordance with Article 15 and the setting of the share of distribution of the renewal fees.

**The Select Committee of the Administrative Council** shall consist of the representatives of the Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or by experts. Decisions of the Select Committee of the Administrative Council shall be taken with due regard for the position of the Commission and in accordance with the rules set out in Article 35(2) of the EPC.

The participating Member States shall ensure effective legal protection before a competent court of one or several participating Member States against the decisions of the European Patent Office.

**Level of renewal fees:** the level of the renewal fees, shall be fixed, taking into account, among others, the situation of specific entities such as small and medium-sized enterprises.

**Distribution:** the amended text stipulates that the **European Patent Office shall retain 50% of the renewal fees 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.

The share of distribution of renewal fees among the participating Member States shall be based on fair, equitable and relevant criteria which include the size of the market, while ensuring a minimum amount to be distributed to each participating Member State.

**Report:** not later than three years (rather than six) 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. The Commission shall regularly submit to the European Parliament and the Council reports on the functioning of the renewal fees.

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

**Entry into force and application:** in accordance with Members' wishes, the Regulation shall apply from **1 January 2014** or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

## Enhanced cooperation in the area of the creation of unitary patent protection: implementation

2011/0093(COD) - 17/12/2012 - Final act

**PURPOSE:** the creation of unitary patent protection.

**LEGISLATIVE ACT:** Regulation (EU) No 1257/2012 of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection.

**CONTENT:** this Regulation aims to implement enhanced cooperation in the area of the creation of unitary patent protection. The other Regulation concerns the [applicable translation arrangements](#).

**BACKGROUND:** on 10 March 2011, the Council adopted [Decision 2011/167/EU](#) authorising enhanced cooperation between 25 countries - 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 ("participating Member States") in the area of the creation of unitary patent protection. On 15 February, the European Parliament approved the establishment of enhanced cooperation. The main obstacle to the creation of unitary patent protection valid in 27 Member States is the lack of unanimity on the choice of the language regime.

The main elements of this Regulation on unitary patent protection are as follows:

**Treating a European patent with unitary effect as a national patent:** a European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect

**Uniform protection:** the European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect. The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.

Uniform patent protection will be available to proprietors of a European patent from both the participating Member States and from other States, regardless of their nationality, residence or place of establishment.

**Administrative tasks in the framework of the European Patent Organisation (EPO):** the EPO has the task of granting European patents valid in the 25 participating States. Furthermore, the participating Member States shall give the EPO certain tasks, particularly: (i) to administer requests for unitary effect by proprietors of European patents; (ii) to administer the Register for unitary patent protection; (iii) to receive and register statements on licensing; (iv) publish translations; (v) to collect and administer renewal fees; (vi) to administer the compensation scheme for the reimbursement of translation costs.

As requested by the European Parliament, participating Member States shall ensure compliance with the Regulation in fulfilling their international obligations undertaken in the Convention on the Grant of European Patents (EPC) and shall cooperate to that end. They must also set the annual renewal fee and the setting of the share of distribution of the renewal fees in accordance with the Regulation.

**Renewal fees:** patent proprietors should pay a single annual renewal fee to the EPO for a European patent with unitary effect. At the request of Parliament, the level of the renewal fees should be set with the aim of facilitating innovation and fostering the competitiveness of European businesses, taking into account the situation of specific entities such as small and medium-sized enterprises, for example in the form of lower fees.

The Regulation lays down that the EPO shall retain 50% of the renewal fees paid for European patents with unitary effect. The remaining amount shall be distributed to the participating Member States, and the share of distribution of renewal fees among the participating Member States shall be based on fair, equitable and relevant criteria. These include the size of the market, while ensuring a minimum amount to be distributed to each participating Member State.

**Report:** not later than three years from the date on which the first European patent with unitary effect takes effect, and every five years thereafter, the Commission shall present a report on the operation of the Regulation and, where necessary, make appropriate proposals for amending it. It shall also submit regular reports on the functioning of the renewal fees.

ENTRY INTO FORCE: 20/01/2013.

APPLICATION: from 01/01/2014 or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.