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VOTING LIST

on the draft report

on the proposal for a regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection

(COM(2011)0215 – C7-0099/2011 – 2011/0093(COD))

Rapporteur: Bernhard Rapkay

PE 472.059v02-00 (ams 1-43) + PE 475.775v01-00 (ams 45-94) + AD ITRE 472.085v02-00 (ams 1-19) + AMC PE 478.394v01-00 (1-33)

The compromise package resulting from the informal trilogues covers: AMC 1-33, AM 6, AM 7, AM 10 and ITRE 8, AM 17, AM 18, AM 21, AM 29, AM 31, AM 32, AM 33 and ITRE 18, AM 34, AM 35, AM 36, AM 37, AM 38, AM 39, AM 2, AM 5. As a part of that compromise package the rapporteur withdraws the following amendments: AM 11, AM 15, AM 14, AM 27, AM 42, AM 44.

Part of the text being considered	Subject of the vote	Comments	Justification	APRIL position
Article 1 – paragraph 2	AM 58 Lichtenberger/Engström	deletion	A regulation cannot constitute a special agreement	+++
Article 2 – point c	AM 6 rapporteur	<i>part of the compromise package</i>	Cosmetic precision	+
Article 2 – point d a (new)	AM 7 rapporteur	<i>part of the compromise package</i>	Moves definition of "Register for unitary patent protection" without unitary effect for licenses	-
Article 3 – paragraph 1 – subparagraph 1	AMC 9 Rapkay	<i>covers AM 8 if adopted go to AM 59</i>	Better definition of identical scope	+
Article 3 – paragraph 1 – subparagraph 1	AM 8 rapporteur	falls if AMC 9 adopted	Better definition of identical scope	(+)



Article 3 – paragraph 2 – subparagraph 1	AM 59 Lichtenberger/Engström		Art. 118.1 TFUE should be respected as the legal basis of this regulation	+++
Article 3 – paragraph 2 – subparagraph 1 a (new)	AM 60 Lichtenberger/Engström		The autonomy of unitary patents should be reaffirmed with legal certainty	+++
Article 3 – paragraph 2 – subparagraph 2	AMC 10 Rapkay	<i>covers AM 9, ITRE AMs 5 and 6 if adopted go to AM 61</i>	No reason to have no unitary effect wrt licensing	-
Article 3 – paragraph 2 – subparagraph 2	AM 9 rapporteur	falls if AMC 10 adopted	No reason to have no unitary effect wrt licensing	-
	AM 5 ITRE	falls if AMC 10 or AM 9 is adopted	No reason to have no unitary effect wrt licensing	-
Article 3 – paragraph 2 – subparagraph 2 a (new)	AM 6 ITRE	falls if AMC 10 or AM 9 adopted	No reason to have no unitary effect wrt licensing	-
Article 3 – paragraph 3 a (new)	AM 61 de Lange		Limits patentability of biotechs	+
Article 3 a (new)	AM 62 Lichtenberger/Engström		Substantive patent law should be defined and clarified by the EU legislator	++
Article 3 b (new)	AM 63 Lichtenberger/Engström		Substantive patent law should be defined and clarified by the EU legislator	++
Article 3 c (new)	AM 64 Lichtenberger/Engström		Clearly excludes software patents	+++
Article 4 – paragraph 1	AM 7 ITRE		Transition period before coming into effect allows more scrutiny	+
Article 4 – paragraph 2	AMC 11 Rapkay		Cosmetic precision	+
Article 5	AM 10 rapporteur	deletion <i>part of the compromise package</i>	Art. 5 would conflict with EPC 2000	+
	AM 8 ITRE			



Article 5 a (new)	AM 11 rapporteur	<i>withdrawn as a part of the compromise package</i>		W
Article 6	AM 65 Wikström	deletion; if adopted go to AM 66	Contrary to Art. 118 TFEU and CJEU Opinion 1/09, would install a jurisdiction of exception	---
Article 6 – paragraph 1 – introductory wording	AM 9 ITRE	falls if AM 65 adopted	Editorial amendment	-
Article 6 – point b	AMC 12 Rapkay	<i>covers AM 12</i> <i>if adopted go to AM 66</i>	Cosmetic precision	+
Article 6 – point b	AM 12 rapporteur	falls if AMC 12 adopted	Cosmetic precision	(+)
Article 7	AM 66 Wikström	deletion if adopted go to AM 67	Contrary to Art. 118 TFEU and CJEU Opinion 1/09, would install a jurisdiction of exception	---
Article 7 – paragraph 1	AMC 13 Rapkay	<i>covers AM 13 and ITRE AM 10</i> <i>if adopted go to ITRE AM 11</i>	Cosmetic precision	+
Article 7 – paragraph 1	AM 13 rapporteur	falls if AMC 13 adopted	Cosmetic precision	(+)
	AM 10 ITRE	falls if AMC 13 or AM 13 adopted	Cosmetic precision	-
Article 8	AM 67 Wikström	deletion if adopted go to am 75	Contrary to Art. 118 TFEU and CJEU Opinion 1/09, would install a jurisdiction of exception	---
Article 8 – introductory wording	AM 11 ITRE	falls if AM 67 adopted	Primacy of EU law	+++
Article 8 – point a a (new)	AM 68 Lichtenberger/Engström	falls if AM 67 adopted	Primacy of EU law	+++
Article 8 – point b a (new)	AM 15 rapporteur	<i>withdrawn as a part of the compromise package</i>		W



	AM 69 de Lange	falls if AM 67 adopted	Limits patentability of biotechs	+
	AM 12 ITRE	falls if AM 67 or AM 69 adopted compatible	Limits patentability of biotechs	
Article 8 – point b b (new)	AM 70 de Lange	falls if AM 67 adopted	Limits patentability of biotechs	+
Article 8 – point b c (new)	AM 71 de Lange	falls if AM 67 adopted	Limits patentability of biotechs	+
Article 8 – point e	AMC 14 Rapkay		Cosmetic precision	+
Article 8 – point f	AMC 15 Rapkay	<i>covers AM 16 if adopted go to AMC 16</i>	Cosmetic precision	+
Article 8 – point f	AM 16 rapporteur	falls if AMC 15 adopted	Cosmetic precision	+
Article 8 – point g	AMC 16 Rapkay		Cosmetic precision	+
Article 8 – point h	AM 17 rapporteur	<i>part of the compromise package if adopted go to ITRE AM 14</i>	Legal certainty of biotechs exception	+
	AM 13 ITRE	falls if AM 17 adopted	Legal certainty of biotechs exception	+
	AM 72 de Lange	falls if AM 17 or AM 13 ITRE adopted	Legal certainty of biotechs exception	+
Article 8 – point i	AM 14 ITRE		Legal certainty of biotechs exception	+
Article 8 – point j	AM 18 rapporteur	<i>part of the compromise package</i>	Legal certainty of interoperability/decompilation exception	+
Article 8 – point k	AM 73 Castex		Limits patentability of biotechs	+
Article 8 – paragraph 1 a (new)	AM 74 Manders		Provides no clear breeders' exemption	-
Article 8 a (new)	AM 14 rapporteur	<i>withdrawn as a part of the compromise package</i>		W



Article 9	AM 75 Wikström	deletion if adopted go to AMC 18	Contrary to Art. 118 TFEU and CJEU Opinion 1/09, would install a jurisdiction of exception	---
Article 9	AMC 17 Rapkay	falls if AM 75 adopted	Cosmetic precision	+
Article 10 – paragraph 1 – introductory wording	AMC 18 Rapkay		Cosmetic precision	+
Article 10 – paragraph 3	AMC 19 Rapkay	<i>covers AM 19 if adopted go to AM 76</i>	Cosmetic precision	+
Article 10 – paragraph 3	AM 19 rapporteur	falls if AMC 19 adopted	Cosmetic precision	(+)
Article 10 – paragraph 4 a (new)	AM 76 Wallis/Wik ström	falls if AMC 19 adopted	Compatibility with Rome I & Rome II are useless in this regulation, but should be adopted in the agreement on the unified patent court.	-
Article 12 – title	AMC 20 Rapkay	<i>covers AM 20 if adopted go to AM 77</i>	Clarifies that EU leaves more powers to the EPO	-
Article 12 – title	AM 20 rapporteur	falls if AMC 20 adopted	Explicit Delegation of Powers	+
Article 12 – paragraph 1 – subparagraph 1 – introductory wording	AM 77 Lichtenber ger/Engstr öm		A regulation cannot constitute a special agreement and primacy of EU law	+++
Article 12 – paragraph 1 – subparagraph 1 – point b	AM 21 rapporteur	<i>part of the compromise package</i>	Coordination amendment with Am. 7	+
Article 12 – paragraph 1 – subparagraph 1 – point e	AMC 21 Rapkay	<i>covers AM 22 if adopted go to AM 78</i>	Coordination amendment with Am. 7	+
Article 12 – paragraph 1 – subparagraph 1 – point e	AM 22 rapporteur	falls if AMC 21 adopted	Coordination amendment with Am. 7	(+)



Article 12 – paragraph 1 – subparagraph 1 – point f	AM 78 Tremosa i Balcells		Co-official languages	-
Article 12 – paragraph 1 – subparagraph 1 – point f a (new)	AMC 22 Rapkay	<i>covers part of AM 26: "b) ensure that requests (...)</i> <i>European Patent Bulletin"</i>	Raises some legal and practical issues wrt to the period between granting of the patent and publication of unitary effect	-
Article 12 – paragraph 1 – subparagraph 1 – point f b (new)	AMC 23 Rapkay	<i>covers part of AM 26: "c) ensure that the unitary effect (...)</i> <i>Article 138(3) of the EPC"</i>	Coordination amendment	+
Article 12 – paragraph 1 – subparagraph 2	AMC 24 Rapkay	<i>deletion</i> <i>if adopted go to AMC 25</i>	Tasks covered by AMC 23	+
	AM 23 rapporteur	falls if AM 23 adopted	Cosmetic precision	+
	AM 79 Wikström	falls if AMC 24 adopted	Extends uncertainty period between grant of the patent and publication of unitary effect	-
Article 12 – paragraph 1 – subparagraph 3	AMC 25	<i>deletion</i>	Tasks covered by AMC 23	+
	AM 24 rapporteur	falls if AMC 25 adopted	Registering of licences, transfer and lapse delegating to the EPO	(+)
Article 12 – paragraph 2	AMC 26 Rapkay	<i>covers AM 25 and the remaining parts of AM 26</i> <i>if adopted go to AMC 27</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 12 – paragraph 2	AM 25 rapporteur	deletion falls if AMC 26 adopted	Coordination amendment due to setup of a selected committee	-
	AM 80 Lichtenberger/Engström	falls if AMC 26 adopted	A regulation cannot constitute a special agreement and better role for EP	+++
Article 12 – paragraph 3	AMC 27 Rapkay	<i>if adopted go to AM 27</i>	Link with unified patent court	-
Article 12 – paragraph 3	AM 81 Lichtenberger/Engström	falls if AMC 27 adopted	Mandatory recourse against any EPO decision	+++



Article 12 a (new)	AM 26 rapporteur	<i>covered by AMCs 22, 23, 26</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 14 – paragraph 2	AM 27 rapporteur	<i>withdrawn as a part of the compromise</i>		W
Article 15 – paragraph 1 – point c a (new)	AM 15 ITRE	covered by AMC 28	Fees adapted to SMEs	+
Article 15 – paragraph 2 – introductory wording	AMC 28 Rapkay	<i>covers AM 28, AM 82, ITRE AM 15 and ITRE AM 16 if adopted go to AM 29</i>	Fees adapted to SMEs	+
Article 15 – paragraph 2 – point b a (new)	AM 28 rapporteur	falls if AMC 28 adopted	Fees adapted to SMEs	(+)
	AM 82 Wikström	falls if AMC 28 or AM 28 adopted	Fees adapted to SMEs	+
	AM 16 ITRE	falls if AMC 28, AMs 28 or 82 adopted	Fees adapted to SMEs	+
Article 15 – paragraph 2 – point c	AM 29 rapporteur	<i>part of the compromise package</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 15 – paragraph 3 – introductory wording	AMC 29 Rapkay	<i>covers AM 30 and AM 83 if adopted go to AM 31</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 15 – paragraph 3 – introductory wording	AM 30 rapporteur	falls if AMC 29 adopted	Treaties don't allow a regulation to set up such a selected committee	-
Article 15 – paragraph 3 a (new)	AM 83 Baldassare	falls if AMC 29 adopted	Fees adapted to SMEs	+
Article 15 – paragraph 4	AM 31 rapporteur	<i>part of the compromise package deletion</i>	Treaties don't allow a regulation to set up such a selected committee	+
Article 16 – paragraph 1	AMC 30 Rapkay	<i>covers AM 84</i>	Original wording was clearer	-
Article 16 – paragraph 1	AM 84 Zwiefka	identical		



Article 16 – paragraph 2 – introductory wording	AM 32 rapporteur	<i>part of the compromise package</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 16 – paragraph 2 – point b	AM 33 rapporteur	<i>part of the compromise package</i>	Original wording is clearer in defining the size of the market	-
	AM 17 ITRE	identical		
Article 16 – paragraph 2 – point c	AM 34 rapporteur	<i>part of the compromise package</i>	Cosmetic precision	+
Article 16 – paragraph 3	AM 35 rapporteur	<i>part of the compromise package deletion</i> <i>if adopted go to AM 36</i>	Transformation of the EPO into a cash machine	-
	AM 85 Baldassarre	falls if AM 35 adopted	Fees adapted to SMEs	+
Article 16 – paragraph 4	AM 36 rapporteur	<i>part of the compromise package deletion</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 17	AM 37 rapporteur	<i>part of the compromise package deletion</i> <i>if adopted go to AM 88</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 17 – paragraph 1	AM 86 Lichtenberger/Engström	falls if AM 37 adopted	Clarifies scope delegated acts	+
Article 17 – paragraph 2	AM 87 Stoyanov/Binev	falls if AM 37 or 86 adopted	Enhances EP scrutiny of delegated acts	+
Article 18	AM 18 ITRE		Better cooperation with NPOs	+
Article 18 – paragraph 1	AM 88 Baldassarre	falls if AM 18 ITRE adopted	Better cooperation with NPOs	+



Article 19 – paragraph 1	AM 89 Lichtenberger/Engström		Primacy of EU law	++
Article 20 – paragraph 1	AM 38 rapporteur	<i>part of the compromise package if adopted go to AM 39</i>	Better role for EP and shorter period for review of the regulation	+
	AM 90 Lichtenberger/Engström	falls if AM 38 adopted	Better role for EP and shorter period for review of the regulation	++
	AM 91 Paksas	falls if AM 38 or 90 adopted	Shorter period for review of the regulation	+
	AM 92 Stoyanov/Binev	falls if AM 38, 90 or 91 adopted	Shorter period for review of the regulation	+
	AM 19 ITRE	falls if AM 38, 90, 91 or 92 adopted	Better role for EP and shorter period for review of the regulation	++
Article 20 – paragraph 2	AM 39 rapporteur	<i>part of the compromise package</i>	Better role for EP	+
Article 21	AMC 31 Rapkay	<i>covers AM 40 if adopted go to AMC 32</i>	Treaties don't allow a regulation to set up such a selected committee	-
Article 21	AM 40 rapporteur	falls if AMC 31 adopted	Treaties don't allow a regulation to set up such a selected committee	-
Article 22 – paragraph 2	AMC 32 Rapkay	<i>covers AM 41 and 43 if adopted go to AMC 33</i>	Link with unified patent court	+
Article 22 – paragraph 2	AM 41 rapporteur	falls if AMC 32 adopted	Link with unified patent court	(+)
	AM 93 Karim	falls if AMC 32 or AM 93 adopted	Link with unified patent court	(+)
Article 22 – paragraph 3	AM 42 rapporteur	<i>deletion withdrawn as a part of the compromise package</i>		W
Article 22 – paragraph 3 a (new)	AM 43 rapporteur	falls if AMC 32 adopted	Link with unified patent court	(+)



Article 22 – paragraph 4	AMC 33 Rapkay	<i>covers AM 44 if adopted go to AM 94</i>	Coordination amendment	+
Article 22 – paragraph 4	AM 44 rapporteur	<i>deletion withdrawn as a part of the compromise package</i>		W
Article 22 – paragraph 4 – subparagraph 1	AM 94 Mészáros	falls if AMC 33 adopted	Mészáros has withdrawn an identical amendment in ITRE	-
Recital 1	AM 1 ITRE		Cosmetic precision	+
Recital 2	AM 45 Baldassarre		Fees adapted to SMEs	+
	AM 46 Paksas		Affects balance between “Participants to patent system” and 3rd parties	-
Recital 4	AM 47 Tremosa i Balcells		Wishful thinking for Italy and Spain	+
Recital 7	AMC 1 Rapkay	<i>covers AM 1 and ITRE AM 2 if adopted go to AMC 2</i>	No reason to have no unitary effect wrt licensing	-
Recital 7	AM 1 rapporteur	falls if AMC 1 adopted	No reason to have no unitary effect wrt licensing	-
	AM 2 ITRE	falls if AMC 1 or AM 1 adopted	No reason to have no unitary effect wrt licensing	-
Recital 9 a (new)	AMC 2 Rapkay		Abandons control over an essential aspect of balancing the conflicting interests involved in the context of patent protection	--
Recital 11 a (new)	AMC 3 Rapkay		Relation with IPRED directive	+
Recital 15	AM 2 rapporteur	<i>part of the compromise package if adopted go to AMC 4</i>	Coordination amendment	+
	AM 48 Wikström	falls if AM 2 adopted	Extends uncertainty period between grant of the patent and publication of unitary effect	-



Recital 15 a (new)	AMC 4 Rapkay	<i>covers AM 3 if adopted go to AMC 5</i>	Treaties don't allow a regulation to set up such a selected committee	-	
Recital 15 a (new)	AM 3 rapporteur	falls if AMC 4 adopted	Treaties don't allow a regulation to set up such a selected committee	-	
Recital 16	AMC 5 Rapkay	<i>covers AMs 4, 49, ITRE AM 3 and AM 50 if adopted go to AMC 6</i>	Treaties don't allow a regulation to set up such a selected committee	-	
Recital 16	AM 4 rapporteur	falls if AMC 5 adopted	Treaties don't allow a regulation to set up such a selected committee	-	
	AM 49 Wikström	falls if AMC 5 or AM 4 adopted	Treaties don't allow a regulation to set up such a selected committee	-	
	AM 3 ITRE	falls if AMC 5, AM 4 or AM 49 adopted	Treaties don't allow a regulation to set up such a selected committee	-	
Recital 16 a (new)	AM 50 Baldassarr e	falls if AMC 5 adopted	Fees adapted to SMEs	+	
Recital 18	AMC 6 Rapkay	<i>covers AMs 52, 51, 53, ITRE AM 4 if adopted go to AM 5</i>	There is no reason for the EU to finance EPO more than to cover expenses generated from the administration of the unitary patent	+	
Recital 18	AM 52 Zwiefka	identical			
	AM 51 Mészáros	falls if AMC 6 adopted		Use of fees for innovation-related purposes instead of only patent-related purposes	+
	AM 53 Baldassarr e	falls if AMC 6 or AM 53 adopted		Help to SMEs	+
	AM 4 ITRE	falls if AMC 6, AM 53 or ITRE AM 4 adopted	Use of fees for innovation-related purposes instead of only patent-related purposes	+	
Recital 19	AM 5 rapporteur	<i>part of the compromise package deletion if adopted go to AM 55</i>	Treaties don't allow a regulation to set up such a selected committee	-	



	AM 54 Stoyanov/ Binev	falls if AM 5 adopted	Definition of “parties concerned” is unclear which implies the risk to leave the patent microcosm alone	-
Recital 20	AM 55 Wikström		Includes help for small patentees	+
Recital 20 a (new)	AM 56 Tremosa i Balcells		Wishful thinking for Spain and Italy	+
Recital 21 a (new)	AMC 7 Rapkay		Link with unified patent court	+
Recital 21 b (new)	AMC 8 Rapkay		Link with unified patent court	+
Recital 23 a (new)	AM 57 Castex		Requirement for EPO to respect EU law	+
DRAFT REPORT AS A WHOLE			Ams 58, 59 & 60 are mandatory for compliance with Treaties and EU oversight of the patent policy, the regulation should be rejected if these amendments are not adopted	- / + is ams. 58, 59 & 60 are adopted