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BUSINESSEUROPE TECHNICAL NOTE ON THE ALLOCATION OF THE ADMINISTRATIVE COSTS RELATED TO THE EUROPEAN PATENT WITH UNITARY EFFECT

THE PRINCIPLE

Article 9 of Regulation 1257/2012 provides that the participating Member States shall, within the meaning of Article 143 of the European Patent Convention (EPC), give the European Patent Office (EPO) a number of administrative tasks relating to the European patent with unitary effect.

Article 9 does not expressly state that the cost of performing such administrative tasks shall be borne by the participating Member States which are giving them to the EPO. It provides, however, that the tasks are given “within the meaning of Article 143 of the EPC”. When additional tasks are given to the EPO by a group of EPC Contracting States under that Article 143, Article 146 of the EPC provides that the group of Contracting States shall bear the expenses incurred by the EPO in carrying out these tasks. Recital 21 of Regulation (EU) N°1257/2012 expressly refers to Article 146 of the EPC on this point.

The inescapable conclusion is that the intent and the letter of Regulation 1257/2012 require that the participating Member States bear the administrative costs related to the performance of the tasks given by them to the EPO. This is consistent with the common sense remark that he who gives tasks to a service provider should at least pay the associated expenses and not let them wholly or partly on the shoulders of the provider.

THE IMPLEMENTATION

There are at least two possible ways to implement the principle. One way would be for the EPO to bill the Member States on a regular basis for the amount of expenses incurred. The process would be kept completely separate from the distribution of their share of the renewal fees to the Member States. The main drawback of such a solution is that it would create unnecessary transaction costs for both the EPO and the participating Member States.

Article 13 of Regulation 1257/2012, interpreted in the light of Recital 21, suggests another, more sensible, approach for the implementation of the principle. The EPO retains 50 per cent of the renewal fees pursuant to Article 13 paragraph 1. Out of the other part, that is to be distributed to the participating Member States, the EPO retains an amount to cover the expenses generated at the EPO in carrying out tasks in relation to the unitary patent protection and distributes the remaining amount to the participating Member States.

The expression “remaining amount” used in Article 13 is clarified by Recital 21 as what remains of the 50% share of the renewal fees that is attributed to the participating



Member States after deduction of the amount retained by the EPO in payment of the expenses of administering the unitary patent protection. BUSINESSEUROPE strongly recommends this second approach.
