

**2023**

**COOPERATION AGREEMENT**

**NUMBER 4020230005**

**between**

**The European Union Intellectual  
Property Office**

**and**

**The Industrial Property Office of the  
Czech Republic**

The European Union Intellectual Property Office, located at Avenida Europa, 4, E-03008 Alicante, Spain, hereinafter referred to as "EUIPO", which is represented for the purposes of the signature of this Cooperation Agreement, hereinafter referred to as "the Agreement", by its Executive Director, Mr XXXXXXXXXX on the one part,

AND

The Industrial Property Office of the Czech Republic, hereinafter referred to as "IPO", which is represented for the purposes of the signature of the Agreement, by its President, Mr Josef Kratochvíl, on the other part,

Hereinafter collectively referred to as "the Parties"

Considering that the parties have agreed to gather into a Single Agreement all cooperation projects including European Cooperation, International Cooperation (EU-funded projects in third countries) and Enforcement;

Whereas Article 152 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (hereinafter "EUTMR") foresees the cooperation between EUIPO and central industrial property offices of the Member States and the Benelux Office for Intellectual Property (hereinafter "IPOs") to promote convergence of practices and tools in the fields of trade marks and designs;

Whereas on 20 November 2019, the Management Board adopted Decision No. MBBC-19-20 to authorise the continuation of five European Cooperation Projects carried forward from the period covered under the Strategic Plan 2020 and to adopt the project definitions for the three new European Cooperation Projects (ECP6, ECP7 and ECP8), and invited the central industrial property offices of the Member States and the Benelux Office for Intellectual Property to participate in the projects; the said decision envisages a new cooperation paradigm which includes a simplification of the contractual framework (including, where appropriate and possible, the use of lump sum payment arrangements, based on historical real costs);

Whereas EUIPO as one of its main task is entrusted by Regulation (EU) No 386/2012 entrusts to the EUIPO with the task of improving knowledge on intellectual property (hereinafter "IP") rights infringements in Member States by Regulation (EU) No 386/2012 and Article 5(1) of the above-mentioned Regulation foresees certain information obligations, specifically "[...] Member States shall, at the request of the EUIPO or on their own initiative: [...] (c) "inform the EUIPO of important case-law";

Whereas the EUIPO will continue to make use of the experts of IPOs to participate in EU-funded projects in third countries and has informed the Management Board accordingly.

The Parties have hereby agreed the following:

### **Article 1 - Scope**

1. The present Agreement sets out the terms and conditions for cooperation activities between the parties in the areas of European Cooperation in the field of Intellectual Property (hereafter "ECPs"), and Enforcement and International Cooperation in the field of Intellectual Property (EU-funded projects in third countries).
2. By signing this Agreement, the IPO accepts to cooperate in the following areas:

- 2.1 (a) European Cooperation Projects Implementation  
(b) European Cooperation activities: Working Groups and other collaborative networks
  - 2.2 ECP5 - Promotional Activities
  - 2.3 ECP6 - Promotional Activities
  - 2.4 ECP8 - TMview and DSview running costs
  - 2.5 Participation in EU-funded projects in third countries, if applicable.
3. The IPO shall participate effectively in the areas referred to in paragraph 2 above with the view to ensuring that the projects are developed, function, are interoperable and kept up to date.

## **Article 2 - Structure**

1. The present Agreement is composed by the following:
  - 1.1 Special Conditions
  - 1.2 Annex I General Conditions
  - 1.3 Annex II Specific provisions
  - 1.4 Annex III Activity specifications, including milestones and/or KPIs, as generated through the Cooperation Platform
  - 1.5 Annex IV Ideas powered for business SME fund.

These annexes form an integral part of the Agreement.

2. Annex II shall take precedence over Annex I, Annex III and Annex IV.
3. Annex III shall take precedence over Annex I and Annex IV.
4. Special Conditions shall take precedence from any other Annex.

## **Article 3 - Maximum amount and form of the contribution**

1. The total cost of this action is estimated at 374,898.89 EUR.
2. The maximum EUIPO contribution for this action is **337,409.00 EUR**. In line with Art. 84(1) of Regulation BC-1-2019 of the Budget Committee of the European Union Intellectual Property Office of 10 July 2019 laying down the financial provisions applicable to the EUIPO ("Financial Regulation"), the total EUIPO contribution is subject to the achievement of the results measured by reference to previously set milestones and/or performance indicators (KPIs).
3. In relation to running costs, the assigned contribution below will be revisited for the second half of 2023 in the light of the definition of a new model for running costs to be presented to the MBBC in June as a consequence of the observations of the IP Special Report published by the European Court of Auditors in April 2022 and already discussed with Member States since the end of 2021. The new model will be based on costs, service levels and performance.

Project	Sub-project name	Project Type	Form Contribution of Art. 84(1) FR	EUIPO contribution EUR
ECP5	Information and advice services on EUTM/RCD	Promotion activity	Lump sum	71,000.00
ECP5	Participation in fairs	Promotion activity	Lump sum	4,400.00
ECP5	Providing information on EUTM/RCD for enforcing institutions	Promotion activity	Lump sum	17,300.00
ECP8	Collaborative Network	Collaborative Service	Lump sum	3,960.00
ECP8	Case Law	Case Law project of the Observatory	Lump sum	2,200.00
ECP8	Maintenance of Common Practices and Tools	Maintenance of common practices and tools	Lump sum	3,300.00
ECP6	Support to SMEs	Working Group	Lump sum	1,980.00
ECP6	Alternative dispute resolution (ADR)	Working Group	Lump sum	1,980.00
ECP6	Outreach and information (EIPIC)	Working Group	Lump sum	1,980.00
ECP6	Support to SMEs	Implementation	Eligible Actual Costs	21,898.00
ECP8	TMView Running costs	Running Cost	Lump sum	103,705.50
ECP8	Design View Running costs	Running Cost	Lump sum	103,705.50
<b>TOTAL</b>				<b>337,409.00</b>

#### Article 4 - Duration

1. The Agreement enters into force on the date on which the last party signs it.
2. For the purposes of this Agreement the implementation period shall be one calendar year starting on 1<sup>st</sup> January 2023.
3. The Agreement shall remain valid until the 31<sup>st</sup> of December 2023.

#### Article 5 - Communication

1. For the purposes of the implementation of the Agreement, the contacts points of the Parties shall be:

For the EUIPO:

XXXXXXXXXX  
European Cooperation Service  
XXXXXXXXXX  
[CooperationAgreement@euipo.europa.eu](mailto:CooperationAgreement@euipo.europa.eu)

For the IPO:

XXXXXXXXXX  
IT department  
XXXXXXXXXX  
XXXXXXXXXX [@upv.cz](mailto:@upv.cz)

2. Unless otherwise specified in this Agreement, communications between the Parties shall be done via the email addresses indicated in point 1 above and by making use of the Cooperation platform.

## SIGNATURES

**For the Industrial Property Office of  
the Czech Republic**

**For the European Union Intellectual  
Property Office**

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**President,  
Josef Kratochvíl**

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**Executive Director,  
XXXXXXXXXX**

Date:

Date:

## **ANNEX I - GENERAL CONDITIONS**

### **ARTICLE 1 - PURPOSE**

1.1 The General Conditions shall specify the conditions under which areas of cooperation referred in Article 1 of the Special Conditions will be executed.

1.2 Unless the context otherwise requires, words and phrases used in this Agreement in the singular shall be deemed to include the plural and vice versa.

### **ARTICLE 2 - OPT OUT, RESTRICTION OR TEMPORARY SUSPENSION**

2.1 With regard to the Projects of Cooperation described in Article 1 of the Special Conditions, without prejudice to the EUIPO's right to terminate the Agreement in pursuance of Article 4, the EUIPO may at any time suspend the execution of the Agreement. Suspension shall take effect on the day IPO receives notification by registered letter with acknowledgement of receipt or equivalent. The EUIPO may at any time, following suspension, give notice to the IPO to resume the work suspended. The EUIPO shall justify the grounds for the suspension in the notification letter.

2.2 The IPO may opt out, restrict or suspend the implementation of its cooperation for any of the projects by providing the EUIPO with a written statement. The written statement shall explain the reasons of its decision and if possible, to indicate the date it will take effect and if already known, also the date of resumption. The IPO's right to opt out, restrict or suspend the implementation of cooperation applies without prejudice to the provisions of article 5, 20 and 24. The suspension shall take effect from the date when the EUIPO receives the formal notification of the IPO by registered letter.

2.3 Before the entry into force of the suspension period, the parties must agree on the costs to be reimbursed during that period.

### **ARTICLE 3 - FORCE MAJEURE**

3.1 Force majeure shall mean any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations under the Agreement, was not attributable to error or negligence on their part and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting Party.

3.2 A Party faced with force majeure shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

3.3 Neither of the Parties shall be held in breach of their obligations under the Agreement if they are prevented from fulfilling them by force majeure. The Parties shall make every effort to minimize any damage due to force majeure

## ARTICLE 4 - TERMINATION OF THE AGREEMENT

### *Termination by the IPO*

4.1 The IPO may terminate the Agreement without any indemnity on its part at any time by giving 60 calendar days' notice and providing the EUIPO with a written statement explaining the reasons.

4.2 If no written statement explaining the reasons is provided, the IPO shall be deemed to have terminated this Agreement improperly, and the consequences set out in the third subparagraph of Article 4.4 may apply.

4.3 The procedure of termination is initiated by registered letter with advice of delivery or via the online tool provided by the EUIPO.

4.4 In the event of termination of the Agreement by the IPO, payments by the EUIPO shall be limited to the proportion of the lump sum corresponding to the results attained and milestones achieved before the date when the termination takes effect. In case of European Cooperation Projects implementations referred to by Article 1, item 2.1.a) of the Special Conditions, Article 27 will apply.

The IPO shall have 60 calendar days from the date when termination takes effect, as notified by the EUIPO, to submit to the EUIPO a request for final payment. If no request for final payment is received within this time limit, the EUIPO shall not make any payment, and when applicable, recover undue amounts paid where the relevant results/milestones have not been delivered or achieved or if they have not been substantiated by the Execution Reports approved by the EUIPO.

In the event of improper implementation by the IPO, the EUIPO has the right to require the partial or total repayment of sums already paid under the Agreement on the basis of the Execution Report approved by the EUIPO, in proportion to the gravity of the failings in question and after allowing the IPO to submit its observations.

When the termination procedure is over, the EUIPO will no longer accept any payment obligation or any liability for the payment of services rendered by third parties to the IPO for the project.

### *Termination by the EUIPO*

4.5 The EUIPO may terminate the Agreement without any indemnity on its part at any time by giving 60 calendar days' notice and providing the IPO with a written statement explaining the reasons.

4.6 The EUIPO may decide to terminate the Agreement, without any indemnity on its part, in the following circumstances:

- a) in the event of a legal, financial, technical, organizational or auditing change in the IPO's situation that is liable to affect the execution of the Agreement substantially or to call into question the decision to award the contract;
- b) if the IPO fails to fulfill a substantial obligation incumbent on it under the terms of the Agreement, including improper execution by the IPO;
- c) if the IPO submits reports which do not correspond to reality to obtain the amount provided for in the Agreement;

- d) if the IPO has intentionally or by negligence committed a substantial irregularity in performing the Agreement to the detriment of the EUIPO's financial interests. A substantial irregularity consists of any infringement of a provision of the Agreement which causes or might cause an illegitimate loss to the EUIPO budget.

4.7 The procedure of termination is initiated by registered letter with advice of delivery or via the online tool provided by the EUIPO.

In the cases referred to in points a) and b) of Article 4.6, the IPO shall have 30 calendar days to submit its written observations and take any measures necessary to ensure continued fulfillment of its obligations under the Agreement. If the EUIPO fails to confirm acceptance of these observations by giving written approval within 30 calendar days of receiving them, the procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the EUIPO's decision to terminate the Agreement is received or on the date established in the termination notice.

4.8 In the event of termination of the Agreement by the EUIPO, payments by the EUIPO shall be limited to proportion of the lump sum linked to the results and milestones achieved and delivered as approved by the EUIPO in the Execution report issued by the IPO. In the case of European Cooperation Projects implementations referred to by Article 1, item 2.1.a) of the Special Conditions, Article 29 of the Specific Provisions will apply.

The IPO shall have 60 calendar days from the date when termination takes effect, as notified by the EUIPO, to produce a request for final payment.

If no request for final payment is received within this time limit, the EUIPO shall not reimburse the IPO up to the date of termination and it shall recover any amount if its use is not substantiated by the Execution Reports approved by the EUIPO.

In the event of termination by the EUIPO on the grounds set out in points c) or d) of Article 4.6, the EUIPO has the right to require the partial or total repayment of sums already paid under the Agreement on the basis of the Execution Report approved by the EUIPO, in proportion to the gravity of the failings in question and after allowing the IPO to submit its observations.

When the termination procedure is over, the EUIPO will no longer accept any payment obligation or any liability for the payment of services rendered by third parties to the IPO for the project.

## **ARTICLE 5 - LIABILITY**

5.1 The IPO shall have sole responsibility for complying with its legal obligations arising from the Agreement for the execution of the project tasks assigned to it under the Agreement.

5.2 The EUIPO shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the Agreement relating to any damage caused during the project's execution. Consequently, the EUIPO will not entertain any request for indemnity or reimbursement accompanying any such claim.

5.3 Except in cases of force majeure, the IPO shall make good any damage sustained by the EUIPO as a result of partial or total non-execution or, faulty execution of any of the projects contemplated under the Agreement.

5.4 The IPO shall bear sole liability vis-à-vis third parties and undertakes to defend, hold harmless and indemnify the EUIPO against any and all claims of alleged or actual infringement of any rights raised by third parties against the EUIPO.

## **ARTICLE 6 - OWNERSHIP / USE OF THE RESULTS**

6.1 Unless stipulated otherwise in the Agreement, ownership of the results of the project/s contemplated under the Agreement, including IP rights, and of the reports and other documents relating to it shall be vested in the EUIPO.

6.2 Without prejudice to paragraph 1, the EUIPO grants the IPO the right to make free use of the projects results contemplated under the Agreement as it deems fit, provided it does not thereby breach its confidentiality obligations or existing IP rights.

6.3 Without prejudice to the IP rights of the Parties existing prior to the conclusion of the present Agreement, the IPO grants the EUIPO a royalty-free license of use, disposal and sub-license of IP rights relating to data belonging to the former and being used in or transferred for the implementation of the projects covered under the present Agreement.

## **ARTICLE 7 - CONFIDENTIALITY**

The EUIPO and the IPO shall preserve the confidentiality of any information and documents, in any form, which are disclosed in writing or orally in relation to the implementation of the Agreement and which are explicitly indicated in writing as confidential. The parties shall remain bound by this obligation beyond the expiration date of the Agreement.

## **ARTICLE 8 - AMENDMENTS TO THE AGREEMENT**

8.1 Any Amendment to the Agreement shall be made in writing.

8.2 Amendments shall enter into force on the date on which the last party signs or on the date of approval of the request for amendment. Amendments shall take effect on a date agreed by the parties or, in the absence of such an agreed date, on the date on which the amendment enters into force.

8.3 The request for amendment can be made by any of the parties in good time before it is due to take effect, and at all events 30 calendar days before the expiration date of the Agreement, via the online tool provided by the EUIPO except in cases duly substantiated by the IPO and accepted by the EUIPO.

## **ARTICLE 9 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

9.1 The Parties specifically agree that the present Agreement shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms and conditions and in the light of its scope.

9.2 Any dispute arising out of or in the context of the present Agreement should be settled amicably between the parties on the basis of the principle of just and equitable treatment for the Parties.

9.3 Should amicable settlement of disputes fail, the European Court of Justice shall have sole jurisdiction to hear any dispute between the parties concerning the interpretation, application or validity of this Agreement.

## **ARTICLE 10 - PROCESSING OF PERSONAL DATA UNDER THE AGREEMENT**

10.1 Where the implementation of the entrusted tasks requires the processing of personal data, the EUIPO undertakes that the processing be made in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, EUIPOs and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

10.2 Where the implementation of the entrusted tasks requires the processing of personal data, the IPO undertakes that the processing be made in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

## **ARTICLE 11 - PROCESSING OF PERSONAL DATA FOR THE PURPOSES OF TMVIEW AND DESIGNVIEW**

11.1 EUIPO, as a controller, defined the purpose and the means of the TMView and DesignView data processing operations. Its competence includes definition and coordination of projects relating to the creation of common databases and portals for Union-wide consultation and search and continuous provision and exchange of data and information, including for the purposes of feeding of the databases and portals. Data protection notice TMView and Designview: <https://tmdn.org/network/data-protection>

11.2 The Parties are sole controllers of the personal data they provide for the purposes of the search tool in accordance with the EU and/or national law applicable to them. The IPO shall ensure that it has the appropriate legal basis to transfer the personal data to the EUIPO.

11.3 The IPO agrees to ensure that the transmission of personal data to the EUIPO complies with the law applicable to it.

11.4 Personal data processing in TMView and DesignView only extends to data which have been published by the respective Parties.

11.5 As regards personal data provided by the EUIPO, the data subject rights can be exercised as indicated in the privacy statement of the EUIPO. As regards personal data provided by IPO, the data subject rights can be exercised as indicated in the privacy statement of the IPO.

11.6 In the event that the EUIPO receives a data subject request on how their personal data are managed in the TMView and/or DesignView platform, including for accessing the personal data of the requester, the EUIPO shall be responsible for processing such requests.

11.7 The IPO shall be responsible for processing any other data subject request related to the data it provides to the EUIPO, including its modification or deletion.

11.8 Where a data subject request does not fall within EUIPO's competence, it will forward the request to the IPO.

11.9 The Parties have the right of recourse at any time to the European Data Protection Supervisor concerning the processing of such data.

## **ARTICLE 12 - SECURITY OF PROCESSING**

12.1 The IPO shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). This requirement shall apply to the EUIPO during transmission, including during processing in the EUIPO IT infrastructure. The IPO shall handle any possible security incident (including personal data breach) related to the confidentiality and/or accuracy of the data submitted by the IPO. The EUIPO shall handle any possible security incident (including personal data breach) strictly related to the management of the TMView and/or DesignView platform.

12.2 In the event of a personal data breach concerning personal data processed by the IPO under these Clauses following their transmission to the IPO from the EUIPO, the IPO shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects and notify the EUIPO without undue delay of the data breach.

12.3 The IPO and the EUIPO shall assist each other, where necessary, in preparing communication with the relevant authorities and data subjects and, where applicable, obtaining relevant information.

12.4 The EUIPO and the IPO shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

12.5 Where applicable, any (onward) transfer of personal data under the Cooperation Agreement to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725[2].

## **ARTICLE 13 - BANK ACCOUNT**

Payments shall be made to the bank account designated by the IPO and denominated in EUR. This account shall allow the identification of the payments made by the EUIPO:

**CZ20 0710 0000 1900 2152 6001**

## **ARTICLE 14 - PUBLICITY**

14.1 Unless the EUIPO requests otherwise, any communication or publication by the IPO about the project, including at a conference or seminar, shall indicate that the project has received financial support from the EUIPO.

Any communication or publication by the IPO about the project, in any form and medium, shall indicate that sole responsibility lies with the author and that the EUIPO is not responsible for any use that may be made of the information contained therein.

14.2 The IPO authorises the EUIPO to publish the following information in any form and medium, including via the Internet:

- a) the IPO's name and the address;
- b) the subject and purpose of the project;

- c) the amount to be paid and the proportion of the project's total cost covered by the funding;
- d) any internal deliverable created by the IPO in their role as member of Working Groups.

Upon a reasoned and duly substantiated request by the IPO, the EUIPO may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the IPO's security or prejudicing its commercial interests.

## **ARTICLE 15 - SUBCONTRACTING**

15.1 Where the implementation of the project requires the procurement of goods, works or services by the IPO, it shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price in accordance with national laws on procurement applicable to IPO. In doing so, it shall avoid any conflict of interests.

15.2 The IPO shall ensure that any procurement contract contains provisions stipulating that the contractor has no rights vis-à-vis the EUIPO under the Agreement and that the contractor adheres to its terms.

## **ARTICLE 16 - EVALUATION - CHECKS AND AUDITS**

16.1 Whenever the EUIPO carries out a final evaluation of the project impact measured against the objectives of the programme concerned, the IPO shall make available to the EUIPO and/or persons authorized by it all relevant documents or information.

16.2 The IPO shall provide any detailed information requested by the EUIPO or by an external body/person authorised by the EUIPO to check that the Agreement is being properly implemented.

16.3 The IPO shall keep all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the Agreement for a period of five years from the date of payment received from the EUIPO.

16.4 The IPO agrees that the EUIPO may audit the use made of the financial contribution received either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the Agreement until the balance is paid and afterwards for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the EUIPO.

16.5 The IPO shall allow the EUIPO staff and external personnel authorised by the EUIPO the appropriate right of access to sites and premises where the project is carried out and to all the information in any form and medium, needed to conduct such audits.

16.6 The European Anti-Fraud EUIPO (OLAF) has the same rights as the EUIPO, particularly the right of access, for the purpose of checks, including on-the-spot checks, investigations and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the EUIPO. Where appropriate, OLAF findings may lead to the EUIPO recovering amounts from the IPO. Moreover, findings arising from an OLAF investigation may lead to criminal prosecutions under national law.

16.7 The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received funds from the EUIPO. The European Court of Auditors shall have the same rights as the EUIPO, notably right of access, for the purpose of checks and audits.

## **ARTICLE 17 - FINANCING**

17.1 The EUIPO shall contribute 90% of the activity cost, in accordance with the principle of co-financing adopted by the Management Board.

17.2 The part of co-financing covered by the IPO may be made up entirely or in part of contributions in kind.

## **ARTICLE 18 - ELIGIBLE COST AND ACTIVITY**

18.1 To be considered as eligible cost or activity of the project, both shall satisfy the following general criteria:

- a) must be connected with the subject of the Agreement and provided in the estimated budget included in Annex III;
- b) must be necessary to ensure the effective participation of the IPO in the project covered by the Agreement;
- c) must be agreed in advance with the EUIPO by being included in Annex III;
- d) must be generated during the lifetime of the project;
- e) must be actually performed by the IPO;
- f) must be identifiable and verifiable.

18.2 The IPO's internal procedures must permit monitoring of their execution.

## **ARTICLE 19 - PROVISIONS ON PAYMENTS / CURRENCY CONVERSION RATES**

19.1 Payments shall be made by the EUIPO in Euros.

19.2 If the IPO holds general accounts in a currency other than the Euro, it must convert costs incurred in another currency into euros at the average of the daily rate published in the C series of the Official Journal of the European Union (available at <http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html>), determined over the corresponding reporting period.

19.3 If no daily Euro exchange rate is published in the Official Journal of the European Union for the currency in question, conversion must be made at the average of the monthly accounting rates established by the Commission and published on its website ([https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro\\_en](https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en)), determined over the corresponding reporting period.

19.4 Payments by the EUIPO shall be deemed to be effected on the date when they are debited to the EUIPO's account.

19.5 The EUIPO may suspend the procedure for payment laid down in Article 21 at any time by notifying the IPO that its request for payment cannot be met, either because it does not comply with the provisions of the Agreement, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the deliverables or milestones have not been really met.

19.6 The EUIPO may also suspend its payments at any time if the IPO is found or presumed to have infringed the provisions of the Agreement, in particular in the wake of the audits and checks provided for in Article 16.

19.7 The EUIPO shall inform the IPO of any such suspension by registered letter with advice of delivery or equivalent.

19.8 Suspension shall take effect on the date when notice is sent by the EUIPO. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the EUIPO.

19.9 The IPO shall have two months from the date of notification by the EUIPO of the final amount to be paid determining the amount of the payment of the balance or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final amount, giving reasons for any disagreement. After this time such requests will no longer be considered. The EUIPO undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply.

## **ARTICLE 20 - CALCULATION OF THE FINAL AMOUNT OF THE CONTRIBUTION TO BE PAID BY THE EUIPO**

20.1 The EUIPO shall adopt the amount of the final payment to be granted to the IPO on the basis of the approved Execution Reports.

20.2 The total amount paid to the IPO by the EUIPO may not in any circumstances exceed the maximum amount referred to in Article 3 of the Special Conditions of the Agreement.

20.3 Without prejudice to the right to terminate the Agreement under Article 4, if the project is not implemented or is implemented poorly, partially or late, the EUIPO may reduce the amount initially provided for in line with the actual implementation of the project on the terms laid down in this Agreement. The exact implementation conditions are referenced in Annex III.

20.4 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the Agreement, the EUIPO shall set the amount of the payment of the balance as being the amount still owing to the IPO. Where the aggregate amount of the payments already made exceeds the amount of the final amount to be paid, the EUIPO shall issue a recovery order for the surplus.

20.5 For the purposes of this Article, only eligible activities and costs falling within the categories set out in the estimated budget referred to in Article 18.1 presented in Annex III shall be taken into account.

## **ARTICLE 21 - PAYMENT ARRANGEMENTS**

21.1 Upon signature of the Agreement by the two Parties, the EUIPO shall make an advance payment of 75% of the estimated activity cost except for the European Cooperation Projects implementations referred to in Article 1, item 2.1.a) of the Special Conditions which will follow the payment arrangements described in Article 27.

21.2 Within 30 calendar days following the end of the period mentioned in Article 4.2 of the Special Conditions or following the time that implementation of an activity/project takes effect, a corresponding claim for payment (payment of the balance) must be issued by the IPO to the EUIPO. The claim for payment shall contain an Execution Report, which specifies the results and achieved key performance indicators as indicated in the Annex III, extracted from the Cooperation platform, that forms integral part of this Agreement.

The payment request shall specify the concept of payment, the beneficiary, the amount, the date of issuing the request and the bank details.

21.3 The IPO may request, with an interim Execution Report, the reimbursement up to the remaining 25% activity cost before the end of the period mentioned in Article 4.2 of the Special Conditions. Articles 22 and 23 apply *mutatis mutandi*.

## **ARTICLE 22 - SUBMISSION OF REPORTS AND OTHER DOCUMENTS**

22.1 Within 30 calendar days following the end of the period mentioned in Article 4.2 of the Special Conditions or following the time that implementation of an activity/project takes effect, one copy of the Execution Report indicating the achieved key performance indicators and a corresponding claim for payment (payment of the balance) as referred to in Article 21 must be submitted in any of the five official languages of the EUIPO (English, Spanish, French, German or Italian) via the Cooperation Platform.

22.2 These deadlines may be exceptionally derogated upon written request to the Authorising Officer. Derogation shall be reported to the Management Board. Non-received and non-derogated reports shall be considered invalid.

22.3 Upon receipt of the request for payment of the balance, accompanied by the Execution Report with a clear indication of the achieved key performance indicators, the EUIPO shall have 30 calendar days to approve or reject the Execution Report, or to require any supporting document or additional information, in accordance with the procedure mentioned in Article 25. If necessary, the IPO has 30 calendar days as from the date of the request of the EUIPO to submit the additional information or a new report.

## **ARTICLE 23 - REQUESTS FOR PAYMENT**

23.1 Payments shall be made in accordance with Articles 19, 21 and 22.

23.2 Requests for additional information shall be notified to the IPO via the Cooperation Platform. The IPO shall have the period laid down in Article 22 to submit the information. If additional information is requested, the time limit for scrutiny shall be extended by the time it

takes to obtain this information. In the event of renewed rejection, the EUIPO reserves the right to terminate the Agreement by invoking Article 4.5.

## **ARTICLE 24 - RECOVERY**

24.1 If any amount is unduly paid to the IPO or if recovery is justified under the terms of the Agreement, the IPO undertakes to repay the EUIPO the sum in question on whatever terms and by whatever date the latter may specify.

24.2 If payment has not been made by the due date, sums owed to the EUIPO may be recovered by offsetting them against any sums owed to the IPO, after informing it accordingly by registered letter with advice of delivery or equivalent.

24.3 Bank charges occasioned by the recovery of the sums owed to the EUIPO shall be borne solely by the IPO.

## **ARTICLE 25 - IMPUTATION OF PAYMENTS**

25.1 Any amount paid to the IPO shall be appropriated for financing the activity by the IPO in the fulfilment of its obligations derived from this Agreement.

25.2 Upon written request by the IPO, the EUIPO shall proceed to reimburse costs in equivalent non-financial contributions in kind such as the supply of consultancy and/or expertise services by the EUIPO.

## **ARTICLE 26 - TASKS AND RESPONSIBILITIES**

26.1 The EUIPO and the IPO will perform their tasks and have specific obligations and responsibilities as described in the decision of the Management Board defining the European Cooperation Projects (MBBC-19-20 of 20 November 2019).

26.2 Upon request of the IPO, the EUIPO may facilitate the IPO's access to software development resources for the fulfilment of tasks foreseen in those projects as part of ECP5. In such a case, such facility will be funded as a part of the implementation effort of the IPO and, where necessary, deducted from the committed funding of the specific project. In case of deployment, the responsibility of the outcomes lies within the IPO.

## **ARTICLE 27 - PROVISION ON EUROPEAN COOPERATION PROJECTS**

27.1 This provision applies to the implementation of the European Cooperation Projects referred to by Article 1, item 2.1.a) of the Special Conditions.

27.2 Determination of the final amount to be paid by EUIPO: The EUIPO shall adopt the amount of the final payment to be granted to the IPO on the basis of and subject to its approval of the documents referred to in Article 18.

27.3 The eligible direct costs for the project are those costs which satisfy the conditions of eligibility set out in Article 18.1 and are identifiable as specific costs linked to the project, such as:

- a) the cost of staff assigned to the project, according to Decision No ADM 10-30 of 10 September 2010 and Decision No ADM-18-39 of 6 August 2018 on the rules applicable to expertise made available on a non-secondment basis for projects. In addition to these Decisions, payments may be made more than once during the duration of the Agreement. However, the salary supplements granted by the IPO to these same persons that result in a temporarily higher salary amount than their usual remuneration (for example the payment of extraordinary premiums during the project period) are not considered eligible for financing;
- b) travel and subsistence allowances for IPO staff taking part in the project, will be in line with the Decision No ADM-18-39 of 6 August 2018, concerning rules on reimbursement of expenses incurred by individuals from outside the EUIPO invited to attend meetings as an expert or to attend training courses, seminars, conferences or other events;
- c) the portion of the equipment's depreciation corresponding to the duration of the project and the rate of actual use for the purposes of the project may be taken into account by the EUIPO, except where the nature and/or the context of its use justifies different treatment by the EUIPO;
- d) costs of consumables and supplies, provided that they are identifiable and assigned to the project;
- e) costs entailed by other contracts awarded by the IPO for the purposes of carrying out the project, provided that the conditions laid down in Article 15 are met;
- f) costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the project, audits, translations, reproduction, etc...)

27.4 An Execution Report is to be submitted via the online tool provided by the IPO to the EUIPO giving a clear description of the work done in accordance with the terms included in the corresponding Annex III.

27.5 Documentary proof that the work described in the report has been executed as reported (internal costs should be documented with time sheets and external costs justified with invoices) is required with the Execution Report.

27.6 The IPO shall submit to the EUIPO a request for payment in Euros. This request for payment shall specify the details of the costs incurred and clearly relate them in conformity with the budget presented in the corresponding Annex III.

27.7 The payment request shall specify the concept of payment, the beneficiary, the amount, the date of issuing the request and the bank details.

27.8 Within 30 calendar days following the approval of the Execution Report and claim for payment, a payment representing the amount determined in accordance with the provisions of Article 20 is made to a bank account designated by the IPO. This payment period can be suspended by the EUIPO in accordance with the procedure mentioned in Article 19

27.9 One copy of the Execution Report and claim for payment as referred to in Article 21 have to be provided in any of the five languages of the EUIPO (English, Spanish, French, German or Italian) by the following deadlines:

- a) Execution Report within 30 calendar days following the expiration date of the eligibility period as indicated in Article 4.2 of the present Agreement, or
- b) Execution Report within 30 calendar days following the completion date(s) of the IPO's obligations for the considered project, or
- c) Interim Execution Report related to any project on reaching a milestone earlier agreed with the EUIPO by the deadline as specified in the project specification, or
- d) Final Execution Report by 31 January of the following year.

27.10 These deadlines may be exceptionally derogated upon written request to the Authorizing Officer. Derogation shall be reported to the Management Board. Non-received and non-derogated reports shall be considered invalid.

27.11 Upon receipt of the claim for payment, accompanied by the Execution Report, the EUIPO shall have 30 calendar days to approve or reject the Execution Report using the services of an Evaluation Committee, or to require any supporting document or additional information, in accordance with the procedure mentioned in Article 23. If necessary, the IPO has 30 calendar days as from the date of the request of the EUIPO to submit the additional information or a new report.

27.12 In the event of termination of the Agreement by IPO, payments by the EUIPO shall be limited to the eligible costs actually incurred by the IPO up to the date when termination takes effect. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

27.13 The IPO shall have two months from the date when termination takes effect, as notified by the EUIPO, to produce a request for final payment. Should the termination take effect on the expiration date of the Agreement, at the end of the current year, the IPO must send a provisional report with a financial statement of the expenses incurred, before January 15 of the following year. If no request for final payment is received within this time limit, the EUIPO shall not reimburse the expenditure incurred by the IPO up to the date of termination and it shall recover any amount if its use is not substantiated by the Execution Reports and financial statements approved by the EUIPO.

27.14 In the event of improper termination by the IPO, the EUIPO has the right to require the partial or total repayment of sums already paid under the Agreement on the basis of the Execution Report approved by the EUIPO, in proportion to the gravity of the failings in question and after allowing the IPO to submit its observations.

27.15 When the termination procedure is over, the EUIPO will no longer accept any payment obligation or any liability for the payment of services rendered by third parties to the IPO for the project.

27.16 In the event of termination of the Agreement by the EUIPO, payments by the EUIPO shall be limited to the eligible costs actually incurred by the IPO up to the date when termination takes effect, in accordance with Article 20. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

## **ANNEX II - SPECIFIC PROVISIONS**

### **ARTICLE 28 - OTHER ACTIVITIES RELATED TO THE ECPS**

The EUIPO shall pay to the IPO a lump sum based on man/days, for the participation in working groups, collaborative network projects (i.e. language check), maintenance of common practices and tools, and other collaborative services, pursuant to the Annex III. The number of man/days per activity will be proportional to the effort required and the determination of the amount will be based on available historical financial data existing for previous similar activities, taking into account the estimated degree of complexity of the activity.

### **ARTICLE 29 - PROMOTIONAL ACTIVITIES**

The EUIPO shall pay to the IPO a lump sum subject to the degree of achievement of previously agreed results and KPIs pursuant to the Annex III. The method for determining the lump sum amount is based on certified or auditable historical data of the IPO.

### **ARTICLE 30 - EUROPEAN COOPERATION PROJECT (ECP6) SUPPORTING SMES**

#### **30.1 EIPIC**

*Only applicable if IPO is including any initiative related to ECP6 EIPIC in the present Agreement.*

With the objective of helping European Union SMEs improving their competitiveness, the parties agree to cooperate in the field of ECP6 to set up and run the “European IP Information Centre” (EIPIC) at the IPO. In line with the policies objectives defined in the European IP Action Plan of the European Commission and as further implemented under the SME Fund programme of the EUIPO, the European Commission and the national and regional IP EUIPOs, EIPIC shall act as a platform to improve IP information and support provision to EU SMEs by harnessing the existing network (the EUIPN) and empowering the nodes of the network (the IPOs) so that they can reach SMEs more effectively.

#### **30.2 Network Support**

30.2.1 In view of achieving the objectives set out in paragraph 1 the EUIPO shall offer support to IPOs in the form of deployed network support or direct financial support under the Cooperation Agreement.

30.2.2 The EUIPO is ready to deploy, upon request by a written letter of each interested IPO, one full-time consultant from the EUIPO’s providers up to a maximum of 220 working days per year on-site at the IPO. The consultant shall be responsible for assisting the IPO in the implementation of the EIPIC initiative defined in paragraph 1. The consultant provided by the EUIPO shall act under the authority and supervision of the EUIPO.

30.2.3 Upon request from the interested IPO and for the implementation of the EIPIC initiative, the IPO may propose to use its internal resources instead of EUIPO’s contractors with the appropriate justification. In this regard the IPO may select to use its internal resources and obtain from the EUIPO the refund of the costs that are equivalent to a maximum of 220 working days per year for a single resource. The Parties agree that the refund will be made based on the daily rate that is applicable to the resource of the EUIPO performing similar tasks. The

EUIPO shall adopt the amount of the payment on the basis of and subject to the provisions referred to in Article 27.

30.2.4 The IPO shall decide the starting date for the provision of the selected service. The maximum total working days covered by this agreement for the implementation of the EIPIC initiative shall be 220 days per year with payment for one single person.

30.2.5 The main role of the Network Support, independent on which form has been chosen, should be to support IP EUIPOs in the implementation of the cooperation tasks that correspond to them in the establishment of the EIPIC as per paragraph 1, with the embedded general goal to improve IP awareness and use of IPRs among SMEs. The role and responsibilities of this profile depend on the needs of each IPO and that will be communicated by the IPO to the EUIPO. However, the following list of tasks is an indication of the expected line of action:

- a) implementation of EIPIC operational activities along the three subject lines of the EIPIC initiative under ECP6 (Network of networks, IP promotion and Services provision);
- b) support the IPO in the development of their SME network (connecting with its players and engaging them in activities and projects with the IPO);
- c) cooperate with the other Network Support resources and the EUIPO teams in charge of developing EIPIC, e.g. by periodically updates and identify and sharing best practices;
- d) participation in EUIPO/IPO events (offline and/or online) targeting SMEs;
- e) design and/or organising and/or participating as a speaker in training activities of EUIPO/IPO;
- f) share knowledge and information with the IPO and EUIPO regarding developments and changes in IP and SME policies and legislation;
- g) contributing to the annual mapping exercises and the design and/or realisation of desk and market research activities to gain a better knowledge of SME's needs in terms of IP information, support and advice;
- h) directly provide information to SMEs in relation to the IP support activities, tools and services;

30.2.6 Other terms, conditions and modalities of the services provided to the IPO by the consultant of the EUIPO for the implementation of the EIPIC initiative shall be agreed by the Parties by exchange of letters.

### 30.3 IP Scan

*Only applicable if IPO is providing IP scans free of charge*

30.3.1 The Parties undertake that IP Scans aim at helping EU SMEs understand the potentials of their IP rights in relation to the development of their businesses and advice on best ways forwards for the outmost exploitation of those potentials.

30.3.2 IP Scan is key to building an SME's IP strategy. With an IP Scan, IP experts examine the SME's business model, products or services and growth plans and help the SME formulate an appropriate IP strategy. IP scan does not constitute a legal service.

30.3.3 The IPO undertakes to provide free support to EU SMEs in relation to IP Scans activities within the limits and in compliance with the applicable law and at the request of the EU SMEs.

30.3.4 The support in the field of IP Scan shall include:

- a) initial analysis: The EU SME will complete a self-assessment survey provided by the IPO. The IPO will analyse the competitive environment of the EU SME and their survey responses to gain an initial understanding of the beneficiary's IP situation;
- b) visit and interview: The IPO shall visit the EU SME and conduct an in-depth interview, using a questionnaire as a guide, which should last between 2 and 4 hours. The use of online means of communication might be used. The EUIPO will provide a template questionnaire for this purpose;
- c) results: The IPO will deliver the results of the complete analysis to the EU SME either in person or via video/teleconference. The EUIPO will provide a template report for this purpose.

30.3.5 For the coordination of the IP Scan service, the IPO will apply the following service level indicators:

Indicator	Description of the indicator	Max acceptable value
IP Scan 1 – Time for acknowledgement of request.	Time between the request received from the EU SME and the issuing of an acknowledgement of receipt by email.	3 days
IP Scan 2 – Time for providing an IP Scan expert.	Time between reception of the SME's service request by the IPO and the provision of available experts to the SME.	2 weeks
IP Scan 3 – Quality check.	<p>The IPO will organise/coordinate a system of quality checks for the IP Scan report provided by the experts. The assumption is that all reports are checked for quality, but this can be adjusted according to the IPO's capacity and a risk-based approach according to national law.</p> <p>The quality checks' main aim is to what extent the IP Scan report provided by the experts is pertinent to the targeted SME and is not biased.</p> <p>Aspects of the quality checks are:</p>	

	<ul style="list-style-type: none"> <li>- is clarity given of which business model is used for suggesting the initial IP strategy?</li> <li>- are IP relevant intellectual assets identified in a plausible manner (in comparison to the business model) ?</li> <li>- is there a section on IP management?</li> <li>- are the recommendations relevant to the business model described?</li> <li>- do the recommendations include references to public support and private services to facilitate their implementation?</li> <li>- is the annex adapted to the recommendations made?</li> <li>- the IPO shall also collect the information from the experts regarding the main recommendations to facilitate the assessment of the impact of IP Scan. The information will be reported to EUIPO in the format described below.</li> </ul>	
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At the end of each quarter, the IPO will provide to the EUIPO a statistical report of the IP Scan service indicating the status, including dates of the IP Scan (requested, in process, completed) and the type of recommendation stemming from the report, containing also the contact details of the EU SME receiving the report. The EUIPO might provide templates, upon request of the IPO.

The statistical report shall be uploaded by the IPO in the Cooperation platform as evidence of the service carried out.

30.3.6 For the provision of the IPO's free support to the EU SMEs in the field of IP Scan the EUIPO shall pay a contribution to the IPO following the amount listed in Annex II to the Note MBBC/21/S12/2.2.2/EN(O).

30.3.7 For the provision of the free support to the EU SMEs in the field of IP Scan, the IPO is free to use its staff or external experts selected on the basis of objective and transparent criteria which shall include, amongst others, the following:

- a) experience with SMEs;
- b) experience in IP;
- c) participation in an IP SCAN training.

The IPO will provide the list of the experts selected to the EUIPO.

## **ARTICLE 31 - TMVIEW AND DESIGNVIEW**

31.1 The IPO grants the EUIPO a royalty-free license to bulk download and incremental updates of data filed with the IPO and to use such data for TMView and Designview in accordance with the terms specified in any agreement between the EUIPO and a third party for the purposes of implementing any cooperation activity. For the purposes of this license, the data shall mean image files, bibliographical information and personal data.

If the IPO is connected to the IP Register blockchain network for the purposes of TMview and/or DesignView, then the royalty-free license to download bulk and incremental updates of data is extended to those IPOs of the network that the IPO will choose to share data with. For the purposes of this license, the data shall mean at least the bibliographical information excluding personal data. The IPO may amplify the licensed data beyond those mentioned before, while both the EUIPO and the IPO are considered data controllers.

31.2 The EUIPO and the IPO undertakes that it shall not use or exploit the downloaded data:

- a) other than for the purpose indicated under Article 31.1;
- b) for any unlawful act; or
- c) in a manner that violates the personal or property rights of third parties in the said downloaded data.

31.3 The IPO does not warrant the accuracy or completeness of any data nor the continued availability of the bulk download and incremental updates facility and all implied warranties or representations to that effect are hereby excluded.

31.4 Immediately after its integration to TMview and/or to DesignView, the IPO shall provide a continuous, automatic supply service of agreed trade mark and/or design data for the central applications of TMview and/or DesignView (hereafter, "the applications"), through web services within a central index model, in accordance with the terms and conditions hereafter agreed on.

31.5 The deadline may be exceptionally derogated upon written request to the Authorising Officer.

31.6 Derogation shall be reported to the Management Board.

31.7 The IPO shall provide the following services:

- a) providing web services related to bibliographic data on a trade mark and design, trade mark and design representation media file, bibliographic data on an applicant and a representative, data on a correspondence address and trade mark and design image thumbnail, as well as any additional data required in corrective and adaptive releases of TMview and/or DesignView;
- b) promoting among users the applications and supporting the EUIPO's promotional activities to this end;
- c) reviewing and approving labels, help files and any associated static text used in the applications in its official language(s);
- d) appointing and informing the EUIPO of contact persons involved in the applications and informing of any subsequent changes to the EUIPO;
- e) supporting the EUIPO's help desk function in relation to the applications;
- f) informing the EUIPO of any and all user feed-back in relation to the applications on a regular basis;

- g) developing and installing new versions/patches in integration layers and set-up adjustments in its local systems, when necessary to continue the supply of data, in particular after the release of corrective and adaptive versions of the applications.

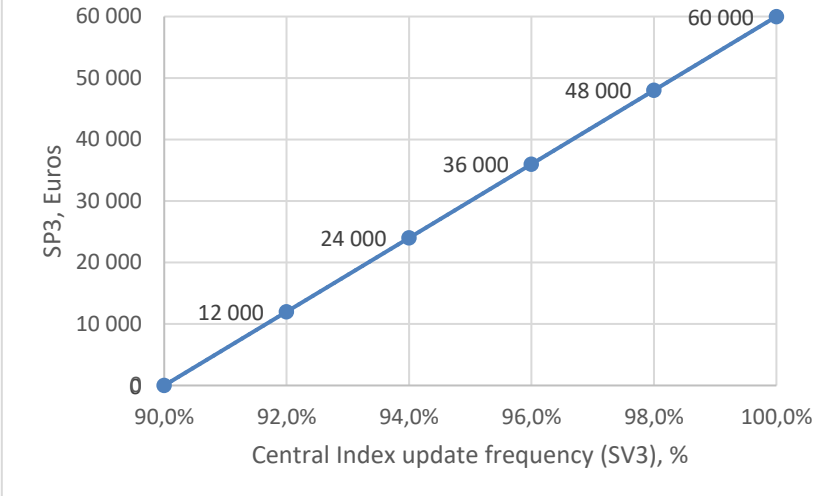
31.8 The IPO shall provide the index data in an incremental package with at least daily frequency. Complete packages shall be required for fixing relevant data inconsistencies between the portal and the IPO. The thumbnail service for images is optional for the IPO. The IPO shall provide the public parts of data as laid down in the ST66 and ST86 standards, within the constraints of national legal rules. In particular, the data to be supplied shall be in compliance with the technical specifications agreed within the project brief and the set-up integration documentation.

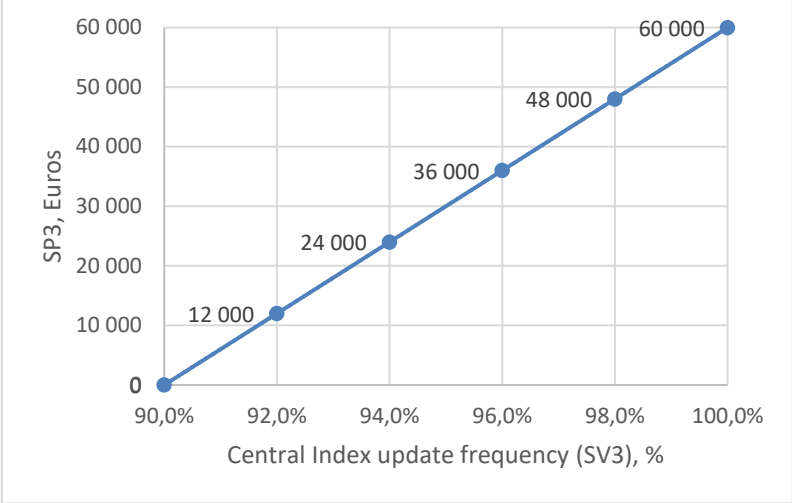
31.9 The calculation of the allowance shall rely on different service values (SV). Each one of those values corresponds to a service parameter (SP), recorded over the service period. The following method shall be used for that purpose:

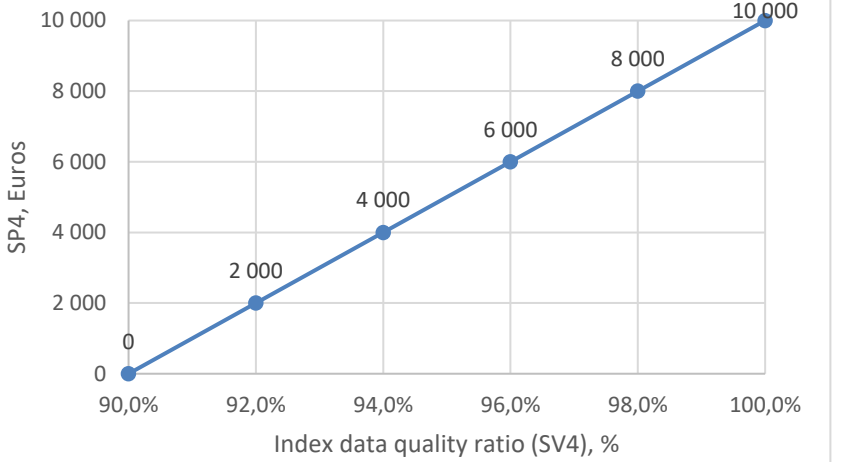
**“90% of Running costs = SP3+SP4+SP5”**

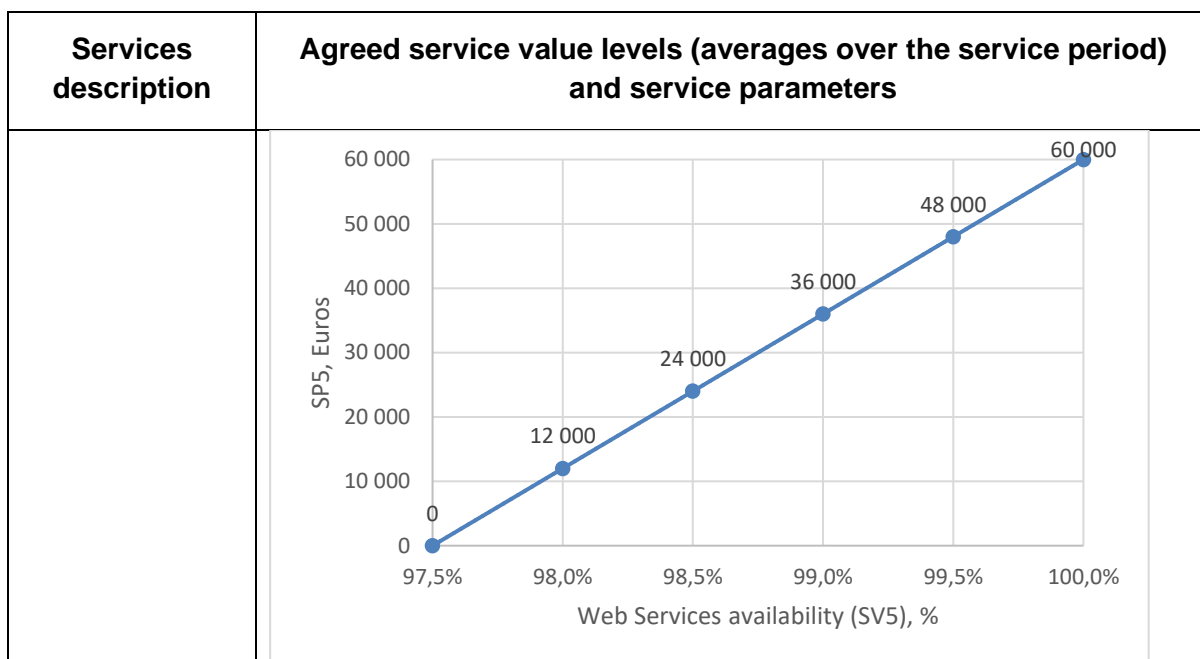
31.10 For the application of the calculation method, the following service value levels and service parameters are agreed for both TMview and DesignView applications:

Services description	Agreed service value levels (averages over the service period) and service parameters
<b>SV3: Index data update frequency through FTP</b> (i.e. this service value reflects the ability of an IPO to update daily the central index data)	<p>It is expected that the central index data is updated by the IPO on a daily basis (SV3) with an automatic delivery of a differential file through FTP.</p> $SV3 = \frac{\text{Number of days when the Central Index was updated}}{\text{Number of days in a period}}$ <p>SP3 means the correction factor for variances of the frequency of update of the index data (SV3). Therefore on annual basis the SP3 is calculated as follows:</p> $SP3 = 600\,000 \times SV3 - 540\,000$ <p>According to the calculation, SP3max = 60 000 € when SV3 = 100%, and</p> <p>SP3min = 0 € when SV3 ≤ 90%.</p>

Services description	Agreed service value levels (averages over the service period) and service parameters														
	 <table border="1"> <caption>Data points from the graph</caption> <thead> <tr> <th>Central Index update frequency (SV3), %</th> <th>SP3, Euros</th> </tr> </thead> <tbody> <tr><td>90,0%</td><td>0</td></tr> <tr><td>92,0%</td><td>12 000</td></tr> <tr><td>94,0%</td><td>24 000</td></tr> <tr><td>96,0%</td><td>36 000</td></tr> <tr><td>98,0%</td><td>48 000</td></tr> <tr><td>100,0%</td><td>60 000</td></tr> </tbody> </table>	Central Index update frequency (SV3), %	SP3, Euros	90,0%	0	92,0%	12 000	94,0%	24 000	96,0%	36 000	98,0%	48 000	100,0%	60 000
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<b>SV3: Index data update frequency through Blockchain</b> (i.e. this service value reflects the ability of an IPO to update daily the central index data)	<p>It is expected that the central index data is updated by the IPO on a daily basis (SV3) with an automatic delivery of a differential file through IP Register. The measurement will be based on evidence that prove server's connection on the blockchain network during a period.</p> $SV3 = \frac{\text{Number of received notifications}}{\text{Number of expected notifications in a period}}$ <p>SP3 means the correction factor for variances of the frequency of update of the index data (SV3). Therefore on annual basis the SP3 is calculated as follows:</p> $SP3 = 600\,000 \times SV3 - 540\,000$ <p>According to the calculation, SP3max = 60 000 € when SV3 = 100%, and</p> <p>SP3min = 0 € when SV3 ≤ 90%</p>														

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<p><b>SV4: Index data quality</b> (data quality check on the daily updates (differential index) will be performed and those IP EUIPOs that comply with the data quality rules will be rewarded).</p>	<p>Rules and conditions detailed under Article 31.11 will be applied to each trade mark and design found in “active” status within the Central Index.</p> $SV4 = \frac{\text{Number of active TM (DS) complying with TM (DS) rules}}{\text{Number of active TM (DS) in Central Index}}$ <p>Calculation for the SP4 values on an annual basis using the following calculation:</p> $SP4 = 100\,000 \times SV4 - 90\,000, \text{ when } SV3 > 90\%$ <p>The SP4 parameter depends on the Central Index update ratio (SV3) – if the SV3 value is less than 90%, then the IP EUIPO would not get any premium for the data quality.</p> <p>Then according to the calculation,</p> <p><math>SP4_{\max} = 10\,000 \text{ €}</math> when <math>SV4 = 100\%</math> and <math>SV3 &gt; 90\%</math></p> <p>and</p> <p><math>SP4_{\min} = 0 \text{ €}</math> when <math>SV4 \leq 90\%</math> or <math>SV3 \leq 90\%</math></p>														

Services description	Agreed service value levels (averages over the service period) and service parameters														
	 <table border="1"> <caption>Data points for SP4 vs SV4</caption> <thead> <tr> <th>Index data quality ratio (SV4), %</th> <th>SP4, Euros</th> </tr> </thead> <tbody> <tr><td>90,0%</td><td>0</td></tr> <tr><td>92,0%</td><td>2 000</td></tr> <tr><td>94,0%</td><td>4 000</td></tr> <tr><td>96,0%</td><td>6 000</td></tr> <tr><td>98,0%</td><td>8 000</td></tr> <tr><td>100,0%</td><td>10 000</td></tr> </tbody> </table>	Index data quality ratio (SV4), %	SP4, Euros	90,0%	0	92,0%	2 000	94,0%	4 000	96,0%	6 000	98,0%	8 000	100,0%	10 000
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<p><b>SV5: Services availability</b> (i.e. the availability of the web services to answer trade mark/design details retrieval requests coming from TMview/DesignView.</p>	<p>Calculation method is implemented so that it captures only those details requests that apply to trade marks and designs that exist in the Central Index. The method for calculating SV5 values will be as follows:</p> $SV5 = \frac{\text{Number of successful TM(DS) requests}}{\text{Total Number of requests excluding TM(DS) non existing in Central Index}}$ <p>SP5 values are calculated in monetary units (Euros) instead of the correction factor for variance. The SP5 calculation on annual basis is :</p> $SP5 = 2\,400\,000 \times SV5 - 2\,340\,000$ <p>Then according to the above,</p> <p>SP5max = 60 000 € when SV5 = 100%</p> <p>and</p> <p>SP5min = 0 € when SV5 ≤ 97,5%</p>														



31.11 The following rules and conditions applied to each trade mark and design found in “active” status within the Central Index shall be observed:

#### Trade marks Rules and Conditions

No	Rule	Condition
1.	Trade mark name is mandatory.	When the TM type is: <ul style="list-style-type: none"> <li>- combined</li> <li>- word.</li> </ul>
2.	Trade mark graphic representation is mandatory.	When the TM type is: <ul style="list-style-type: none"> <li>- 3D shape</li> <li>- combined</li> <li>- figurative</li> <li>- colour</li> <li>- kennfaden (Tracer)</li> <li>- pattern</li> <li>- position</li> <li>- stylized characters.</li> </ul>
3.	Trade mark graphic representation must be empty.	When the TM type is Word
4.	Application number is mandatory.	Always.
5.	Applicant name is mandatory.	Always: <ul style="list-style-type: none"> <li>- if not known, should have the value “Unknown”;</li> <li>- if not available, should have the value “Not available”.</li> </ul>
6.	Application date: <ul style="list-style-type: none"> <li>- is mandatory</li> <li>- must be in the valid date format</li> </ul>	Always.

	- must be a date in the past <sup>1</sup> .	
7.	Registration number must be empty.	When the TM status is "Filed".
8.	Registration date must be empty.	
9.	Registration number is mandatory.	When the TM status is "Registered".
10.	Registration date: <ul style="list-style-type: none"> <li>- is mandatory;</li> <li>- must be in the valid date format;</li> <li>- must be equal or later than the application date;</li> <li>- must not be a date in the future.</li> </ul>	
11.	At least one Nice class with a value 1-45 is mandatory.	1. When the TM status is "Registered"; 2. When the TM Application date is equal or later than the date of enforcement of the Nice Agreement in the respective country

#### Designs Rules and Conditions

No	Rule	Condition
1.	Application number is mandatory.	Always.
2.	Design number is mandatory.	Always.
3.	Owner name is mandatory.	Always: <ul style="list-style-type: none"> <li>- if not known, should have the value "Unknown";</li> <li>- if not available, should have the value "Not available".</li> </ul>
4.	Filing date: <ul style="list-style-type: none"> <li>- is mandatory;</li> <li>- must be in the valid date format;</li> <li>- must be in the past.</li> </ul>	Always.
5.	Design (representation) is mandatory.	When the Design status is: <ul style="list-style-type: none"> <li>- FILED and End of deferment is not provided; or</li> <li>- APPLICATION PUBLISHED and End of deferment is not provided.</li> </ul>
6.	Indication of the product is mandatory.	
7.	Registration date must be empty.	
8.	Expiry date must be empty.	
9.	Design (representation) must be empty.	When the Design status is: <ul style="list-style-type: none"> <li>- FILED and End of deferment is provided as the current date<sup>2</sup> or a date in the future; or</li> <li>- APPLICATION PUBLISHED and End of deferment is provided as the current date or a date in the future.</li> </ul>
10.	Indication of the product must be empty.	
11.	Locarno class must be empty.	
12.	Registration date must be empty.	
13.	Expiry date must be empty.	

<sup>1</sup> A date in the past refers to an earlier date than the current system date when the data quality checks are being executed;

<sup>2</sup> The current date refers to the current system date when the data quality checks are being executed

No	Rule	Condition
14.	Design (representation) is mandatory.	When the Design status is: - REGISTERED; or - REGISTERED AND FULLY PUBLISHED; or - INVALIDITY PROCEDURE PENDING and End of deferment is not provided; or - EXPIRING.
15.	Indication of the product is mandatory.	
16.	Locarno class is mandatory <sup>3</sup> .	
17.	Registration date: - is mandatory; - must be in the valid date format; - must be later than the Filing date.	
18.	Expiry date: - is mandatory; - must be in the valid date format; - must be later than the Registration date.	
19.	Design (representation) must be empty.	When the design status is: - REGISTERED AND SUBJECT TO DEFERMENT; or - INVALIDITY PROCEDURE PENDING and End of deferment is provided as the current date or a date in the future.
20.	Indication of the product must be empty.	
21.	Locarno class must be empty.	
22.	Registration date: - is mandatory; - must be in the valid date format; - must be later than the Filing date.	
23.	Expiry date: - is mandatory; - must be in the valid date format; - must be later than the Registration date.	

31.12 All calculations will be done with 3 decimals and time stamp will be measured in milliseconds. The mathematic method that will be used is the Symmetric Arithmetic Rounding or Round-Half-Up (Symmetric Implementation).

31.13 The performance of the IPO shall be monitored with the assistance of an administration tool. This evaluation shall be based on the list of agreed service value levels. The EUIPO shall provide the IPO with access to the tool. The IPO shall, at least on a quarterly basis, review its own statistics and communicate immediately any disagreement to the EUIPO. In case the administration tool is temporarily unavailable, EUIPO will be providing the statistic information to the IPO through other means (e.g. email).

31.14 The EUIPO shall send an evaluation report to the IPO, based on the administration tool, no later than 30 calendar days following the expiration date of each service period. The IPO shall provide its conformity statement within 21 calendar days from the date of receiving the EUIPO's evaluation. The EUIPO shall have 15 calendar days to approve or reject this conformity, or to require any supporting documentation or additional information. If necessary, the IPO shall have 15 calendar days, as from the date of the EUIPO's request, to submit the requested additional information or a new conformity statement.

<sup>3</sup> When the Design Filing date is equal or later than the date of enforcement of the Locarno Agreement in the respective country

31.15 The EUIPO may propose an adjustment to the service level and/or financial allowance scheme on an annual basis in accordance with the overall performance of all participating IPOs. It may also adjust the maximum annual amount foreseen in Article 3 of the Special Conditions in accordance with the overall performance observed during each service period. In doing so, the EUIPO shall apply the principle of co-financing as decided by the Management Board.

31.16 If this Agreement is terminated before the expiry of the fourth year after the integration of the IPO into the applications, the IPO shall reimburse to the EUIPO that part of the contribution which has not been recouped by depreciation at the time of termination. The refund schema in the case of a termination is as follows:

- a) in the course of the 1st contractual year: 100% of the contribution has not been recouped by depreciation;
- b) in the course of the 2nd contractual year: 75%;
- c) in the course of the 3rd contractual year: 50%, and
- d) in the course of the 4th contractual year: 25%.

31.17 If this Agreement is terminated by the EUIPO before the expiry of the fourth year after the integration of the IPO into the applications, the IPO may not refund the set-up costs, except if the termination is due to non-compliance with the current Agreement.

## **ARTICLE 32 - MAINTENANCE OF COMMON TOOLS AND PRACTICES**

32.1 The EUIPO shall be responsible for the central hosting and maintenance of the common tools and IT solutions once they are successfully put into production (hereafter, “the go-live”).

32.2 The EUIPO shall manage the corrective and adaptive maintenance tasks of the central site elements of those tools, as well as the provision of licenses, hardware, equipment and hosting services when necessary for those tools. In particular, the EUIPO shall be responsible for the following tasks:

- a) supporting IPOs and end users with a multilingual service desk function, an incident management practice, a business continuity plan and a security policy;
- b) maintaining a regular flow of information and feedback from IPOs and users on the tools;
- c) managing general statistics on the use and performance of the tools;
- d) if necessary, liaising between IPOs and the EUIPO’s external service providers (e.g. software development, hosting services), in particular in relation to integration and set-up adjustments with common tools, performed by IPOs;
- e) identifying needs for maintenance, in collaboration with designated experts from IPOs, through common platforms and within the context of the EUIPO’s change management process. To this end, IPOs will be part of the process through the Liaison Meeting on Cooperation, acting as a change advisory board; a subcommittee composed of a reduced set of experts may be created to prepare the change management process;

- f) planning, managing, delivering and communicating releases for corrective and adaptive maintenance, including approving relevant release documentation and artefacts;
- g) organising acceptance tests;
- h) coordinating training for IPOs in relation to tools and releases;
- i) promoting tools among users in collaboration with IPOs.

32.3 The EUIPO shall manage these activities as part of its IT, stakeholders' management and capacity-building activities.

32.4 The IPO shall manage the development and installation of adjustments to integration layers and set-up services connected with the common tools, when necessary. The IPO shall remain owner and responsible of its own data, displayed, integrated or otherwise used in any of those tools. In case the IPO is integrated through IP Register, then shall be also responsible for hosting the data of other IPOs integrated to the blockchain.

32.5 Without prejudice to the IP rights of the Parties existing prior to the conclusion of the present Agreement, the IPO grants the EUIPO a royalty-free license of use, disposal and sub-license of IP rights relating to data belonging to the former and being used in or transferred for the implementation of the projects covered under the present Agreement.

32.6 The IPO shall implement the adopted common practice, unless opted out. The IPO which is unable to implement a practice because of a legal constraint shall have the option to adopt the agreed common practice at any moment in the future when the legal constraint ceases to exist.

32.7 The IPO shall communicate to the EUIPO any legal constraint that occurs following the implementation of the common practice and which might impede the current or future implementation.

32.8 The IPO shall facilitate support, in the continuity of the common practices, to the maintenance tasks coordinated by the EUIPO.

32.9 The IPO shall be responsible for amending its guidelines, based on the new common practice.

32.10 The IPO shall provide help in the elaboration, translation, validation and publication of common communications.

32.11 The IPO shall provide help in the validation, publication and translation of training, awareness and communication material.

32.12 The IPO shall provide assistance, namely completing surveys, in the continuity of the new common practice as coordinated by the EUIPO.

32.13 The IPO shall liaise with user associations to communicate and receive feedback regarding the implementation of the common practice.

32.14 The IPO shall designate a person(s) to act as a point of contact and communicate it to the EUIPO.

32.15 The IPO shall collaborate in the creation of collaborative network which will be established in order to provide a platform to discuss the maintenance of common practices. The IPO shall designate one expert representing them on each of the specific subject matters.

32.16 The IPO shall provide active support for the maintenance of the Harmonised Database, by acting within the Harmonisation Workflow established by a working group composed of participating IPOs, WIPO and the EUIPO. The working group is responsible for the definition of this Harmonisation workflow and its future evolution. Any modification will be published and communicated to all participating IPOs.

32.17 The IPO shall use the Terminology Maintenance Console to enter any new entries and modification in the Harmonised Database, following the Harmonisation Workflow rules.

32.18 The IPO shall assign at least one classification expert and one substitute in order to access the Terminology Maintenance Console and perform the maintenance tasks, following the Harmonisation Workflow rules.

32.19 The IPO shall be co-responsible of the quality of the translations and variants in the Harmonised database in the respective filing language(s).

32.20 The IPO shall be co-owner, with all the other harmonised IPOs, of the Harmonised Database.

32.21 The IPO shall actively participate in the voting process of the Harmonised Workflow.

32.22 The IPO shall actively collaborate in the implementation, communication and maintenance of the "Guidelines on acceptability of classification terms". These guidelines comprise a set of instructions that will help to identify when a classification term is sufficiently clear and precise. The guidelines can also be of help to reason the acceptance or rejection of any classification term proposed to the Harmonised database.

32.23 The IPO shall cooperate in the updating of Taxonomy and Class Scopes, as coordinated by the EUIPO, and validate the yearly taxonomy updates.

32.24 The IPO shall cooperate in the implementation, validation and translation of new Nice Classification editions and versions.

32.25 The IPO shall provide support on off-line exercise regarding maintenance of translations of Goods & Services terms and the evolution of the Harmonised database.

32.26 The IPO, which is harmonised, shall strictly apply the agreed guidelines and rules ("Guidelines on acceptability of classification terms" and Harmonisation Workflow rules), and the content of the Harmonised Database. This includes providing the full, unaltered and unedited content of the Harmonised Database (when IPO harmonisation is completed) in all classification search tools, including e-filing classification functionality.

32.27 The IPO shall comply with the outcome of the voting process of the harmonised workflow.

32.28 The IPO shall prominently include a link to TMclass on their website, preferably in section(s) concerning classification of goods and services. Furthermore, when utilising the Harmonised Database and the built in web services on their own website, their e-filing or any other online tool, shall reference the origin by adding the text "Powered by TMclass and the Harmonised Database" (where TMclass is hyperlinked to the Trade mark and Designs Network tool) clearly visible on the page.

32.29 The IPO must provide active support for the maintenance of the harmonised database of product indications (HDBPI), by acting in accordance with the Harmonised Workflow established by a working group composed of Participating IPOs, WIPO and the EUIPO. The working group is responsible for the definition of this Harmonised Workflow. Any modification will be agreed and communicated to the IPO in due course.

32.30 The IPO must use the Design Terminology Maintenance Console (DTMC) to enter any new terms and/or modifications into the HDBPI, in accordance with the rules of the Harmonised Workflow.

32.31 The IPO must assign at least one classification expert and one substitute that will have permission to access the DTMC and perform the maintenance tasks, as provided for in the rules of the Harmonised Workflow.

32.32 The IPO shall be jointly co-responsible for the quality of the translations and variants in the HDBPI in the respective filing language(s).

32.33 The IPO must be co-owner of the HDBPI jointly with all the other harmonised IPOs.

32.34 The IPO must actively participate in the voting process of the Harmonised Workflow.

32.35 The IPO must actively collaborate in the implementation, communication and maintenance of the "Guidelines on acceptability of classification terms". These guidelines comprise a set of instructions that will help to identify when a classification term is sufficiently clear and precise. The guidelines can also be of help to justify the acceptance or rejection of any classification term proposed for entry into the HDBPI.

32.36 The IPO must cooperate in the updating of the extended product indication classifications (EPIC) and validate the yearly EPIC structure updates.

32.37 The IPO must cooperate in the implementation, validation and translation of new Locarno editions and versions.

32.38 The IPO must provide support regarding maintenance of translations of product indication terms and the evolution of the HDBPI.

32.39 The IPO, which is harmonised, must strictly apply the agreed guidelines and rules ("Guidelines on acceptability of classification terms" and the rules of the Harmonised Workflow), as well as the content of the HDBPI, throughout its operations. This includes providing the full, unaltered and unedited content of the HDBPI (when IPO harmonisation is complete) in all classification search tools, including the e-Filing classification functionality.

32.40 The IPO must comply with the outcome of the voting process contemplated within the Harmonised Workflow.

The IPO must include a clearly visible link to DesignClass on its website, preferably in the section(s) concerning classification of product indications. Furthermore, when utilising the HDBPI and the built in web services via its own website, its e-Filing or any other online tool the origin of the content shall be referenced with the text "Powered by DesignClass and the HDBPI" (where DesignClass is hyperlinked to the Trade mark and Designs Network tool), which shall be clearly visible on the page.

## **ARTICLE 33 - COLLABORATIVE NETWORK PROJECT PRACTICES AND RELATED SERVICES**

33.1 The Parties agree to the common terms and conditions establishing the implementation, maintenance and service in relation to the Collaborative Network/Services Project. These terms and conditions shall aim to guarantee the sustainability of the collaborative network and the related services in the long term.

33.2 The Parties undertake that the data corresponding to the names and working languages of each of the language checkers will be available to those employees of the Parties carrying out the Language Check Task via the Language Check Tool (LCT).

33.3 The Parties undertake to manage the individual production data of each of the language checkers in order to facilitate evaluation reports regarding the number of language checks performed and the list of remarks left by each when so required by the language checker's managing EUIPO.

33.4 The IPO is hereby advised that the administrator of the LCT, which is an employee of the EUIPO, has access to the production reports of all the language checkers of the EUIPO and the IPO.

33.5 The Parties hereby agree to the transfer of the personal production data of individual language checkers between the IPO and the EUIPO, for purposes strictly related to the Language Check Task.

33.6 The Parties are hereby advised that the processing of the data corresponding to the names and working languages of each of the language checkers, as well as the individual data corresponding to the number of language checks performed and remarks recorded, has been duly registered with the Data Protection EUIPO (DPO) of the EUIPO via a DPO Notification, in accordance with EUIPO procedure.

33.7 The IPO must be responsible for ensuring that their own language checkers are duly advised of the processing of their personal and production data, and have read and understood the DPO Notification on the same.

33.8 Subject to Article 10, the Parties undertake that the processing of the aforementioned personal data of individual language checkers must be confined to the context of the Language Check Task and must not be distributed under any other circumstances.

33.9 The Parties undertake to preserve the confidentiality of all information relating to the trade marks examined within the scope of the Language Check Task.

33.10 The IPO undertakes to adhere to the quality standards and regulations laid out in the Instruction and training material provided to them during the implementation of the project.

33.11 The IPO must be responsible for managing its own Language Check team members.

33.12 The IPO must communicate any absences of languages checkers, planned or otherwise, to the EUIPO forthwith in order to allow for replacements to be assigned in a timely manner, causing as little disruption to the Language Check Task as possible.

33.13 The IPO must be responsible for ensuring that all pending language checks assigned to their language checkers have been completed by 11:30 every week day morning.

33.14 The IPO must ensure that all Language Checkers are available to respond to questions or comments from EUIPO examiners regarding any remark or decision registered in the LCT, and must undertake to ensure responses provide adequate information that allows for the resolution of the examiner's doubts.

33.15 The IPO must observe all comments and suggestions made by the EUIPO Operations Department regarding the execution of the Language Check Task and improvements that can be made thereto, incorporating feedback into language check procedure without delay.

33.16 In the event of noncompliance with any of the provisions laid out above, and pursuant to Articles 2, 3 and 4, the EUIPO may suspend or terminate the involvement of the IPO in the Language Check Task.

33.17 The EUIPO may terminate the execution of the Language Check Task by the IPO, at any time and for any reason relating to a change in the process for conducting language examinations and/or a change to EUIPO procedure.

33.18 In case the IPO has a reason and wishes to stop performing the Language Check, it should warn the EUIPO one month in advance.

#### **ARTICLE 34 - IMPLEMENTATION OF THE CASE LAW ACTIVITY UNDER THE WORK PROGRAMME OF THE OBSERVATORY**

34.1 The present Article sets out the terms and conditions of the co-operation between the parties that have expressed their interest to participate in the Case Law activity in the context of the Observatory work programme.

34.2 The IPO has agreed to assist the Observatory in collecting key judgments related to enforcement of IP rights rendered at national level to be included in the EUIPO case law database. Key enforcement judgment is to be understood as a judgment in relation to application of enforcement-related measure or procedure in IP rights infringement case that provides new trend in jurisprudence.

34.3 IP rights to be covered include national trade mark rights, design rights, copyright and rights related to copyright, patent rights, geographical indications and trade secrets.

34.4 Key enforcement judgments may be related to civil or criminal proceedings, covering the period provided by Article 4 of the Special Conditions, and if applicable, key enforcement judgments of previous years which were not yet provided to EUIPO.

34.5 IPO will provide the following information to the EUIPO:

- a) texts of key judgments related to enforcement of IP rights rendered at national level, covering the calendar year covered by this Agreement, and if applicable, key enforcement judgments of previous years which were not yet provided to EUIPO, in cases related to trade marks, designs, copyright and related rights, patents, geographical indications and trade secrets, to be uploaded in the EUIPO case law database (full texts of judgments, including representations, in original language);
- b) summary of each judgment in English or in the language of the Member State, containing such information as IP rights at stake, main facts of the case, legal questions decided by the court and reached conclusions (submitted using defined template to be provided by the EUIPO);

- c) indexation of judgments (submitted using a set of defined key words to be provided by the EUIPO).

34.6 The above-mentioned information shall be submitted to the EUIPO by end of the period covered by this Agreement.

34.7 The EUIPO shall pay to the IPO a lump sum based on man/days, for the implementation of this service, pursuant to the Annex III of this Agreement.

34.8 The IPO is authorising the EUIPO to use the judgments from national courts by making them publicly available in the EUIPO case law database. When providing the judgments to the EUIPO, the IPO will ensure that relevant data protection requirements are taken into account, i.e. relevant parts of the judgments containing sensitive personal or company data may be anonymised.

34.9 The IPO is authorising the EUIPO to use the texts of the judgments from national courts, together with the summary of each judgement, for any purposes related to the activities of the Observatory.

## **ARTICLE 35 - MAINTENANCE & LICENCES OF DECENTRALISED TOOLS AND SOLUTIONS**

35.1 The EUIPO (hereinafter, “the licensor”) grants the IPO (hereinafter, “the licensee”) a licence on a royalty-free, non-exclusive and non-sublicensable basis for the IPO’s non-commercial use of decentralised tools and solutions, developed under the ECP and its major improvements as it deems fit, under the terms and conditions stated hereafter and provided the IPO does not thereby breach its confidentiality obligations or existing IP rights. Any use of the software or work (as defined hereafter), other than as authorised under this licence is prohibited (to the extent that such use is covered by a right of the copyright holder of the work).

35.2 For the purposes of this Part:

- a) the Original Work or the Software refers to the EUIPO’s decentralised tools and solutions developed under the ECP and its major improvements distributed and/or communicated by the EUIPO under this licence, available as Source Code and also as Executable Code as the case may be. The term “Original Work” also includes all system documentation provided by the EUIPO to the IPO in relation to the software;
- b) Derivative Works refer to the works or software that could be created by the licensee, based upon the Original Work or modifications thereof, including all relevant system documentation. This licence does not define the extent of modification or dependence on the Original Work required in order to classify a work as a Derivative Work; this extent is determined by the applicable copyright law;
- c) the Work refers to the Original Work and/or its Derivative Works;
- d) the Source Code refers to the human-readable form of the Work which is the most convenient for people to study and modify;
- e) the Executable Code refers to any code which has generally been compiled and which is meant to be interpreted by a computer as a program;

- f) Proprietary third-party source code refers to any copyright protected source code that may be embedded in, or form a part of, the licensor's Work for which the rights are held by a third party and not the licensor;
- g) Contributor(s) refers to any natural or legal person who modifies the Work under the licence, or otherwise contributes to the creation of a Derivative Work;
- h) The Parties refers to the licensor and the licensee.

35.3 For the purpose of this Agreement, the licence is granted for the duration of copyright vested in the Original Work to do the following:

- a) use the Work in any circumstance and for all usage;
- b) reproduce the Work;
- c) modify the Original Work, and make Derivative Works based upon the Work, in particular with a view to improve, enhance and/or adapt the existing work and/or correct defects or "bugs".

35.4 Those rights can be exercised on any media, supports and formats, whether now known or developed later, as far as the applicable law permits.

35.5 The licensor may provide the Work either in its Source Code form, or as Executable Code. If the Work is provided as Executable Code, the licensor provides in addition a machine-readable copy of the Source Code of the Work. Along with each copy of the Work that the licensor distributes or indicates, in a notice following the copyright notice attached to the Work, a repository where the Source Code is easily and freely accessible for as long as the licensor continues to distribute and/or communicate the Work.

35.6 Nothing in this licence is intended to deprive the licensee of the benefits from any exception or limitation to the exclusive rights of the owners in the Original Work or Software rights, of the exhaustion of those rights or of other applicable limitations thereto.

35.7 The grant of the rights mentioned above is subject to some restrictions and obligations imposed on the licensee. They are the following:

- a) the licensee shall support the strategic objective of establishing a European IP Network.
- b) the licensor shall be granted by the IPO a world-wide, royalty-free, non-exclusive and sublicensable licence for any and all modifications of the Original Work, and for any and all Derivative Works based upon the Work, made by or for the IPO. The licensor shall be granted the same rights in the Derivative Works as those granted to the IPO.
- c) the licensee shall keep intact all copyright, patent or trade marks notices and all notices that refer to the licence and to the disclaimer of warranties. The licensee must include a copy of such notices and a copy of the licence with every copy of the Work he/she distributes and/or communicates. The licensee must cause any Derivative Work to carry prominent notices stating that the Work has been modified and the date of modification.

- d) the licence does not grant permission to use the trade names, trade marks, service marks, or names of the licensor, except as required for reasonable and customary use in describing the origin of the Work and reproducing the content of the copyright notice.
- e) articles 35.3 and 35.4 shall not be applicable to any of the source codes owned by third parties that may be embedded in, or form a part of, the licensor's Work. The licensee is prohibited from using such proprietary third-party source codes for any use other than his/her implementation and operation of the software and tools covered by this Agreement. The licensee shall not use any such proprietary third-party source code for the development of any Derivative Works or further applications. The licensee is prohibited from distributing and/or communicating any proprietary third-party source code to any other parties.

35.8 The original licensor warrants that the copyright in the Original Work granted hereunder is owned by him/her or licensed to him/her and that he/she has the power and authority to grant the licence and/or permit the use of the Work in accordance with the restrictions expressed in Article 35.7.e).

35.9 Each contributor warrants that the copyright in the modifications he/she brings to the Work are owned by him/her or licensed to him/her and that he/she has the power and authority to grant the licence.

35.10 The Work may contain defects or "bugs" inherent to this type of software development. Further, the documentation concerning the software may not be uniform in nature or complete. For these reasons, the Work is provided under the licence on an "as is" basis and without warranties of any kind concerning the Work, including without limitation merchantability, fitness for a particular purpose, absence of defects or errors, accuracy, completeness, non-infringement of IP rights other than copyright. This disclaimer of warranty is an essential part of the licence and a condition for the grant of any rights to the Work.

35.11 Except in the cases of wilful misconduct or damages directly caused to natural persons, the licensor will in no event be liable for any direct or indirect, material or moral, damages of any kind, arising out of the licence or of the use of the Work, including without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, loss of data or any commercial damage, even if the licensor has been advised of the possibility of such damage. However, the licensor will be liable under statutory product liability laws as far as such laws apply to the Work.

35.12 Furthermore, the licensor shall in no event be liable for any commercial or other damages arising from the licensee's failure to use and/or lack of entitlement to use additional software (e.g. database server, application server) which is necessary to make the Original Work into a workable system.

35.13 The licence and the rights granted hereunder will terminate automatically upon any breach by the licensee of the terms of the licence.

35.14 Without prejudice to the possibility to complete additional agreements, the licence represents the complete agreement between the Parties as to the Work licensed hereunder. This licence may be extended upon the written consent of both Parties.

35.15 If any provision of the licence is invalid or unenforceable under the applicable law, this will not affect the validity or enforceability of the Licence as a whole. Such provision will be construed and/or reformed as necessary to make it valid and enforceable.

35.16 The Licence shall be governed by the law of Spain.

## ARTICLE 36 - PARTICIPATION IN EU FUNDED PROJECTS IN THIRD COUNTRIES

36.1 The IPO agrees to assist the EUIPO, upon request by the latter, in implementing actions where the IPO can share its knowledge, skills and expertise, namely in the area/s of:

Please mark Interest by indicating Yes/No	Areas
<input type="checkbox"/>	<p><u>Support for the preparation and development of Free Trade Agreement (FTA) negotiations and their implementation, where appropriate</u></p> <p>Objective: to obtain data and information on non-EU IPR legislation, protection and enforcement to assist the European Commission in the preparation, negotiation and implementation of FTAs in the region such as national or regional -when possible- case law and the IPR institutional framework and resources</p>
<input type="checkbox"/>	<p><u>Information collection and strategic analysis.</u></p> <p>Objective: to provide a detailed overview of the situation regarding IPR legislation, protection and enforcement and the infrastructure, resources, organisation and efficiency of the IPR EUIPOs and institutions in non-EU countries.</p>
<input type="checkbox"/>	<p><u>Support for IP Dialogue and Implementation of FTAs</u></p> <p>Objective: To foster the development and delivery of appropriate actions in accordance with the decisions and indications which emerge from discussions during the IP Dialogues. Interventions to assist the various non-EU countries with obligations arising from the commitments taken in the context of the trade agreements with the EU and the provision of ad-hoc support, in the form of support activities relevant IP Working Groups.</p>
<input type="checkbox"/>	<p><u>Improving IP administration</u></p> <p>Objective: To uptake EUIPN IT tools by non-EU IPO so as to improve access to the IP system and to facilitate processing of IP applications and registrations (from search and classification tools to modern electronic services for users, examination and processing software ("IP Administration Tools") and "Enforcement Tools"). To extend the EU approach in the elaboration of laws and development of best practices directed towards ensuring an efficient and transparent administration of IPRs.</p> <p>To favour the development -or implementation- of modern, internationally accepted procedures and practices (trade mark oppositions, appeals, mediation etc.); support of the use of international registration systems (Madrid system, PCT, Hague system); codification of internal procedures guaranteeing quality and transparency of the non-EU IPO decision (IP Examination Guidelines, Quality Management Manuals); increased cooperation and promotion, and exchanges of best practice in various IPR protection and enforcement related domains (with a special emphasis on GIs and collective management) and institutions (such as customs, and courts).</p>

	To promote and make available European tools, technical support and advice, trainings, peer-to-peer exchanges, study visits, seminars, workshops.
<input type="checkbox"/>	<u>Improving enforcement practices - Enforcement Network</u> Objective: To develop enforcement networks in support of increasing the effectiveness of ICT tools and databases for the enforcement of IPRs and to exchange best practice as regards IPR enforcement.
<input type="checkbox"/>	<u>Awareness raising interventions on the importance of IP, its protection and enforcement</u> Objective: To organise/support actions directed towards the promotion of the understanding of the importance of IP protection from the perspective of social and economic development, and to favour foreign investment.

36.2 The IPO agrees to provide, upon request of the EUIPO, a roster of IPO Experts in the areas described above along with comprehensive CVs within 30 calendar days after signature of the Agreement.

36.3 Following the definition of periodical Annual Work Plans and after agreement with the European Commission, the EUIPO will contact, if applicable, the interested IPO providing specific information on the task to be performed, deliverables and the IPO Expert's rights and obligations.

36.4 The IPO shall confirm the availability of the IPO Expert within five calendar days. A specific agreement shall be endorsed by the IPO and the EUIPO for this purpose.

36.5 The cost of the IPO Expert's participation including, *inter alia*, per diems, travel, local transport, visa costs, additional insurance for non-EU countries, and any other cost agreed by the Parties by separate specific agreement shall be disbursed directly to the IPO Expert by the EUIPO adhering to the applicable provisions.

36.6 The proportional monthly salary is an eligible cost for reimbursement to the IPO. The payment will be based on the IP Expert's monthly payslips and will be disbursed following the presentation of relevant supporting documents.

## **ANNEX III - ACTIVITY SPECIFICATIONS, INCLUDING MILESTONES AND/OR KPIs GENERATED THROUGH THE COOPERATION PLATFORM**

### **ARTICLE 37- MILESTONES AND KPIs**

The IPO shall achieve the results measured by reference to the milestones and/or key performance indicators incorporated in this Annex as generated by the Cooperation Platform. An annex to this provision is added to this end.

DRAFT

# **COOPERATION AGREEMENT ANNEX 3 PROJECT DETAILS**

**EUIPO - Industrial Property Office of the Czech Republic  
(Czech Republic)**

## Table of contents

- I. Agreement general Information
- II. Office Information
- III. Bank accounts information
- IV. List of sub-projects
- V. Project details
- VI. Proposal budget summary

## I. Agreement general information

Office: Industrial Property Office of the Czech Republic (Czech Republic)  
Agreement number: 4020230005 Year: 2023  
Version: 2.0 Version date: 16 / 12 / 2022  
Status: Approved

EUIPO contribution percentage: 90%

Advanced Payment: 0.00 EUR

## II. Office Information

Office name: Industrial Property Office of the Czech Republic (CZ) Tax / VAT: CZ48135097

Address: Antonina Cermaka 2a  
160 68 Praha 6  
Prague  
Czech Republic

Phone: +42 0 220 383 205

E-mail: posta@upv.cz

Office head:

Mr Josef Kratochvíl  
President

## III. Bank account information

Bank information: Czech National Bank

Bank address:

Na Pátekův 28  
110 00 Praha 1  
Prague  
Czech Republic

Account holder: Josef Kratochvil

Account alias:

IBAN: CZ20 0710 0000 1900 2152 6001

BIC / SWIFT: CNBACZPP

## IV. List of sub-projects

#	Project	Sub-project	Project type	Project Category	EUIPO Contribution / Lump Sum		Status
1	ECP5	Information and advice services on EUTM/RCD	Promotion activity	Provision of information/advice	71,000.00	EUR	Approved
2	ECP5	Participation in fairs	Promotion activity	Dissemination events	4,400.00	EUR	Approved
3	ECP5	Providing information on EUTM/RCD for enforcing institutions	Promotion activity	Observatory activities: awareness and enforcement activities/events	17,300.00	EUR	Approved
4	ECP8	Collaborative Network	Collaborative Service		3,960.00	EUR	Approved
5	ECP8	Case Law	Case Law project of the Observatory		2,200.00	EUR	Approved
6	ECP8	Maintenance of Common Practices and Tools	Maintenance of common practices and tools		3,300.00	EUR	Approved
7	ECP6	Support to SMEs	Working Group		1,980.00	EUR	Approved
8	ECP6	Alternative dispute resolution (ADR)	Working Group		1,980.00	EUR	Approved
10	ECP6	Outreach and information (EIPIC)	Working Group		1,980.00	EUR	Approved
11	ECP6	Support to SMEs	Implementation		21,898.00	EUR	Approved
12	ECP8	TMView & Design View Running costs	Running Cost	TM View	103,705.50	EUR	Approved
13	ECP8	TMView & Design View Running costs	Running Cost	DS View	103,705.50	EUR	Approved

## V. Project details

### 1 . Information and advice services on EUTM/RCD - Provision of information/advice

Project Information
<p>Project: ECP5</p> <p>Sub-project name: Information and advice services on EUTM/RCD</p> <p>Type: Promotion activity</p> <p>Category: Provision of information/advice</p> <p>Status: Approved</p>
<p>Length: 12</p> <p>Location: Prague</p> <p>Target: Entrepreneurial community, IP experts and specialists and general public</p>
<p>Description of actions: Providing the information on EUTM/RCD to the entrepreneurial community, IP experts and specialists and general public in the course of the year on the daily basis via following means:</p> <p>a) Information centers</p> <p>The IPO CZ operates an information desk for face-to-face advice. Basic information search services, written and telephone requests are operated on day-to-day basis. This service is provided by two information centers located in the entrance hall and public study room. Availability of the service corresponds to working hours of the Office. The service is provided by the team of information specialists experienced in both search strategies and tactics and industrial property matters. We provide the first line support to the Czech applicants interested in protection of their rights on the EU level. The questions concern various aspects of intellectual property rights such as legal background, strategic and business issues, application procedures etc. The services serve to broad public, professional representatives, representatives of Czech business, research and science community. We are pleased to help all EUTM and RCD applicants with guidance on the EUTM and RCD.</p> <p>b) Back office</p> <p>Except for information services provided at the regular information centers, more difficult and complicated requests are handled by managers of the trademark and design department. It is estimated that this type of work occupies 45% of the working time of the managers.</p> <p>c) Helpdesk</p> <p>The Office operates also helpdesk service for the electronic requests which is available on <a href="mailto:helpdesk@upv.gov.cz">helpdesk@upv.gov.cz</a> or <a href="mailto:posta@upv.gov.cz">posta@upv.gov.cz</a>.</p>

Currency: EUR

Lump Sum: 71,000.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXXX@upv.gov.cz

Phone:

### Project objectives

#	Objective	Require units	Unit
1	KPI1 Number of consultations	Yes	2000

## 2 . Participation in fairs - Dissemination events

### Project Information

Project: ECP5

Sub-project name: Participation in fairs

Type: Promotion activity

Category: Dissemination events

Status: Approved

Length: 0.4

Location: Prague

Target: Entrepreneurship community, IP experts and specialists and general public

Description of actions: The Office plans to participate in two fairs that we find relevant to promote EUTM and RCD.

1) STECHY fair will take place in Prague, 10 - 12 February 2023.

<https://www.stechy-praha.cz/en>

2) FOR INTERIOR fair will take place in Prague in autumn 2023, usually at the turn of September and October.

<https://forinterior.cz/>

Participation in fairs is an activity we have long and rich experience with. We find it a highly effective way of addressing general public and entrepreneurs with the information about industrial property. We focus particularly on promoting the systems of EUTM and RCD among the groups of people who might be interested in it. Our experts do not give just

among the groups of people who might be interested in it. Our experts do not give just information but also a practical guidance how to apply for EUTM and/or RCD.

Currency: EUR

Lump Sum: 4,400.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXXX@upv.gov.cz

Phone:

### Project objectives

#	Objective	Require units	Unit
1	KPI2.1 Number of participants	Yes	50
2	KPI2.2 Satisfaction about the activity	Yes	3
3	KPI2.3 Volume of reach	Yes	50

### 3 . Providing information on EUTM/RCD for enforcing institutions - Observatory activities: awareness and enforcement activities/events

#### Project Information

Project: ECP5

Sub-project name: Providing information on EUTM/RCD for enforcing institutions

Type: Promotion activity

Category: Observatory activities: awareness and enforcement activities/events

Status: Approved

Length: 12

Location: Prague

Target: State enforcing institutions dealing with the enforcement of IPRs (police, custom administration, trade inspection, financial offices, etc.)

Description of actions: The Office closely cooperates with state institutions that deal with enforcement of IPRs (police, custom administration, trade inspection, financial offices, etc.). All requests from enforcing institutions in the Czech Republic are handled in due time. This enables fast, more efficient and effective fight against counterfeiters on the market. This service is provided according to the demand in the course of the whole year.

Currency: EUR

Lump Sum: 17,300.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXXX@upv.gov.cz

Phone:

### Project objectives

#	Objective	Require units	Unit
1	KPI3.1 Number of participants	Yes	1000
2	KPI3.2 Satisfaction about the activity	Yes	3
3	KPI3.3 Volume of reach	Yes	1000

### 4 . Collaborative Network

#### Project Information

Project: ECP8

Sub-project name: Collaborative Network

Type: Collaborative Service

Status: Approved

Currency: EUR

Lump Sum: 3,960.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXXX@upv.gov.cz

Phone:

### Project objectives

#	Objective	Require units	Unit
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1	KPI5 Terms assigned duly validated	No	
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## 5 . Case Law

### Project Information

Project: ECP8  
Sub-project name: Case Law  
Type: Case Law project of the Observatory  
Status: Approved

Currency: EUR

Lump Sum: 2,200.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXXXXX@upv.gov.cz

Phone:

## Project objectives

#	Objective	Require units	Unit
1	KPI8 Effective participation in the Case Law Project of the Observatory.	No	

## 6 . Maintenance of Common Practices and Tools

### Project Information

Project: ECP8  
Sub-project name: Maintenance of Common Practices and Tools  
Type: Maintenance of common practices and tools  
Status: Approved

Currency: EUR

Lump Sum: 3,300.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXX Head of the Finance department	Email: XXXXXXXXXX@upv.gov.cz Phone:
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## Project objectives

#	Objective	Require units	Unit
1	KPI6 Quarterly Update on the implementation of Common Practices and cases brought to court.	No	
2	KPI7 Effective contribution in the workflow of the maintenance of tools (HDB, HDBPI, etc).	No	

## 7 . Support to SMEs

<b>Project Information</b>
Project: ECP6 Sub-project name: Support to SMEs Type: Working Group Status: Approved
Currency: EUR Lump Sum: 1,980.00 Euro

## Person responsible for the project

Project Manager	
Ms XXXXXXXXXX Head of Innovation Protection Support department	Email: XXXXXXXX@upv.gov.cz Phone:

## Project objectives

#	Objective	Require units	Unit
1	KPI4 Attendance and effective contribution to the Working Group	No	

## 8 . Alternative dispute resolution (ADR)

<b>Project Information</b>
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Project: ECP6  
Sub-project name: Alternative dispute resolution (ADR)  
Type: Working Group  
Status: Approved

Currency: EUR  
Lump Sum: 1,980.00 Euro

### Person responsible for the project

Project Manager	
Ms XXXXXXXXXXXX Head of Innovation Protection Support department	Email: XXXXXXXX@upv.gov.cz Phone:

### Project objectives

#	Objective	Require units	Unit
1	KPI4 Attendance and effective contribution to the Working Group	No	

### 10 . Outreach and information (EIPIC)

#### Project Information

Project: ECP6  
Sub-project name: Outreach and information (EIPIC)  
Type: Working Group  
Status: Approved

Currency: EUR  
Lump Sum: 1,980.00 Euro

### Person responsible for the project

Project Manager	
Ms XXXXXXXXXXXX Head of Innovation Protection Support department	Email: XXXXXXXX@upv.gov.cz Phone:

## Project objectives

#	Objective	Require units	Unit
1	KPI4 Attendance and effective contribution to the Working Group	No	

## 11 . Support to SMEs

### Project Information

Project: ECP6  
 Sub-project name: Support to SMEs  
 Type: Implementation  
 Status: Approved

Project approach: Project aims at the production and broadcasting of 4 short videos describing IP Rights system for SMEs, aiming at raising the IP awareness. It will be strongly supported by the Czech Association of Small and Medium Sized enterprises.

Videos will be repeatedly broadcasted on the Czech Television which is the most popular TV in the Czech Republic and is owned by the state.

Currency: EUR

EUIPO Contribution: 21,898.00 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXXXX

Head of the Office of the CZIPO President

Email: XXXXXX@upv.gov.cz

Phone:

## Project Costs

Staff costs	
Total Staff Costs (EUR)	0.00

Other costs				
Other Staff	Position	Daily Rate	Days	Total EUR

1	Preparation of scripts	506.89	4	2,027.56
2	Production of videos	1,520.68	4	6,082.72
3	Broadcasting of videos on TV	16,220.83	1	16,220.83
<b>Total Other Costs (EUR)</b>				<b>24,331.11</b>

### Total project costs

PROJECT EXPENDITURE		EUR
<b>Direct Costs</b>		<b>24,331.11</b>
(1) Staff		0.00
	Internal Staff	0.00
	External Staff	0.00
(2) Other costs		24,331.11
	Other external costs	24,331.11
TOTAL PROJECT EXPENDITURE		<b>24,331.11</b>

## 12 . TMView & Design View Running costs - TM View

### Project Information

Project: ECP8

Sub-project name: TMView & Design View Running costs

Type: Running Cost

Category: TM View

Status: Approved

Currency: EUR

Lump Sum: 103,705.50 Euro

### Person responsible for the project

Point of Contact

Ms XXXXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXXXXX@upv.gov.cz

Phone:

### Project objectives

#	Objective	Require units	Unit
1	KPI9: RC(TM) = SP3 + SP4 + SP5	No	

### 13 . TMView & Design View Running costs - DS View

#### Project Information

Project: ECP8

Sub-project name: TMView & Design View Running costs

Type: Running Cost

Category: DS View

Status: Approved

Currency: EUR

Lump Sum: 103,705.50 Euro

#### Person responsible for the project

Point of Contact

Ms XXXXXXXXXXXX

Head of the Finance department

Email: XXXXXXXXX@upv.gov.cz

Phone:

#### Project objectives

#	Objective	Require units	Unit
1	KPI10: RC(DS) = SP3 + SP4 + SP5	No	

## VI . Proposal budget summary

### Contribution summary per project type

Project type	EUIPO contribution
Implementation	21,898.00
Working Group	5,940.00
Promotion activity	92,700.00
Running Cost	207,411.00
Collaborative Service	3,960.00
Maintenance of common practices and tools	3,300.00
Case Law project of the Observatory	2,200.00
<b>Totals in EUR</b>	<b>337,409.00</b>

### Contribution summary by project

Project		EUIPO contribution
ECP1	Consolidate the implementation of EUIPN tools	0.00
ECP2	Improvement and upgrade of EUIPN tools	0.00
ECP3	New Tools	0.00
ECP4	Converge of practice	0.00
ECP5	Sustainability of the network	92,700.00
ECP6	Supporting SMEs	27,838.00
ECP7	Implementation of directive	0.00
ECP8	Collaborative services	216,871.00
Test1	Test	0.00

**EUIPO contribution: 337,409.00 EUR**

Declaration of the Industrial Property Office of the Czech Republic (CZ)

I, the undersigned, certify that the information given in this proposal and the documents attached to it are correct.

Signature:

Date:

**Mr Josef Kratochvíl**  
**President of the Industrial Property Office of the Czech Republic (CZ)**  
**Prague**

## SOLEMN DECLARATION

I, the undersigned, Mr Josef Kratochvíl, authorised to represent the Industrial Property Office of the Czech Republic, hereby request from the Office an amount of 337,409.00 EUR with a view to implementing the action / work programme on the terms laid down in this proposal.

I certify that the information contained in this proposal is correct and that the Industrial Property Office of the Czech Republic has not received or applied for any other Community funding to carry out the action / work programme which is the subject of this proposal.

I certify on my honour that the Industrial Property Office of the Czech Republic is not in one of the situations which would exclude it from taking part in a Community programme.

I take note that all EUIPO operations are VAT exempt. Therefore I certify that any VAT indicated in this report will not be recovered by our office.

Signature and official stamp of the Industrial Property Office of the Czech Republic:  
Date:

**Mr Josef Kratochvíl**  
**President of the Industrial Property Office of the Czech Republic (CZ)**  
**Prague**

*Your proposal will be processed by computer. All personal data (such as names, addresses, CVs, etc.) will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Your replies to the questions in this form are necessary in order to assess your cooperation agreement application and they will be processed solely for that purpose by the department responsible for the programme concerned. On request, you may be sent personal data and correct or complete them. For any question relating to these data, please contact the Office department to which the form must be returned. Central industrial property offices may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time. [If, at any stage of the administrative treatment of applications, the persons or entities concerned consider that they have been affected by an instance of maladministration, they may, irrespective of any other means of redress, make a complaint to the European Ombudsman in accordance with Article 195(1) of the EC Treaty and as provided by the Parliament Decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties published in Official Journal of the European Communities L 113 of 4 May 1994.]*

## **ANNEX IV - IDEAS POWERED FOR BUSINESS SME FUND**

### **1. DESCRIPTION OF THE ACTION**

As described in Note MBBC/22/S14/3.3/EN(O) and authorized during the MBBC meeting of 23 November 2022, in 2023 the EUIPO will launch and implement on behalf of the European Commission the second call for proposals of the multiannual SME Fund 2022-2024 ("the SME Fund") under the Single Market Programme.

The overall objective of the SME Fund initiative is to contribute to the recovery of the EU economy and to fortify European's Union small and medium-sized enterprises ('EU SMEs') growth, thereby maintaining their competitiveness despite the challenging business environment caused by the COVID-19 pandemic.

The successful implementation of the SME 2022 Fund and the strong financial support it has provided to EU SMEs to access the IPR system demonstrates the ability of the European Intellectual Property Office ("Office") to implement the EU's IP policy. It is also the result of close collaboration with the European Commission and the members of the EUIPN.

The objective of the SME Fund 2023 is to financially support EU SMEs that wish to

- benefit from an IP Scan and/or
- wish to directly protect their trade marks and designs through national, regional, European or international IP systems, and/or
- protect their patents at national or European level, including prior art search services provided by EU Member States' central industrial property offices (MS IPOs), and/or
- protect their European plant variety.

The SME Fund will support EU SMEs in their journey to protect intellectual property rights, ensuring that as many EU SMEs as possible have access to the initiative and that each SME can obtain a fair financial contribution. Financial support will be provided in the form of vouchers and the Fund will be implemented by the EUIPO through grants to EU SMEs in accordance with the EU and EUIPO's Financial Regulations. It will finance the activities described in section 2 of this Annex.

The SME Fund call for proposals 2023 will be launched in January 2023 and will close in December 2023.

### **2. ACTIVITIES COVERED BY THE ACTION AND EXPECTED BENEFITS**

Financial support under the SME Fund 2023 will be provided through four different vouchers, as described below.

#### **2.1 Activities covered under voucher 1**

Voucher 1 will cover IP Scan services for a maximum grant amount of up to EUR 1 350 per beneficiary.

IP Scan services aim to advise SMEs on the potential of IP to develop their businesses, identifying the types of IP that may be valuable and should be protected. They also aim to identify any IP that is already protected and that could be further exploited to gain additional benefits to support the growth of their business.

IP Scan services are offered by experts appointed by the participating MS IPOs, under their coordination and at the request of the SMEs. For IP Scan, under the SME Fund scheme, SMEs must be established in an EU Member State where eligible IP Scan services can be provided.

EU SMEs will be entitled to apply for the **reimbursement of 90 %** of the costs of the mentioned service (provided by experts designated by the IPOs) with the possibility of co-financing from national schemes (or similar) covering up to 100 % of the cost.

## 2.2 Activities covered under voucher 2

Up to EUR 1 000 per beneficiary for:

### *a) Trade mark and design protection within the EU:*

Eligible IP rights are individual trade marks and designs filed directly and electronically (where possible) at the Office and IPOs.

Respecting the principle of co-financing of the European Commission's Programmes, eligible EU SMEs could apply for a **75 % reimbursement of the trade mark and design fees** for acquiring trade mark or design protection in the EU (including application, class, examination, registration, publication and deferment of publication fees). Protections similar to the trade mark one are included depending on applicable legislation (e.g. logotype protection under Portuguese law is covered).

### *b) Trade mark and design protection in third countries:*

To support EU SMEs' growth on a more international scale, the eligible fees for international trade mark and design may be **reimbursed by up to 50 %** using the systems administered by WIPO. This activity intends to extend the support currently offered to EU SMEs, assisting them in the internationalisation process, while boosting the innovation and competitiveness of EU SMEs globally.

Those fees subject to reimbursement are the ones charged for applications (including basic fees, designation fees and subsequent designation fees) under:

- the international trade mark system (Madrid System);
- the international design system (The Hague System).

Designation fees of EU countries are excluded as well as handling fees charged by the office of origin.

## 2.3 Activities covered under voucher 3

Up to EUR 1 500 per beneficiary for the following activities:

- *Patent prior art searches fees services:*

The fees charged by the Member State IPOs for delivering patent prior art search services will be **reimbursed up to 75 %** and will be limited to the financial contribution of the European Commission.

- *Patent fees for national patent protection:*

The fees charged by the Member State IPOs for registering national patents will be **reimbursed up to 75 %** and will be limited to the financial contribution of the European Commission. This includes both the patents pre-grant fees, e.g. filing fee, search fee and examination fee, and the patent grant fee and the publication fee.

- *Fees for European patent applications:*

The fees charged by the EPO for European patents will be **reimbursed up to 75 %** and will be limited to the financial contribution of the European Commission. This includes both the fees paid for new applications during the activation and implementation periods of the SME Fund: filing and search fees.

## 2.4 Activities covered under voucher 4

Up to EUR 225 per beneficiary for EU Plant Variety protection.

The online application fee charged by the Community Plant Variety Office (CPVO) will be **reimbursed up to 50 %** and will be limited to the financial contribution of the European Commission.

## 2.5 Expected benefits

The action will have the following benefits:

- economic support to SMEs during the economic recovery;
- increased awareness of the benefits of IPR among EU SMEs;
- increased investment in IP-related activities such as IP advise and IP protection;
- increased investment in technological innovations of EU SME;
- stronger competitive advantage due to better management of intangible assets, including the increased protection of the intellectual property of EU SMEs;
- promotion of the EU's objective of supporting the EU economy's recovery, as well as the resulting reputational benefits for the Member State IPOs and the EU.

## 3. ROLE AND RESPONSIBILITIES

### The EUIPO

The EUIPO is responsible for the central implementation of the SME Fund. This includes the provision of editable digital communication material to the MS IPOs to promote the SME Fund in their territory. The EUIPO is also responsible for training the experts designated by the MS IPOs to deliver the IP Scan services under the SME Fund.

In addition, the EUIPO will provide regular updates and statistics and deliver the progress and final reports on the action to the European Commission and to the EUIPO governing bodies.

## The MS IPOs

All Member States and/or MS IPOs are invited to participate on a voluntary basis in the implementation of the SME Fund, as follows

Please indicate interest marking Yes/No	SME Fund
<input data-bbox="272 598 344 655" type="checkbox"/>	<p><b>Provide/coordinate IP Scan service 2023</b> and exchange of related information to monitor and report on the activities of the SME Fund.</p> <p>Estimated starting date for provision of service 1: [1/2023]</p>
<input data-bbox="272 793 344 850" type="checkbox"/>	<p><b>Promotion of the SME FUND 2023</b> and exchange of information to monitor and report on the activities of the SME Fund.</p>

## 4. SERVICES

### 4.1. Central implementation of the SME Fund

The EUIPO is responsible for managing the SME Fund within the framework established by the Contribution Agreement signed between the EUIPO and the European Commission.

The SME Fund is implemented through the award of grants to EU SMEs. The call for proposals and management of the grant will be under the EUIPO's sole responsibility in accordance with the relevant rules and regulations, in particular the EUIPO's Financial Regulation.

The EUIPO will inform the MS IPOs of the implementation of the SME Fund: a monthly update will be provided to the MS IPOs via the SME Fund points of contact for information.

For the purposes of the central coordination of the SME Fund, the SME Fund contact points are:

For the EUIPO:

XXXXXXXXXX

Director

Customer Department

XXXXXXXXXX

[SMEFund@euipo.europa.eu](mailto:SMEFund@euipo.europa.eu)

For the IPO:

Ms XXXXXXXXXXXX

Position: Head of innovation support protection

Telephone number: XXXXXXXXXXXX

Email address: XXXXXXXXXXXX@upv.gov.cz

The IPO will inform the EUIPO in advance of any change in the SME Fund point of contact to maintain the information always up to date.

#### **4.2. Communication aspects relating to the use of the vouchers**

For the purposes of implementing the voucher and providing support to EU SMEs, the EUIPO will inform the individual SMEs having been awarded the voucher about a contact point at the IPO level.

For the :

Ms XXXXXXXXXXXX

Telephone number: XXXXXXXXXXXX

Email address: XXXXXXXXXXXX@upv.gov.cz

The MS IPO will inform the EUIPO in advance of any change in the point of contact to ensure that the information is always up to date. The MS IPO authorises the EUIPO to share this information with the EU SMEs that request the service.

This contact will also be used by EU SMEs to request an IP Scan service.

#### **4.3. Provision of IP Scan service**

This section is only applicable if the IPO provides the IP Scan service following the Call for Expression of Interest.

The IPO coordinates/provides the IP Scan service for EU SMEs which have been awarded the grant from the SME Fund. The unitary cost of the IP Scan service is EUR 900 as indicated in Annex to Note MBBC/22/S14/3.3/EN(O).

On request from the EU SME, the MS IPO will coordinate/provide the IP Scan service.

The IP Scan service is provided by experts selected by the IPO. These experts can be IPO staff and/or external experts. The IPOs will select the appropriate experts available and facilitate the contact between the experts and the EU SME.

Experts delivering IP Scan service must meet the following criteria:

1. experience with SMEs
2. experience in intellectual property
3. participation in an IP Scan training

The IPO will provide and update the list of the experts selected to the EUIPO.

A non-disclosure agreement is to be signed between the EU SME and the expert. The EUIPO will provide to the IPO a template of the non-disclosure agreement for the purpose of the IP Scan service.

The IP Scan service will consist of the following main steps:

- Initial analysis: The EU SME will complete a self-assessment survey provided by the IPO. The expert will analyse the competitive environment of the EU SME and their survey responses to gain an initial understanding of the beneficiary's IP situation.
- Visit and interview: The expert will visit the EU SME and conduct an in-depth interview, using a questionnaire as a guide, which should last between 2 and 4 hours. The use of online means of communication might be used. The EUIPO will provide a template questionnaire for this purpose.
- Final result: The expert will submit a draft report to the MS IPO for a quality check. Once approved by the IPO, the expert will deliver the results of the complete analysis to the EU SME either in person or via video/teleconference. The EUIPO will provide a template report.

#### **4.3.1. Evidence of completion of the IP Scan service**

Once the IP Scan service has been provided to the EU SME, the MS IPO will issue a proof of the service delivery and payment in an electronic format. The EU SME will use the proof of service delivery and payment to request the reimbursement of 90 % up to the established ceiling of EUR 900 from the EUIPO and within the limits of voucher 1.

#### **4.3.2. Communication aspects relating to the IP Scan service**

The EUIPO will inform the MS IPO of the EU SMEs established within the territory of the IPO that have been awarded a grant covering voucher 1.

At the beginning of each month, the IPO will provide to the EUIPO a statistical report of the IP Scan service indicating the status, including dates, of the IP Scan (requested, in process, completed) and the type of recommendation stemming from the report. The information must also contain the contact details of the EU SME receiving the report. The EUIPO will provide a template for the report. The reporting of an IP Scan request is necessary for the EUIPO to consider the voucher as activated.

#### 4.3.3. Service Level agreement applicable to the IP Scan service

For the coordination of the IP Scan service, the IPO will apply the following service level indicators:

Indicator	Description of the indicator	Max acceptable value
IP Scan 1 – Time for acknowledgement of request	Time between the request received from the EU SME and the issuing of an acknowledgement of receipt by email.	3 days
IP Scan 2 – Time for providing an IP Scan expert	Time between reception of the SME's service request by the IPO and the provision of available experts to the SME.	2 weeks
IP Scan 3 - Time for completion of the IP Scan	Time to complete the service and deliver proof of service delivery (IP Scan report) and payment from the time of reception of the EU SME's service request by the IPO.	4 months
IP Scan 4 – Quality check	<p>The IPO will organise/coordinate a system of quality checks for the IP Scan report provided by the experts. The assumption is that all reports are checked for quality, but this can be adjusted according to the IPO's capacity and a risk-based approach according to national law.</p> <p>The quality checks' main aim is to what extent the IP Scan report provided by the experts is pertinent to the targeted SME and is not biased.</p> <p>Aspects of the quality checks are:</p> <ul style="list-style-type: none"> <li>• Is clarity given of which business model is used for suggesting the initial IP strategy?</li> <li>• Are IP relevant intellectual assets identified in a plausible manner (in comparison to the business model)?</li> <li>• Is there a section on IP management?</li> <li>• Are the recommendations relevant to the business model described?</li> </ul>	At the MS IPO's best convenience and according to resources available.

	<ul style="list-style-type: none"> <li>• Do the recommendations include references to public support and private services to facilitate their implementation?</li> <li>• Is the annex adapted to the recommendations made?</li> </ul> <p>The IPO shall also collect the information from the experts regarding the main recommendations to facilitate the assessment of the impact of IP Scan. The information will be reported to EUIPO in the format described below.</p>	
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#### 4.4. Promotion of the action

The IPO will provide full support to the action using its communication and promotional channels to communicate the action to the potential beneficiaries, namely EU SMEs. Promotion and communication will be done throughout the duration of the action.

The promotional activities may be eligible under ECP6 SME focused activities. Relevant types of promotional activities under ECP6 focusing on the promotion of the SME Fund 2023, such as IPR-awareness campaigns for SMEs, dissemination events for SMEs or IPR training for SMEs will have to be identified, proposed, and integrated into this Agreement.

The IPOs will provide the EUIPO with the list of the communication and promotional activities carried out by them each quarter (Q1: end of March, Q2: end of June, Q3: end of Sep, Q4: end of Dec). A reporting template will be provided to the IPOs.

The EUIPO will provide the IPOs with communication material in editable format and will distribute a communication report on a quarterly basis.

In line with Article 22 of this Cooperation Agreement the achieved key performance indicators ('KPIs') will be reported preferably once the promotional activity has taken place.

Activity	Indicators
IPR awareness and marketing campaigns	KPI1.2 Satisfaction about the activity KPI1.3 Volume of reach
Dissemination events targeting SMEs	KPI 2.1 Number of participants (SMEs) KPI 2.2 Satisfaction about the activity

IPR training for SMEs	KPI 3.1 Number of participants (SMEs) KPI 3.2 Satisfaction about the activity
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Each month, for statistical and information purposes, the EUIPO will provide the IPO with the names and basic details of all the EU SMEs that have been awarded a grant from the SME Fund, together with the service provided for vouchers 1 to 3. On regular basis (bi-monthly) the EUIPO will organise meetings to exchange information and best practices amongst IPOs.

## 5. TIMING OF THE ACTION

1. The call for applications should be opened from January 2023 until December 2023.

The monthly reporting and monitoring laid down already in the sections above are agreed upon.

Summary:

- The EUIPO will provide on a monthly basis an update on the implementation of the action (statistics of requests received and processed) as well as the list of beneficiaries which have been awarded with the grant covering vouchers 1, 2, 3 and 4.
- IPOs which provide/coordinate the IP Scan will provide a monthly update of IP Scan requests using the reporting template provided by EUIPO.
- On a quarterly basis, the MS IPOs will be requested to provide list of communication activities carried out using the template provided by the EUIPO.

During the period January 2024 – May 2025, the SME Fund will still be opened for beneficiaries which vouchers are still valid to implement activities and claim reimbursements. The monthly reporting above mentioned will be adapted to the needs of the stakeholders.

In addition, training sessions will be organised by the EUIPO for the experts designated by IPOs to deliver IP Scan services and regular meetings (bi-monthly) will take place to discuss and coordinate communication and promotion aspects linked to this initiative.

## 6. DATA PROTECTION

The EUIPO and the IPOs will take appropriate measures to ensure compliance with the data protection regulation applicable to them (Regulation (EU) 2018/1725 for the EUIPO and Regulation (EU) 2016/679 for the IPOs). The EUIPO and the IPOs undertake to act as sole controllers within the meaning of Regulation (EU) 2018/1725 or Regulation (EU) 2016/679, respectively, as regards the personal data processed by them in the context of the SME Fund.

The collection and exchange of personal data as described in this Annex will be carried out solely for the purpose of the implementation of the SME Fund. This personal data may not be processed for any other purpose.

In particular, the lists of the SME Fund beneficiaries that are provided by the EUIPO to the IPOs may not be processed by the IPOs for any purpose not related to the SME Fund.

The EUIPO and the IPOs will cooperate and, when so requested, provide each other with swift and efficient assistance in handling any requests from data subjects. All requests from the data subjects will be replied to without undue delay, as set out in the relevant regulation.

The EUIPO and the IPOs will also cooperate in case of any security incidents, including personal data breaches. Having said that, each party is only responsible for their own security incidents (including personal data breaches), which will be handled in accordance with the relevant regulation.

The EUIPO and the IPOs will implement appropriate technical and organisational measures in order to ensure and protect the security, integrity and confidentiality of the personal data processed in the context of the SME Fund, as well as protect the data against any unauthorised or unlawful processing, access, loss, use, disclosure or acquisition.