

## ANNEX IV

### RULES FOR IMPLEMENTATION

#### IP PRE-DIAGNOSTIC AND BETTER ACCESS TO IP FOR INNOVATIVE SMES COSME PROJECT 2019-2021

#### RULES FOR IMPLEMENTATION

The present rules govern the implementation of the IP pre-diagnostic and better access to IP for innovative SMEs COSME PROJECT, by

- (a) Setting the framework under which SMEs can apply for, and be awarded, the support actions
- (b) Defining the scope and limits of the support actions
- (c) Defining how the support actions are to be implemented
- (d) Establishing reporting obligations and data sharing commitments that will allow the monitoring and evaluation of the implementation of the project and the assessment of its impact

The present rules may be amended by EASME and the European Commission, after consulting the Coordination Centre, at any time during the project. The changes would be applicable to the subsequent cut-off dates.

#### **Article 1 - Definitions**

(1) IP pre-diagnostic and better access to IP for innovative SMEs COSME Project: the COSME action foreseen in and funded by the 2017 COSME work programme to support use of Intellectual Property by innovative SMEs.

(2) Support actions: the actions foreseen in the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project to support and facilitate the use of Intellectual Property by SMEs. The project envisages three types of support actions:

- Type 1: IP pre-diagnostic services - advice on the potential of Intellectual Property to the development of their business
- Type 2: Financial support for European Patent Office fees
- Type 3: Financial support for costs of external legal advice by IP attorneys (professional representative before the European Patent Office)

(3) Coordination Centre: the legal entity to which the grant referred to in the call for proposals No COS – IP – 2017-2-03 was awarded.

(4) Candidate SME: an SME that has applied for support actions foreseen in the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project.

(5) Beneficiary SME: an SME that benefited from one or more support actions foreseen in the IP pre-diagnostic and better access to IP for innovative SMEs COSME Project.

(6) Website: the website set up by the Coordination Centre which will contain information on the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME PROJECT and an online system by which SMEs apply for the support actions referred to above.

(7) European Patent application: for the purpose of this project it is an application for a patent filed before the European Patent Office covering more than two EU Member States and preferably all EU Member States that will participate in the enhanced cooperation on the Unitary Patent<sup>1</sup>.

(8) Unitary Patent application: an application for a patent filed before the European Patent Office with unitary effect in the EU Member States who ratified the Unitary Patent court agreement<sup>2</sup>.

## **Article 2 - Eligibility**

(1) In order to be eligible to any of the support actions, applicant SMEs must fulfil the following requirements:

- Be a company incorporated in a EU Member State or COSME Member State<sup>3</sup>
- Having, in the year preceding that of the filing of the application, an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro and an staff headcount of less than 250 employees<sup>4</sup>;
- Be the holder of a Seal of Excellence awarded in the context of the H2020 SME instrument;
- For support action Type 1: be a company incorporated in one of the following EU Member State that participates in action Type 1:
  - Austria
  - Denmark
  - France
  - Germany
  - Greece
  - Ireland
  - Italy
  - Latvia
  - Netherlands
  - Spain
  - Sweden
- Accept the present Rules for Implementation applicable to all SMEs beneficiaries of the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project.

(2) The fulfilment of the above requirements and the correct and timely filing of the application for one or more support actions do not entitle the applicant to benefit from any of the support actions sought. If the number of applications received by the Coordination Centre exceeds the number of actions planned for the cut-off date for the relevant type of support actions or the total expenditure foreseen for said call cut-off date, the criteria set in these Rules for Implementation will be applied to select those applicants that will be granted support actions. The non-granting of the support actions sought does not preclude the SME in question from applying for the same or other support actions in subsequent call cut-off dates.

## **Article 3 – Website**

The Coordination Centre will put in place and maintain a fully operational and updated website dedicated to the IP pre-diagnostic and better access to IP for innovative SMEs COSME Project with information on the project, including easy guidelines for interested SMEs, an email and telephone for enquiries, the foreseen dates of publication of the call for expressions of interest, an online application system, a users' account system for candidate and beneficiary SMEs, and

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<sup>1</sup> <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2013001>

<sup>2</sup> See footnote 2

<sup>3</sup> <https://ec.europa.eu/docsroom/documents/34263>

<sup>4</sup> See SME definition: [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)

statistical data on the implementation of the project and in particular of the support actions applied for, awarded and executed, with information on the evolution per quarter, type of support action sought or awarded or implemented and geographical distribution of applicant and beneficiary SMEs. The main webpage and the application form should be available in the official languages of the European Union Member States participating in support action Type 1.

#### **Article 4 – Call for interest and applications**

The Coordination Centre will publish an open call for expressions of interest. The call will be open from month 4 to month 28 of the project. During that period interested SMEs may file applications for one or more support actions. The budget for the support actions will be distributed between 9 call cut-off dates. For that purpose SMEs must complete the application form available on the website and provide the information and documentation required therein. The following applications will not be taken into account:

- Any application submitted after the last cut-off date of the project indicated in the call for expressions of interest;
- Any application that does not fulfil the requirements set in these Rules for implementation (including incomplete applications);
- Any application without the indication of a functioning email address of contact.

#### **Article 5 – Application form<sup>5</sup>**

The online application system will include an online application form which shall contain the following fields to be completed by the SME wishing to apply for the support actions foreseen in the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project:

- Name, seat<sup>6</sup> and year of incorporation of the applicant;
- Contact person name, email address and telephone number;
- Number of employees of the applicant and the preceding year annual turnover;
- Declaration that in the preceding year the applicant's annual turnover did not exceed 50 million euro, and/or that its annual balance sheet total did not exceed 43 million euro;
- Participant portal reference number of their application to the SME instrument and their PIC number;
- Area for the applicant to upload the Seal of Excellence certificate in the name of the applicant;
- Area for the applicant to upload the evaluation summary report received by the interested SME from the H2020 SME instrument;
- Type of support sought by the interested SME within the various support actions available within the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project;
- IBAN of the interested SME in case one or more of the support actions involves financial support;
- Declaration of agreement to the terms and conditions of participation (rules for implementation) to the IP pre-diagnostic and better access to IP for innovative SMEs COSME PROJECT;
- Declaration of agreement to share information about the SMEs between the Coordination Centre, EASME, the European Commission and the EUIPO, for the purpose of the evaluation of this action<sup>7</sup>.

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<sup>5</sup> For information on data protection and confidentiality please see article 13

<sup>6</sup> Place of establishment

<sup>7</sup> For information on data protection and confidentiality please see article 13

- Declaration that the applicant's Seal of Excellence was awarded no more than 3 years prior to the next call cut-off date.

#### **Article 6 - Support action Type 1: IP pre-diagnostic services**

The maximum price of reference for each Pre-diagnostic service is up to EUR 1 500 each. The services will be rendered to the beneficiary SMEs free of charge. Any costs will be supported by the Coordination Centre and paid directly to the expert that provided the IP Pre-diagnostic services, its employer or to the entity that will be indicated by EASME.

Once the action has been granted to the beneficiary SME, the Coordination Centre will:

- Contact the beneficiary SME and provide it with information on available experts for rendering the pre-diagnostic;
- Facilitate the contact between the beneficiary SME and the chosen expert;
- Receive from the expert confirmation that the pre-diagnostic service has been provided, which will require answering a short questionnaire on pre-diagnostic services delivered, generic information on the outcome, and any difficulties or limitations encountered;
- Receive from the beneficiary SME a confirmation that the pre-diagnostic service has been provided. The submission of the confirmation will require:
  - answering a short questionnaire on the quality of the pre-diagnostic services and respective report;
  - accepting to be contacted within two years from the date of submission of the confirmation, by the EUIPO or another entity acting on its behalf or on behalf of EASME or the European Commission, for a follow-up to the pre-diagnosis report to be carried out by face-to-face interview, phone call, video-conference, email or online questionnaire;
- Pay the fee due for the IP Pre-diagnostic services to, as applicable, the expert that delivered the service or its employer, or the entity indicated by EASME for that purpose. The amount of the fee will be indicated by EASME.

Each beneficiary SME can receive only one IP pre-diagnostic service. EASME and the Coordination Centre reserve the possibility of establishing a time limit for the reimbursement process for Type 1 support services if necessary.

#### **Article 7 - Support action Type 2: Financial support for costs: EPO fees**

This action will support innovative SMEs in obtaining European patents. Once In the event that the Unitary patent is becomes available during the project, this action will only support applications for Unitary patents.

After communicating the awarding of this support action the beneficiary SME will be reimbursed of 75% of the EPO fees for depositing an application for a European or unitary patent (up to a maximum of EUR 2 500 per eligible SME per patent application) upon delivery of a EPO receipt in the name of the beneficiary SME issued after the date of awarding.

Each candidate SME can request the co-financing of more than one EPO patent application (up to a maximum of five). However, the selection criteria will privilege awarding the support actions to different applicants rather than awarding a second or more support action of the same type to the same applicant. If after granting the support actions sought by the totality of applicants the Coordination Centre will, to the extent that the budget for the quarter in question so allows, carry out a second round of awards using the same criteria.

#### **Article 8 - Support action Type 3: Financial support for costs: External legal advice by IP attorneys**

This financial support will aim at covering 50% of the costs of the services of a professional representative before the EPO hired for the purposes of preparing the filing for a European Patent (up to a maximum of EUR 2 000 per eligible SME per patent application process). Once granted the beneficiary SME is entitled to be reimbursed for the costs of the services in question upon delivery of receipt(s) from the professional representative in question in the name of the beneficiary SME issued after the date of awarding. The financial support can only be granted if the above mentioned services are rendered by a person entitled to act before the EPO<sup>8</sup>. The identification of the professional representative rendering the services is only required at the time of the filing of the supporting documents for reimbursement. The receipt must identify the patent application in relation to which the services were rendered or the receipt must be accompanied by a statement that the initial idea of a patent application has been discontinued as a result of the advice provided.

Each candidate SME can request the co-financing of costs of services of a professional representative to file an EPO patent application more than once, but each time it needs to be in relation to a potential patent application supported by support action Type 2. Identical conditions apply as for support action Type 2 as regards to the selection criteria.

### **Article 9 – Calls for expressions of interest**

The Coordination Centre will launch a call for expressions of interest through publication in the webpage on the following indicative dates:

- 6 May 2019 (4th Month<sup>9</sup>) – Call Launch
- 7 June 2019 (5th month) – Cut-off Date 1
- 26 September 2019 (8th month) – Cut-off Date 2
- 19 December 2019 (11th month) – Cut-off Date 3
- 26 March 2020 (14th month) – Cut-off Date 4
- 25 June 2020 (17th month) – Cut-off Date 5
- 30 September 2020 (20th month) – Cut-off Date 6
- 17 November 2020 (23th month) – Cut-off Date 7
- 25 February 2021 (25th month) – Cut-off Date 8
- 27 May 2021 (28th month) – Cut-off Date 9

The above mentioned calendar, including the number, exact dates, frequency and lapse of time between the cut-off dates may be modified by EASME. The total number of cut-off dates is estimated at 9 and the lapse of time between them will be at least one month.

### **Article 10 – Budget planned for each cut-off date in the call for expressions of interest**

For the first cut-off date of the call for expressions of interest the Coordination Centre will make available a budget of EUR 412 500 to implement the support actions.

The following rules apply to all calls for expressions of interest:

- In case the demand for the support actions exceeds the total budget planned for the cut-off date in question, the Coordination Centre will apply the selection criteria in order to rank the applications received and to award the support actions to the applicants higher in the rank until the budget is exhausted.

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<sup>8</sup> <http://www.epo.org/applying/online-services/representatives.html>

<sup>9</sup> Indicative Dates

- By default in case the demand for the support actions is inferior to the total budget planned for the call for expressions of interest cut-off date in question, the unused budget will be transferred pro-rata to the remaining call for expressions of interest cut-off dates.
- By default the planned budget for each quarter will be EUR 412 500, plus the pro-rata of the unused budget, if any, that has been transferred from the previous call for expressions of interest cut-off date(s).
- EASME may review planned budget for each call for expressions of interest cut-off date: In particular, when the demand is superior to the planned budget, EASME will adjust the budget planned for the subsequent quarter accordingly. EASME can increase it in increments up to a maximum of EUR 825 000 (indicative 1/4 of the total budget dedicated to SME support actions) as long as there is capacity of response in particular as regards support actions of Type 1.

After the award of support actions after the last call for expressions of interest cut-off date any unused support action expenditure budget will revert to EASME.

### **Article 11 – Selection criteria**

In case of need to exclude applications due to insufficient budget to cover all the support actions requested the following will apply:

- Candidate SMEs with the seal of excellence will be ranked in terms of the points received in the H2020 SME Instrument report.
- Support actions will be awarded to the highest in rank until the planned budget is exhausted.

In case two or more applicants have received the same amount of points in the H2020 SME Instrument report, preference will be given to SMEs that have not yet been awarded support from this project. Among remaining candidates, preference will be given to the companies that have been incorporated more recently. Between companies with the same date of incorporation preference will be given to those with fewer employees.

### **Article 12 – Maximum sum of awarded grants**

Candidate SMEs can be awarded financial support of a maximum sum of EUR 15 000.

### **Article 13 – Data protection**

By applying to the support actions foreseen in the project candidate SMEs agree that the data contained in their applications, and all the data relating to the support action that they benefit from, will be shared by the Coordination Centre with EASME and the European Commission. The European Commission may share the same data with the EUIPO and/or their contractor (s) for the purpose of the evaluation of this project. All these entities will be bound by data protection rules and will not share private data or specific data relating to identifiable SMEs.

### **Article 14 – Confidential information**

Information collecting entities are experts who provide IP pre-diagnostic services, the Coordination Centre, EASME, the European Commission, the EUIPO and/or their contractor(s) tasked to evaluate this action. All these entities will keep any information identified by the beneficiary SMEs as confidential confined to the involved information collecting entities.

## **Annex I – Indicative Timetable**

This indicative timetable includes the planned date for the launch of the call for expressions of interest for SMEs and the cut-off dates to be used for ranking and budget allocation. The indicative assigned budget sets the funding limits for each cut-off date. The dates and the budget can be adjusted in agreement between the EASME, the Commission and the Coordination Centre. Funds not spent on a given cut-off date period will be automatically rolled over pro-rata to each of the following cut-off dates.

- 7 May 2019 (4th Month<sup>10</sup>) – Call Launch
- 7 June 2019 (5th month) – Cut-off Date 1
- 26 September 2019 (8th month) – Cut-off Date 2
- 19 December 2019 (11th month) – Cut-off Date 3
- 26 March 2020 (14th month) – Cut-off Date 4
- 25 June 2020 (17th month) – Cut-off Date 5
- 30 September 2020 (20th month) – Cut-off Date 6
- 17 November 2020 (23th month) – Cut-off Date 7
- 25 February 2021 (25th month) – Cut-off Date 8
- 27 May 2021 (28th month) – Cut-off Date 9

		Payments	Payments	Total Received	Budget committed	Total budget committed / spent	Balance
		50%	2150				
2	Beta Version						
3							
4					412.5	412.5	
7	Progress report				412.5	825	
10					412.5	1237.5	
13	Progress report				412.5		
16					412.5	1650	
18	Interim report	40%	1720	3870			
19	Progress report				412.5	2475	
22					412.5	2887.5	
25	Progress report				412.5	3300	
31	Progress report						
36		10%	430	4300			
	10%	430					
	40%	1720					
	50%	2150					

<sup>10</sup> Indicative Dates