

# **RULES FOR IMPLEMENTATION**

Version 8<sup>th</sup> July 2019

## **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. The project's acronym is IPA4SME.

(2) Support actions: the actions foreseen in the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project named IPA4SME to support and facilitate the use of Intellectual Property by SMEs. The project envisages three types of support actions:

- Service 1: IP pre-diagnostic services - advice on the potential of Intellectual Property to the development of their business
- Service 2: Financial support for European Patent Office fees
- Service 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 abovementioned "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 named IPA4SME 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; or be identified as an innovative SMEs by the implementing partner from one of the countries participating in the support Service 1
- For support action Service 1: be a company incorporated in one of the following EU Member State that participates in Service 1:
  - Austria
  - Denmark
  - France
  - Germany
  - Greece
  - Ireland
  - Italy
  - Latvia
  - Netherlands
  - Spain
  - Sweden
- Have not been supported by the H2020 SME Instrument Phase 2 programme.
- Accept the present Rules for Implementation applicable to all SMEs beneficiaries of the abovementioned "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.

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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)

### **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 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 Service 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 the 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>, VAT and year of incorporation of the applicant;
- Contact person name and email address;
- Type of support sought by the interested SME from the various support services available within the "IP pre-diagnostic and better access to IP for innovative SMEs" COSME Project;
- Number of employees of the applicant and the preceding year annual turnover;
- R&D Intensity (sum total of in house and external R&D activities during last year);
- Innovation intensity (% of total turnover);
- Export intensity (% of total 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;
- Points received (score) in the evaluation report (ESR) of the H2020 SME instrument application
- Area for the applicant to upload the Seal of Excellence certificate in the name of the applicant;

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

<sup>6</sup> Place of establishment

- Area for the applicant to upload the evaluation summary report received by the interested SME from the H2020 SME instrument;
- Date of SME Instrument call for which your Seal of Excellence was awarded
- Declaration that the applicant has not, to date, been supported by the H2020 SME Instrument Phase 2 programme;
- Declaration that the SME has been identified as eligible for service 1 by the implementing partner from one of the countries participating in the support action service 1 (only for SMEs that are not seal of excellence holders)
- 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>.
- 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 - Service 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;
- Provide the selected expert with the beneficiary SME's IPA4SME Self-assessment results;
- 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 expert the non-confidential conclusions from the IP-Pre Diagnostic Report.
- 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 three 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. The service should be completed within 4 months from the date of communication of the support action grant. EASME

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

and the Coordination Centre reserve the possibility of modifying this time limit for the completion of Service 1 if necessary.

**Article 7 - Service 2: Financial support for costs: EPO fees**

This action will support innovative SMEs in obtaining European patents. In the event that the Unitary patent 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 along with proof of payment to the EPO by the SME. EPO fees which qualify for reimbursement under Service 2 are listed in the following table:

Code	Description
001	Filing fee - EP direct - not online
001	Filing fee - EP direct – online
002	Fee for a European search - Applications filed on/after 01.07.2005
005	Designation fee - For all contracting States designated for applications filed on/after 01.04.2009
006	Examination fee - For applications filed on/after 01.07.2005
007	Fee for grant and printing (not more than 35 pages) or fee for grant including fee for Publication
033	Renewal fee for the 3rd year

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 allows, carry out a second round of awards using the same criteria.

Beneficiaries of Service 2 support will be entitled to a maximum of 2 reimbursements for each service award. To activate the support, beneficiaries must present at least 1 valid invoice and proof of payment or an official proof of patent application from the EPO within 4 months from the date of communication of the support action grant. Invoices and proofs of payment for the second payment can be presented until the end of the IPA4SME project. If a beneficiary does not activate their Service 2 award within 4 months, the support will be cancelled. Beneficiaries who have had a support service cancelled may reapply to the IPA4SME open call without penalisation.

In the event that a beneficiary has been awarded both Service 2 and 3 from the same cut-off date, the activation of either of the support services will automatically extend the time for the activation of the other service by an additional 4 months.

**Article 8 - Support action Service 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 service 2. Identical conditions apply as for support action service 2 as regards to the selection criteria.

Beneficiaries of Service 3 support will be entitled to a maximum of 2 reimbursements for each service award. To activate the support, beneficiaries must present at least 1 valid invoice and proof of payment within 4 months from the date of communication of the support action grant. Invoices and proofs of payment for the second payment can be presented until the end of the IPA4SME project. If a beneficiary does not activate their Service 3 award within 4 months, the support will be cancelled. Beneficiaries who have had a support service cancelled may reapply to the IPA4SME open call without penalisation.

In the event that a beneficiary has been awarded both Service 2 and 3 from the same cut-off date, the activation of either of the support services will automatically extend the time for the activation of the other service by an additional 4 months.

#### **Article 9 – Call 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 (22nd 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**

The Coordination Centre has made an initial budget allocation of EUR 412 500 to implement the support actions for each cut-off date of the call for expressions of interest.

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

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

<sup>9</sup> Indicative Dates

- 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 accordingly as long as there is capacity of response in particular as regards support actions of service 1.
- 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.
- 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).

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.
- Rankings will be established separately per support action service.
- For support action service 1: SMEs identified as innovative by Member States authorities participating in support action service 1 will be ranked separately. Member States authorities will be able to identify up to 24 innovative SMEs for the duration of the action in case there is limited demand from this country for this service from Seal of Excellence holders. Any seal of excellence SME from such a country receiving the support action service 1 will be deducted from the total 24 SMEs that can benefit from this support action service.

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 - Impact and satisfaction monitoring and evaluation**

IPA4SME beneficiaries agree to participate in a series of surveys as part of their support. These surveys are designed to effectively monitor the impact of the IPA4SME project, as well as to continuously improve the service provided by the Coordination Centre. The surveys to which beneficiaries will be asked to respond are presented in the following table. Please note that beneficiaries who are awarded multiple support services will only be asked to respond to each survey once during the project. In the event that a beneficiary does not activate a support service they will not be asked to respond to any follow up surveys. The first survey, the IP Response

Questionnaire” will be mandatory for all beneficiaries meaning that their support services cannot be activated until they have completed the survey.

Support Service	Surveys and Timeframe			
	Prior to Service Activation	2-3 Months After Service Completion	12 Months After Service Activation	+36 Months After Service Activation <sup>10</sup>
Service 1	IPA4SME Self-assessment	Post-service IPA4SME Self-assessment	IPA4SME Impact Questionnaire	Long-term IPA4SME Impact Questionnaire
Service 2				
Service 3				

#### **Article 14 – 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. For Service 1 beneficiaries, their application and IPA4SME Self-assessment data will be shared with the expert selected to implement their IP Pre-diagnostic.

#### **Article 15 – 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.

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<sup>10</sup> Beneficiaries may be contacted by the EUIPO for this survey after the IPA4SME project has finished.



## **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>11</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 (22nd month) – Cut-off Date 7
- 25 February 2021 (25th month) – Cut-off Date 8
- 27 May 2021 (28th month) – Cut-off Date 9

The following table illustrates IPA4SME’s financial plan as well as its relation with the Coordination Centre’s (CC) execution and reporting plan:

Month	Milestones	Transfer to CC (%)	Transfer to CC (K€)	Aggregate (K€)	Budget committed to Open Call (K€)	Total budget committed / spent (K€)	Balance
1		50%	2150				
2	Website Beta Version						
4					412.5	412.5	
7					412.5	825	
10	Progress report				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	Final Report	10%	430	4300			

<sup>11</sup> Indicative Dates