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**MEMORANDUM OF UNDERSTANDING**

**ON BILATERAL COOPERATION**

**BETWEEN:**

**The EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE**

**(EUIPO)**

**and**

**THE European Agency for the cooperation of energy regulators (acer)**

The European Union Intellectual Property Office, located at Avenida Europa 4, 03008 Alicante, Spain, and represented for the purpose of signing this Memorandum of Understanding ("MoU") by Mr António Campinos, Executive Director, duly entitled to sign, (hereinafter referred to as "**EUIPO**") with VAT number ESV03965324

 on the one part

AND

The European Agency for Cooperation of Energy Regulators, located at Trg republike 3, 1000 Ljubljana - Slovenia, and represented by Mr Alberto Pototschnig, Executive Director, duly entitled to sign, (hereinafter referred to as "**ACER**") with VAT number SI37879260

 on the other part

Hereinafter, individually referred to as "**the Party**" or collectively as "**the Parties**".

WHEREAS:

(1) EUIPO is the European Union Agency responsible for registering trademarks and designs in the European Union and it is entrusted with tasks aimed at facilitating and supporting the activities of national authorities, the private sector and the European Union’s institutions in the fight against infringements of intellectual property rights;

(2) The mission of ACER is to complement and coordinate the work of national energy regulators at EU level, and to work towards the completion of the single EU energy market for electricity and natural gas;

(3) In its Communication of June 2012 concerning the Common Approach on EU Decentralised Agencies the Commission made specific recommendations to the Agencies of the European Union to increase their efficiency and accountability by fostering synergies and strengthening cooperation among them in areas of common interest;

CONSIDERING THAT:

(1) The European Union (EU) decentralised Agencies are an integral part of the EU institutional architecture.

(2) The Parties are ready and willing to develop cooperation activities that can lead to forge a strategic partnership between them;

(3) The cooperation activities to be performed under the MoU would contribute to creating synergies between the Parties in different operational and administrative areas in line with the said recommendations of the European Commission and thus contribute to increase the Parties’ efficiency and accountability;

(4) The Parties have sufficient human, technical and material means to implement the objectives and commitments set out in the MoU

**Have reached the following understanding:**

**Objective**

The present MoU establishes the general conditions under which the Parties may establish mechanisms for mutual cooperation in the areas indicated under the part concerning the scope of cooperation.

**Scope of cooperation**

Without prejudice to the cooperation of the Parties in other areas that may fall outside the scope of the present MoU, the Parties hereby agree to cooperate on activities of common interest such as Information and Communication Technologies, and any other activities that they may deem fit for the purpose of achieving the objective of the present MoU.

**Implementation**

1. The Parties shall agree to an implementation plan on an annual basis. Specific terms and conditions for the implementation of the MoU are established in the part of the MoU concerning “*Annex 1: the Disaster Recovery (DR) services*”.
2. Any further agreement that the Parties may enter into for implementing the present MoU shall include at least the details of the activities to be carried out by the Parties, their duration and their terms of financing.
3. Any agreement carried out under paragraph 2 shall be drawn up and agreed upon by both Parties in line with the present MoU. Any discrepancy between the two texts shall be solved by giving precedence to the provisions of this MoU.
4. Any activity conducted under this MoU is subject to its prior inclusion in the Parties’ respective work programmes and to their budgetary capacity. The Parties undertake to implement any such activity in full observance of their respective rules and practices.

**Protection of information and personal data**

1. The Parties shall use the information obtained during the course of the implementation of the MoU exclusively for internal purposes. The written prior consent of the other Party is required when one Party wishes to use such information for other purposes.
2. Each Party guarantees that the documents, information and any other knowledge of a confidential nature will not be disclosed or transmitted to third parties without the prior written consent of the other Party.

1. The present MoU does not imply any transfer of Intellectual Property (IP) Rights between the Parties. The IP Rights of each Party that were in existence prior to, or are developed outside the scope of the present MoU, and any enhancements, modifications and/or derivatives thereto, shall remain the exclusive IP Rights of that Party.

1. Any IP right related to any work performed under the present MoU shall be vested in the author or authors of the work. The Parties may expressly agree otherwise in a written agreement signed by them.
2. For the purpose of the services included in “*Annex 1: Description of the service*”, both parties agree that ACER is the data controller for all data stored in the ACER DR environment, and that EUIPO acts merely as a data processor.

1. Where the implementation of the present MOU requires the processing of personal data by the Parties they undertake to act 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.
2. Any intentional or unintentional unauthorized processing of personal data located at EUIPO premises and provided by ACER under the present MoU will be communicated to ACER within a reasonable strict deadline from detection.
3. Unless justified under Regulation (EC) No 45/2001 and agreed further in written by the parties, the parties hereby undertake that , all personal data provided by ACER under the present MoU and located in EUIPO premises will be deleted upon conclusion of the provision of the services contemplated in this MoU.
4. Upon a duly justified request of ACER, EUIPO can provide information necessary to achieve and demonstrate that personal data provided by ACER data located at EUIPO premises is managed in compliance with Regulation (EC) No 45/2001.

**Financing**

1. Without prejudice to the specific financing terms set out by the Parties in the Annex 1, the Parties undertake to cooperate in the activities that are indicated under "scope of cooperation" of the present MoU with no profit.
2. Under this non-profit principle, when a party to this MOU obtains a service from the other party as a result of the implementation of the present MoU it shall reimburse the costs of that service to the other party.

**Follow-up assessment**

1. In view of verifying the effectiveness of the implementation of the MoU, the Parties may decide to carry out a joint follow-up assessment of the implemented actions.

The verification by the Parties shall aim at:

i. Identifying areas in which cooperation should be strengthened and/or improved; and

ii. Determining new areas for joint actions; or

iii. Identifying cases in which cooperation should be suspended or terminated by the Parties.

1. This follow-up assessment shall be carried out and delivered by the Parties with the terms stipulated at a time and place to be mutually agreed by them in a separate written agreement.

**Entry into force and termination**

1. The present MoU shall come into effect on 1st June 2017 and shall remain valid for four years from that date. It shall continue to exert its effects until the ongoing projects or activities are completed. It may be extended with the mutual written consent of the Parties.
2. The Parties will review the content of the MoU on a regular basis. The MoU may be terminated by mutual agreement or by one Party giving the other twelve months written notice.

1. Unless the Parties agree otherwise, early termination of the MoU should not hinder the implementation of any ongoing projects or activities.

**Final provisions**

1. The present MoU may be amended by mutual consent of the Parties. Any amendments shall be formalised in writing and shall include the date on which the amendments become effective.
2. All matters or disputes related to the interpretation and application of the present MoU shall be resolved by mutual agreement.
3. The present MoU replaces and supersedes any prior written agreements signed between the Parties.

Signed in duplicate at Alicante on XXth XXXXX, 2017 in English,

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| **For the European Union Intellectual Property Office**  | **For the European Agency for the Cooperation of Energy Regulators**   |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **António Campinos****Executive Director**  | **Alberto Pototschnig****Executive Director** |

# Annex 1: The Disaster Recovery (DR) services

## Service

This agreement will cover the hosting of the Recovery Site for ACER, as per the technical provisions detailed below.

## Technical Provisions

The architecture recommendation for the DR Service within the EU Agencies network includes best practices for isolating the Agencies infrastructure from the EUIPO’s one, while at the same time finding synergies that result in gains overall.

It follows strict guidelines established by the requirements in terms of autonomy and security and it provides enough scalability in terms of compute, memory and disk capacity.

### *Description of the DR services:*

* **Firewall protection:** Using the existing physical firewall infrastructure, ACER will have its assets protected through an own dedicated and isolated zone
* **Full scalability:** Leveraging virtualisation, EUIPO can easily provide additional services in an easy manner, making the service scalable.
* **Complete autonomy and full independence:** The environment, with the exception of hardware failures which fall under the responsibility of EUIPO, can be managed completely by the ACER IT team without the interaction of EUIPO. This facilitates the application of the policies that the Parties may each have for their BCP site without conflicting with EUIPO policies.

ACER will have its own set of public IP. In this way, it can manage the services open to the Internet without the intervention of EUIPO IT team. In addition, the internal network behind the firewall can use any addressing desired without overlapping with the EUIPO addressing.

These two features allow complete independence and provide the possibility of creating site to site VPNs, opening services to the Internet in a complete transparent way, and will not entail an operative overhead for the EUIPO.

* **Security compliance:** Connectivity from the agencies infrastructure and the Office infrastructure will take place at the DMZ level, meeting EUIPO security standards.
* **High available Internet access:** ACER will make use of the redundant Internet access by two separate ISPs available at EUIPO, giving an extra layer of redundancy in case of ISP failures. As Internet access will therefore be shared between the ACER DR environment and EUIPO, EUIPO will retain the ultimate control over the traffic generated so as to keep the security levels, if any, and to control the amount of bandwidth consumed in case of oversubscription.

### *Sizing of the DR services:*

Specifically, EUIPO will provide the following DR environment, or similar:

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|  |  | **Quantity** |
| **Servers** | Lenovo x3750 M4 + FC Cards | 1 units |
| Brocade 6510 48P switch for a Server | 2 ports |
| Hitachi HUS150 (TB) | 10 TB |
| Network ports for a Server | 2+4 ports |
| **Network** | Public IPs | 3 usable IPs |
| Internet Orange | 100Mbps |
| Internet Movistar | 100Mbps |

If necessary, EUIPO may replace some of this equipment by equivalent material, keeping the same level of service.

## Duties and responsibilities:

* The Parties will mutually agree a calendar for periodical preventative maintenance interventions in any of the components of the shared infrastructure that actually or potentially may affect the availability of the service. In that respect, EUIPO will notify ACER about such activities duly and timely using the agreed communication channels.
* In case of non-planned service disruption, EUIPO should alert to the agreed ACER staff about the event in a reasonable timeframe and when service is completely restored.
* EUIPO will monitor the common hardware infrastructure provided for the contracted service and the responsibility of ACER falls on the monitoring of the dedicated software intended for the ACER DR service.
* EUIPO will be responsible for the maintenance of all the hardware infrastructure components provided for the contracted service and ACER will be in charge of the dedicated software infrastructure intended for the ACER DR service.

## Testing of the services:

EUIPO will assist ACER with an annual disaster recovery full test, at a date mutually agreed by both Parties.

## Exclusions to the service:

EUIPO will not provide as part of this service:

* Backup facilities for data replicated to the DR environment, as ACER already has a backup solution in its production environment, and it would result in unnecessary extra costs.
* Monitoring of the services replicated in the DR environment, for the same reasons.
* A high-availability solution for the DR environment, as this is judged to be non-cost effective by both parties.

## Financing

ACER agrees to reimburse to EUIPO during the 4 first years of this agreement an annual fixed cost of € 17,802.80 which is equivalent to the operational and administrative costs borne by EUIPO for the provision of the DR services and which is calculated on the basis of incremental investments, and operational costs, and which do not include the infrastructure that was already available at EUIPO.

In case of modifications in the requirements detailed in the technical provisions chapter during the validity of the present agreement, a prorated amendment in the annual fixed costs will be charged for the remaining period of the parties’ agreement.

In case where the agreement is renewed for another period of 4 years, and in order to cover for the expenses of renewing the infrastructure, the reimbursement will be adjusted, on the basis of hardware, software and service prices. The EUIPO will communicate the revised annual fixed cost to ACER in advance in order to allow for proper budgeting.

By 1st June each year, EUIPO will request ACER to pay ACER’s annual contribution on the basis of a duly-documented debit note issued by EUIPO to ACER for the total amount due for that year consisting of the annual flat-rate. The payment will take place within 60 days after the presentation of the debit note into the EUIPO bank account detailed below:

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| **BANCO  BILBAO  VIZCAYA  ARGENTARIA** |
| **IBAN :  ES76  0182  5596  9200  9444  4222** |
| **Swift code  :  BBVAESMMXXX** |

## Other provisions

In conformity with its financial regulations, the European Union, including the European Anti-Fraud Office (OLAF) and the European Court of Auditors (ECA), may undertake, including on the spot, checks, reviews, audits and investigations.

Under Regulations No 883/2013 and No 2185/96 (and in accordance with their provisions and procedures), the European Anti-Fraud Office (OLAF) may — at any moment during implementation of the action or afterwards — carry out investigations, including on-the-spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the EU.

Likewise, under Article 287 of the Treaty on the Functioning of the European Union (TFEU) and Article 161 of the Financial Regulation No 966/201245, the European Court of Auditors (ECA) may — at any moment during implementation of the action or afterwards — carry out financial audits. The ECA has the right of access for the purpose of checks and audits.

Additionally, a provision on the law applicable to the contractual obligations must be observed by the parties.