



IPR Policy

V. 27.10.2021

IPR Policy

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1. Introduction / Purpose

- 1.1. The purpose of this Intellectual Property Rights Policy (hereinafter the “**IPR Policy**”) is to support the protection of intellectual property in compliance with EUROSMART’s policies and governance.
- 1.2. The main characteristics of the IPR Policy can be summarized as follows:
 - 1.2.1. Members are fully entitled to hold, and benefit from, any IPRs which they may own, including the right to refuse to grant licenses;
 - 1.2.2. The IPR Policy seeks a balance between the needs of standardization with the rights of IPR owners;
 - 1.2.3. The IPR Policy seeks to reduce the risk that investment in the preparation, adoption and application of Specifications by EUROSMART could be wasted as a result of an Essential IPR for a Specification being unavailable;
 - 1.2.4. IPR owners should be adequately and fairly rewarded for the use of their IPRs in the implementation of Specifications.
- 1.3. The IPR Policy covers the issues of patents, utility models, design rights or other similar intellectual property rights conferred by law, including applications therefor, as well as copyrights for specifications and technical documents, amendments thereto and other deliverables contributed or collaboratively created by EUROSMART. In the event of any conflict or inconsistency between the IPR Policy and any other document, the terms of the IPR Policy shall prevail.

2. Definitions

Terms in the IPR Policy shall have the following meaning:

- 2.1. “**Affiliates**” shall mean (i) any corporation or business entity fifty percent (50 %) or more of the voting stock of which is owned directly or indirectly by a Member; (ii) any corporation, business entity or person which directly or indirectly owns fifty percent (50 %) or more of the voting stock of a Member; (iii) any corporation or business entity under the direct or indirect control of such corporation or business entity as described in (i) or (ii) above, or (iv) any corporation or business entity which is under common control with such corporation, business entity, or person as described in (i), (ii), or (iii) above.
- 2.2. “**Committees**” shall mean any group of EUROSMART and shall include the committees, as well as their subcommittees and the taskforces created by the Board of EUROSMART.
- 2.3. “**Confidential Information**” shall mean all information deemed to be confidential pursuant to clause 12 of the IPR Policy, disclosed directly or indirectly to a Member.
- 2.4. “**Equipment**” shall mean any system, or device fully conforming to a Specification.
- 2.5. “**Essential**” as applied to IPR shall mean that it is not possible on technical (excluding commercial) grounds, considering normal technical practice and the state of the art generally available at the time of a Specification, to make, sell, lease, otherwise dispose of, repair, use or operate Equipment or Methods which comply with a Specification without infringing that IPR. Essential IPR shall explicitly exclude IPR that would be

infringed only by the implementation of a standard, technology or a specification (or portion thereof) previously developed outside of Eurosmart and incorporated directly or indirectly by reference in a Specification.

- 2.6. “**FRAND**” shall mean fair, reasonable and non-discriminatory.
- 2.7. “**EUROSMART Document**” shall mean any document written, created, designed or developed by a Member or any of its directors, officers or employees either individually or jointly within a Committee of EUROSMART or as a result of any work carried out on behalf of such Committee and identified as a document of EUROSMART.
- 2.8. “**IPR**” shall mean patents, utility models, design rights or other similar intellectual property right conferred by law including applications therefor. For the avoidance of doubt, rights relating to trademarks copyrights, get-up, confidential information, trade secrets or the like are excluded from the definition of IPR.
- 2.9. “**Manufacture**” shall mean production of Equipment.
- 2.10. “**Member**” shall mean a member of EUROSMART and/or its Affiliates.
- 2.11. “**Method**” shall mean any method or operation fully conforming to a Specification.
- 2.12. “**Patent Family**” shall mean all the documents having at least one priority in common, including the priority document(s) themselves. For the avoidance of doubt, “documents” refers to patents, utility models, and applications therefor.
- 2.13. “**Specification**” shall mean any standard, technical specification or technical document adopted by EUROSMART, including options therein or amended version including drafts, the technical specifications of which are available to all Members, but not including any technical specifications, or parts thereof, not made by EUROSMART. The date on which a Specification is considered to be adopted by EUROSMART for the purposes of this IPR Policy shall be the date on which the technical content of that Specification was available to all Members.

3. Disclosure of IPR

- 3.1. Each Member shall use its reasonable endeavours to timely inform EUROSMART of that Member’s Essential IPR that the Member is aware of and believes to be likely to fully or partially cover elements of Specifications that are being developed by a of EUROSMART prior to such Specifications being submitted to a voting procedure. In particular, each Member submitting a technical proposal for development of a Specification shall timely and on a bona fide basis draw the attention of EUROSMART to the IPR of that Member which might be Essential if the proposal is adopted.
- 3.2. The information referred to in Clause 3.1 shall be provided to the Board of EUROSMART according to the disclosure statement in Annex 1 (“**IPR Information Statement**”).
- 3.3. The obligations pursuant to Clause 3.1 are deemed to be fulfilled in respect of all existing and future members of a Patent Family if EUROSMART has been informed of a member of this Patent Family in a timely fashion. Information on other members of this Patent Family, if any, may be voluntarily provided.
- 3.4. In the event that a Member omits to declare Essential IPRs with respect to a given Specification, the Member shall be deemed to have forfeited its right to withhold a perpetual licence on FRAND conditions from anyone who desires to implement said

Specification. In addition, if the lack of declaration was intentional, the Member's membership of EUROS MART may be terminated in accordance with the statute of EUROS MART.

- 3.5. For the avoidance of doubt, the obligations set forth in clause 3 are limited to the knowledge of the Member's participants, and do not imply an obligation on a Member to conduct IPR searches.

4. Licensing Declaration

- 4.1. When an IPR that is Essential with respect to a Specification that is being developed by a Committee of EUROS MART is brought to the attention of the Board of EUROS MART, the latter shall immediately request the IPR owner to give, within three months, an irrevocable undertaking in writing that it is prepared to grant licence pursuant to Clause 4.2 and 4.3.

- 4.2. Save in the case of a refusal or non-reply within three months by the IPR owner, the IPR owner shall be obligated to grant perpetual licences to IPR that is Essential with respect to a Specification on FRAND conditions to the extent required under Clause 4.3.

- 4.3. The licence referred in Clause 4.2 shall cover the use of the IPR to at least the following extent:

- (a) Manufacture, including the right to make or have made customised components and subsystems to the licensee's own design for use in Manufacture;
- (b) Sell, lease, or otherwise dispose of Equipment so Manufactured;
- (c) Repair, use, or operate Equipment; and
- (d) Use Methods;

insofar as required to comply with a Specification.

- 4.4. If a patent contains both Essential IPR and non-essential claims, there is no obligation to provide access to non-essential claims in such patent.

- 4.5. The written confirmation referred to in Clauses 4.2 and 4.3 shall be provided to the Board of EUROS MART according to the licensing declaration in Annex 2 ("**IPR Licensing Declaration**").

- 4.6. An undertaking pursuant to Clauses 4.2 and 4.3 with regard to a specified member of a Patent Family shall apply to all existing and future Essential IPRs of that Patent Family unless there is an explicit written exclusion of specified IPRs at the time the undertaking is made. The extent of any such exclusion shall be limited to those explicitly specified IPRs.

- 4.7. A Member shall have no obligation to licence third parties pursuant to Clauses 4.2 and 4.3 in cases where the third party has obtained a Specification in violation of the confidentiality obligations of a Member related to unpublished Specifications.

- 4.8. The Essential IPR owner's obligations under Clauses 4.2 and 4.3 are subject to the following conditions:

- a) Any licensee or Equipment manufacturer shall agree to grant a licence of their Essential IPR on reciprocal terms and conditions;

- b) The portion of the licence that relates to a party to whom the licensee sells, leases or otherwise disposes of Equipment is terminable if that party refuses to grant a licence of its Essential IPR in accordance with Clauses 4.2 and 4.3 on reciprocal terms and conditions;
 - c) The licensee will use its best efforts to notify Clause 4.8 to whomever it sells, leases or otherwise disposes of Equipment.
- 4.9. As long as the requested undertaking of the IPR owner is not granted, the Committee's Chairman should use his/her judgment as to whether or not the Committee should suspend work on the relevant parts of the Specification until the matter has been resolved and/or submit for approval any relevant Specification. The Committee's Chairman immediately informs the Board of EUROSMART to take appropriate measures.

5. Record of Information Statements and Licensing Declarations

A record of the IPR Information Statements and IPR Licensing Declarations shall be placed and retained in the files of EUROSMART and shall be accessible upon request.

6. Notice of Essential IPRs and Licensing Declarations

- 6.1. Any published Specification containing Essential IPRs shall refer to the claimed Essential IPRs which are brought to the attention of EUROSMART prior to such publication, as well as the IPR Licensing Declarations.
- 6.2. EUROSMART shall establish appropriate procedures to allow access to information at any time with respect to Essential IPRs which have been brought to its attention.

7. Non-availability of Licensing Declaration prior to the publication of a Specification

- 7.1. Where, prior to the publication of a Specification, an Essential IPR owner declares to not be willing to grant a license or does not reply to the request within three months in accordance with Clause 4.1, the President of EUROSMART shall, upon the Board's approval, suspend the adoption of the Specification until the matter has been resolved.
- 7.2. EUROSMART shall review the requirement for that Specification and verify whether a viable alternative technology is available for the Specification which is not blocked by Essential IPR and satisfies EUROSMART's requirements.
- 7.3. If EUROSMART considers that no viable alternative technology is available, work on the Specification shall cease, and EUROSMART shall observe the following procedure:
 - 7.3.1. If the Essential IPR owner is a Member, EUROSMART shall request that Member to reconsider its position and provide a Licensing Declaration in accordance with Clauses 4.2 and 4.3. If that Member still refuses to do so, it shall inform EUROSMART of its decision and provide a written explanation of its reasons for refusing to license the Essential IPR, within three months of receipt of EUROSMART's request. EUROSMART shall then take further action as deemed fit.
 - 7.3.2. If the Essential IPR owner is a third party, EUROSMART shall, wherever appropriate, request full supporting details from any Member which has complained that licences are not available and/or request appropriate Members to use their good offices to find a solution to the problem. Where this does not

lead to a solution, EUROSMART shall write to the Essential IPR owner concerned for an explanation and request ultimately that licences be granted on FRAND conditions. Where the Essential IPR owner refuses EUROSMART's request or does not answer within three months of receipt of EUROSMART's request, EUROSMART shall take further action as deemed fit.

- 7.4. Prior to any decision by EUROSMART in relation to a refusal or non-reply within three months by the IPR owner in accordance with clause 4.1, the Committee should use their judgment as to whether or not the Committee should pursue development of the concerned parts of the Specification based on the non-available technology and should look for alternative solutions.

8. Non-availability of Licensing Declaration after the publication of a Specification

Where, in respect of a published Specification, EUROSMART becomes aware that licences are not available from an IPR owner in accordance with Clauses 4.2 and 4.3 above, that Specification shall be referred to the Board of EUROSMART for further consideration in accordance with the following procedure:

- 8.1. The Board of EUROSMART shall request full supporting details from any Member or third party who has complained that licences are not available in accordance with Clauses 4.2 and 4.3 above.
- 8.2. The Board of EUROSMART shall write to the IPR owner concerned for an explanation and request that licences be granted according to Clauses 4.2 and 4.3 above. Where the concerned IPR owner is a Member, it shall inform the Board of EUROSMART of its decision and provide a written explanation of its reasons in case of continuing refusal to license that IPR.
- 8.3. Where the IPR owner refuses the request of the Board of EUROSMART or does not answer the letter within three months, the Board of EUROSMART shall inform the General Assembly and, if available, provides the IPR owner's explanation for consideration.
- 8.4. A vote shall be taken in the Board to immediately refer the Specification to the relevant Committee to modify it so that the IPR is no longer Essential.
- 8.5. Where Clause 8.4 does not lead to a solution, then the Board shall see what further action may be appropriate, including nonrecognition of the Specification in question. In carrying out the foregoing procedure due account shall be taken of the interest of the enterprises that have invested in the implementation of the Specification in question.

9. Call for IPRs

- 9.1. Every meeting of any Committee of EUROSMART shall start with an oral "call for IPRs" by the Committee's chairman in order to remind the Members of their obligation to inform EUROSMART of Essential IPRs, including applications therefore, under Clause 3 of the IPR Policy.
- 9.2. If it becomes apparent that a Member or a third party IPR owner is not prepared to grant a license, the Committee's Chairman shall inform the Board of EUROSMART, which will take the appropriate action in accordance with Clauses 7 or 8 of the IPR Policy.

- 9.3. The Committee's Chairman shall record in the minutes of each meeting that a call for IPRs was issued and the responses that were received. For the avoidance of doubt, if there is no response, the absence of any response shall be recorded.

10. Copyrights

- 10.1. Any copyright or other related right vested in materials provided to EUROSMART under the activities covered by this IPR Policy, should remain the exclusive property of the Member who has provided such materials.
- 10.2. Any copyright or other related right in any EUROSMART Document or a Specification, written, created, designed or developed by a Member or any of its directors, officers or employees either individually or jointly within a Committee of EUROSMART or as a result of any work carried out on behalf of such Committee under this IPR Policy (the "Copyright") will belong to and automatically vest in EUROSMART.
- 10.3. Notwithstanding with Clause 10.2, the Member shall have the right to an irrevocable, non-exclusive, royalty free, worldwide licence in the Copyright under Clause 10.1 to use, reproduce and modify the EUROSMART Document or Specification for the purpose of implementing a Specification.
- 10.4. Notwithstanding Clauses 10.1 and 10.3, the Member shall not have the right to distribute, transmit, broadcast, communicate or make available the EUROSMART Document or Specification to parties other than its internal units or associates.
- 10.5. The copyright in all documents, literature and material owned by the Member which are not, or do not form part of, an EUROSMART Document or Specification and which are submitted by it to any Committee of EUROSMART or the Board shall remain vested in the Member and the following terms shall apply to such material:
- 10.5.1. EUROSMART shall have a non-exclusive, royalty-free licence to use (including the right to sub-license) such copyright material for the purposes of work carried out in the development of Specifications unless the Member notifies EUROSMART, at the time of submission, that the copyright material is not licensable to EUROSMART;
- 10.5.2. The Member shall grant a non-exclusive, royalty-free licence to all other Members of EUROSMART on request to use such copyright for the purposes of work carried out in the development of Specifications;
- 10.5.3. The Members agrees to mark all such documents, literature and material clearly with an appropriate copyright notice.
- 10.6. The Member will do all acts and execute all documents or instruments as are necessary to vest the Copyright in EUROSMART and in the meantime will hold all interest in the same in trust for EUROSMART.
- 10.7. The Member shall not denigrate the integrity of the Copyright by (but without limitation) either removing the copyright notice contained thereon, varying or removing its title, or using all or any part of it as part of a standard, technology or specification not emanating from EUROSMART and in any event it shall not publish nor disclose the Specification to any third party until the Specification is published by EUROSMART by posting the same on EUROSMART's website.

10.8. The Member will promptly notify EUROSMART of any threatened or actual infringement of the Copyright which comes to its notice and shall, at EUROSMART's request, do all such things as is reasonably necessary to assist in defending and enforcing EUROSMART's rights in the Copyright.

11. Ownership of IPR jointly created by Members within EUROSMART

- 11.1. Subject to Clauses 10.1 and 10.1, any IPR or Copyright created jointly by two or more Members of EUROSMART within a Committee of EUROSMART or as a result of any work carried out on behalf of such Committee shall be owned by such Members and licensed to the other Members in accordance with the provisions of Clauses 4.2 and 4.3, or 10.5.
- 11.2. Unless the Members owning such IPR or Copyright come to an agreement among themselves with respect to whether and how to accomplish filing or registration, ownership and allocation of rights and licensing of their jointly created IPR or Copyright, such Members shall make and share equally the cost, risks, and benefits of any applications for patent or other registration of the IPR or Copyright.
- 11.3. In case a joint owner refuses to accede to such a joint agreement or otherwise share the costs, risks, and benefits equally or reasonably assist in applying for a patent or other registration of the IPR or Copyright within 30 days of a written request to do so, the other owner(s) shall have the right to apply for a patent or other registration in its (their) name and account and shall own all rights to such registration.
- 11.4. A joint owner refusing to share the costs or to reasonably participate in applying for a patent shall execute all such documentation and assignments that are reasonably necessary for the other joint owner(s) to apply for a registration if any of the other owners request or require it.

12. Confidentiality

- 12.1. The proceedings of a Committee shall be regarded as non-confidential and all information submitted to a Committee shall be treated as if non-confidential and shall be available for public inspection, unless the information is cumulatively:
- in written or other tangible form;
 - identified in writing, when submitted, as confidential; and
 - first submitted to, and accepted by, the Committee's Chairman as confidential.
- 12.2. Confidential information incorporated in a Specification shall be regarded as non-confidential by EUROSMART and its Members, from the date on which the Specification is published.

13. Reproduction of Documentation

Members may make copies of documentation concerning Specifications produced by EUROSMART for their own use free of charge but may not distribute such copies to others.

14. Law and Regulation

- 14.1. The obligations contained in the IPR Policy will be construed and interpreted in accordance with Belgian law.

14.2. No Member shall be obliged by the IPR Policy to commit a breach of the laws or regulations of its country or to act against supranational laws or regulations applicable to its country insofar as derogation by agreement between parties is not permitted by such laws.

ANNEX 1 - IPR INFORMATION STATEMENT FORM

IPR Holder/Organisation (“Declarant”)

Legal Name: _____

Signatory

Name: _____

Title: _____

Functions: _____

Address: _____

Tel: _____

Email: _____

IPR information statement

In accordance with Clause 3.1 the EUROSMT IPR Policy, the Declarant hereby informs EUROSMT that it is the Declarant’s belief that the IPR(s) listed in the attached IPR Information Statement annex may be or may become Essential in relation to at least the EUROSMT Specification identified in the attached IPR Information Statement annex in its current form and status.

The Declarant [**is**] / [**is not**] (~~strikethrough what is not applicable~~) the proprietor of the IPR(s) disclosed in the attached IPR Information Statement

The construction, validity and performance of this statement shall be governed by the laws of Belgium.

Capitalized terms shall have the meaning provided in Clause 2 of the EUROSMT IPR Policy.

By signing this IPR Information Statement, you represent that you have the authority to bind the Declarant to the representations and commitments provided in this form.

Place, Date:

Signature:

Please return this form duly signed to: contact@EUROSMT.com

IPR Information Statement Annex

| Specification Name | Applicant / Holder | Application No. | Publication / Patent No. * | Patent/Application Title | Country of registration | Other members of this Patent Family, if any* | | |
|--------------------|--------------------|-----------------|----------------------------|--------------------------|-------------------------|--|---------------------------|--------------------------|
| | | | | | | Application No. | Publication / Patent No.* | Patent/Application Title |
| | | | | | | | | |
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* This information should only be provided voluntarily and when available.

ANNEX 2 - IPR LICENSING DECLARATION FORM

IPR Holder/Organisation (“Declarant”)

Legal Name: _____

Signatory

Name: _____
Title: _____
Functions: _____
Address: _____
Tel: _____
Email: _____

IPR licensing declaration

EUROSMART has been informed that the Declarant is the proprietor of the IPR(s) listed in the attached IPR Licensing Declaration annex and that these IPRs may be considered Essential with reference to at least the Specification identified in the attached IPR Licensing Declaration annex in its current form and status.

The Signatory hereby declares that the Declarant is either:

- Prepared to grant perpetual licences under the IPRs on terms and conditions which are in accordance with Clauses 4.1 and 4.2 of the EUROSMART IPR Policy, in respect of the Specification, to the extent that the IPRs remain Essential and that it is subject to the condition that those who seek licences agree to reciprocate same in respect of the Specification in accordance with Clause 4.8 of the EUROSMART IPR Policy, and
- Unwilling to license the specific IPR identified in the attached table which may be Essential IPR in respect of the Specification.

The construction, validity and performance of this statement shall be governed by the laws of Belgium.

Capitalized terms shall have the meaning provided in Clause 2 of the EUROSMART IPR Policy.

By signing this IPR Licensing Declaration form, you represent that you have the authority to bind the Declarant to the representations and commitments provided in this form.

Place, Date:

Signature:

Please return this form duly signed to: contact@EUROSMART.com

IPR Licensing Declaration Annex

| Specification Name | Applicant / Holder | Application No. | Publication/ Patent No.* | Patent/Application Title | Country of registration | Other members of this Patent Family, if any* | | |
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| | | | | | | Application No. | Publication / Patent No.* | Patent/Application Title |
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* This information should only be provided voluntarily and when available.