EU patent: translation arrangements

2010/0198(CNS) - 30/06/2010 - Legislative proposal

PURPOSE: to set out the translation arrangements of the EU patent.

PROPOSED ACT: Council Regulation.

BACKGROUND: patent protection is currently provided by national patents granted by Member States or by European patents granted by the European Patent Office (EPO) under the European Patent Convention (EPC). When a European patent is granted, it must be validated in Member States where protection is sought. For a European patent to be validated in a territory of a Member State, national law may require that the patent proprietor files a translation of the European patent into the official language of that Member State. In order to reduce the costs caused by validation requirements, in 2000 the EPC Contracting States adopted the "London Agreement" which is currently in force in ten EU Member States. The London Agreement is an optional scheme and therefore results in differences in the translation regimes in the EU Member States. Therefore, the current patent system in the EU, in particular in terms of translation requirements, involves very high costs and complexity. A European patent validated in 13 countries costs as much as 20 000 EUR, of which nearly 14 000 EUR arises from translations alone. This makes a European patent more than 10 times more expensive than a US patent costing about 1 850 EUR. The high costs in Europe would be considerably reduced with an EU patent having cost-effective, legally-secure and simplified translation arrangements.

Under this proposal, processing fees for the EU patent covering all 27 Member States would be less than 6 200 EUR, with only about 10% due to translations. By improving accessibility to patent protection, particularly for small and medium-sized enterprises (SMEs) and public research organisations, an affordable EU patent should be an important element in stimulating innovation and competitiveness in the EU.

In December 2009, the Council adopted conclusions on an "Enhanced patent system for Europe" and a general approach on the proposal for a Regulation on the EU Patent. The Council conclusions affirm the need for a Regulation to cover the translation arrangements, which should come into force together with the Regulation on the EU patent. Furthermore, in the Europe 2020 strategy the Commission, as part of the Flagship Initiative "Innovation Union", reaffirms its commitment to working towards the creation of a single EU patent.

IMPACT ASSESSMENT : the proposal is accompanied by an impact assessment which compares the economic impact of four options:

- **Option 1:** an EU patent system in English only;
- **Option 2:** an EU patent processed, granted and published in one of the three official languages of the European Patent Office with claims translated into the other two official languages;
- **Option 3**: an EU patent processed, granted and published as in option 2, but with claims translated into the other four most commonly spoken EU official languages; and
- **Option 4:** an EU patent processed, granted and published as in options 2 and 3, but with claims translated into all EU languages.

The analysis carried out in the impact assessment has demonstrated that **Option 2** is the preferable option as it maintains the linguistic regime of the well-functioning system of the EPO and implies only minimum translation costs.

LEGAL BASE: second paragraph of Article 118(2) of the Treaty on the Functioning of the EU.

CONTENT: the draft Regulation establishes the provisions on the translation arrangements applicable to a European Union patent.

The main provisions are as follows:

Publication of the EU patent specification: after the publication of the EU patent specification in accordance with Article 14, paragraph 6, of the Convention on the Grant of the European Patents of 5 October 1973, as amended ("EPC"), no further translations are required. The text of the EU patent in the official language of the European Patent Office referred to as the language of the proceedings in Article 14, paragraph 3, of the EPC shall be the authentic text.

Article 14(6) EPC provides that specifications of European patents are published in the language of the proceedings (one of the three EPO official languages in which the application for the patent has been filed – English, French or German) and includes translations of the claims in the other two official languages of the EPO. This minimum requirement established in the EPC will also apply to EU patents, but no further translations after the grant of the EU patent will be required.

This requirement is identical with the Commission's original proposal for a Community patent Regulation in August 2000 and builds on the existing system of official languages at the EPO and the use of languages by the majority of applicants. This solution is likely to have a positive impact on all users of the patent system in Europe by achieving a considerable reduction in translation costs.

Translation in case of a dispute: in the case of a dispute relating to an EU patent, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. In the case of a dispute relating to an EU patent, the patent proprietor shall provide at the request of the competent court in the EU in the course of legal proceedings, a full translation of the patent into the language of the proceedings of the court. The cost of the translation shall be borne by the patent proprietor.

Report on the implementation of this Regulation: within five years, the Commission shall present to the Council a report on the operation of the translation arrangements for the EU patent and where necessary make proposals for amending this Regulation.

FINANCIAL IMPLICATIONS : the proposal has no impact on the EU budget.