Enhanced cooperation in the area of the creation of unitary patent protection

2010/0384(NLE) - 11/02/2011 - Legislative proposal

PURPOSE: the authorisation of enhanced cooperation in the area of the creation of unitary patent protection.

PROPOSED ACT: Council Decision.

BACKGROUND: on **1 August 2000**, the Commission adopted a proposal for a Council Regulation on the Community patent. It proposed the creation of a unitary Community patent which would co-exist with national patents granted by national patent offices of the Member States and European patents granted under the European Patent Convention (EPC) by the European Patent Office (EPO).

On 30 June 2010, the Commission adopted a proposal for a Council Regulation on the translation arrangements for the European Union patent providing for the translation arrangements applicable to the European Union patent.

At the Council meeting on 10 November 2010, it was recorded that there was **no unanimity** to go ahead with the proposed Regulation on the translation arrangements. It was confirmed on 10 December 2010 that insurmountable difficulties existed, making unanimity impossible at the time and in the foreseeable future. Since the agreement on the proposed Regulation on the translation arrangements is necessary for a final agreement on unitary patent protection in the Union, it is established that the objective to create unitary patent protection for the Union could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

In these circumstances, **twelve Member States**, namely Denmark, Germany, Estonia, France, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Finland, Sweden and the United Kingdom, addressed requests to the Commission in December 2010 indicating that they wished to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection on the basis of the existing proposals supported by these Member States during the negotiations and that the Commission should submit a proposal to the Council to that end (*please refer to the previous initial legislative document dated 14/12/2010*).

In the meantime, **thirteen more Member States**, namely Belgium, Bulgaria, the Czech Republic, Ireland, Greece, Cyprus, Latvia, Hungary, Malta, Austria, Portugal, Romania and Slovakia have written to the Commission indicating that they also wish to participate in the envisaged enhanced cooperation. In total, twenty-five Member States have requested enhanced cooperation.

CONTENT: by this proposal, **25 Member States**: Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom are **authorised to establish enhanced cooperation** between themselves in the area of the creation of unitary patent protection, by applying the relevant provisions of the Treaties.

Enhanced cooperation should **provide the necessary legal framework for the creation of unitary patent protection in participating Member States** and ensure the possibility for undertakings throughout the Union to improve their competitiveness by having the choice of seeking uniform patent protection in participating Member States, as well as contributing to scientific and technological advance.

Enhanced cooperation should aim at creating a unitary patent, providing uniform protection throughout the territories of the participating Member States, which would be granted in respect of all those Member States by the European Patent Office (EPO). As a necessary part of the unitary patent, the applicable **translation arrangements** should be simple and cost-effective and correspond to those provided for in the proposal for a Council Regulation on the translation arrangements for the European Union patent, presented by the Commission on 30 June 2010, combined with the elements of compromise proposed by the Presidency in November 2010 that had wide support in Council.

The translation arrangements would maintain the possibility of filing patent applications in any language of the Union at the EPO, and would ensure compensation of the costs related to the translation of applications filed in languages other than an official language of the EPO.

The patent having unitary effect should be granted only in one of the official languages of the EPO as provided for in the Convention on the Grant of European Patents (European Patent Convention). No further translations would be required without prejudice to transitional arrangements which would be proportionate and require additional translations on a temporary basis, without legal effect and purely for information purposes.

In any case, transitional arrangements would terminate when high quality machine translations are made available, subject to an objective evaluation of their quality.

In case of a dispute, mandatory translation obligations should apply to the patent proprietor.