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

2010/0384(NLE) - 10/03/2011 - Final act

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

NON-LEGISLATIVE ACT: Council Decision 2011/167/EU authorising enhanced cooperation in the area of the creation of unitary patent protection.

CONTENT: the Council authorised the launch of an **enhanced cooperation among 25 EU Member States** for the creation of a unitary patent title.

The use of an enhanced cooperation has been requested by 25 out of 27 Member States with the aim of establishing a single patent that will be valid across the territory of the participating Member States. All Member States except Italy and Spain are in favour of using enhanced cooperation. The main obstacle to agreeing by unanimity on the creation of an EU patent is the number of languages in which the future unitary patent will be valid, hence the recourse to enhanced cooperation.

Enhanced cooperation provides the necessary **legal framework** for the creation of unitary patent protection in participating Member States and ensures 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.

The aim of enhanced cooperation is to create 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).

The translation arrangements to be applied 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** (English, French, and German) 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.

The possibility of obtaining unitary patent protection on the territories of the Member States participating **does not affect the availability or the conditions of patent protection on the territories of non-participating Member States.** Moreover, undertakings from non-participating Member States will be able to obtain unitary patent protection on the territories of the participating Member States under the same conditions as undertakings from participating Member States.

ENTRY INTO FORCE: 22/03/2011.