Enhanced cooperation in the area of the creation of unitary patent protection: implementation; translation arrangements

2011/0094(CNS) - 13/04/2011 - Legislative proposal

PURPOSE: to implement enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

PROPOSED ACT: Council Regulation.

BACKGROUND: the current patent system in the EU, in particular in terms of translation requirements, involves very high costs and complexity. The overall cost of validation of an average European patent reaches 12 500 EUR if validated only in 13 Member States and over 32 000 EUR if validated in the whole EU. It is estimated that the actual validation costs are around 193 million EUR per year in the EU.

Despite of broad recognition of the competitive disadvantage European business faces in the absence of unitary patent protection, the Union has not been able to establish unitary patent protection.

The Commission first proposed a Council Regulation on the Community patentin August 2000. On 30 June 2010 the Commission adopted a proposal for a Council Regulation on the translation arrangements for the EU patent.

It was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed, making a decision requiring unanimity impossible now and in the foreseeable future.

25 Member States then asked for recourse enhanced cooperation in the area of unitary patent protection (all Member States except Italy and Spain) in the area of the creation of unitary patent protection.

The proposal for the authorising decision was adopted by the Council, after obtaining the consent of the European Parliament, on 10 March 2011. The present regulation implements the enhanced cooperation in the area of the creation of unitary patent protection as authorised by Council Decision 2011/167/EU..

IMPACT ASSESSMENT : the proposal is accompanied by an impact assessment which analyses the impacts of the following options:

Option 1 **(base-line scenario):** the Commission takes no action;

Option 2**:** the Commission continues to work with the other institutions towards an EU patent covering 27 Member States;

Option 3**:** the Commission presents proposals for regulations implementing enhanced cooperation:

- **Sub-option 3.1** - the Commission proposes translation arrangements applicable in the area of unitary patent protection that correspond to its proposal of 30 June 2010, or
- Sub-option 3.2 – the Commission proposes translation arrangements applicable in the area of unitary patent protection based on its proposal of 30 June 2010 and incorporating elements of a compromise proposal discussed by the Council.

The analysis carried out in the impact assessment has demonstrated that **option 3 with sub-option 3.2 is the preferred option**.

LEGAL BASIS: Article 118(2) of the Treaty on the Functioning of the EU provides for a specific legal basis to establish language arrangements applicable to European intellectual property rights providing uniform protection throughout the Union by means of regulations adopted by a special legislative procedure with the Council acting unanimously after consulting the European Parliament.

CONTENT: the proposal aims to implement the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision No 2011/167/EU with regard to the applicable translation arrangements. The main provisions are as follows :

Translation arrangements for the European patent with unitary effect: the proposal provides that where the specification of a European patent with unitary effect has been published, no further translations are required. The EPC provides that the specification of a European patent is published in the language of the proceedings before the European Patent Office (EPO) and includes a translation of the claims into the other two official languages of the EPO. Further translations are only requested in case of a dispute and during a transitional period as stated in the Regulation. A request for unitary effect is to be submitted in the language of the proceedings.

Translation in the case of a dispute: in the case of a dispute concerning a European patent with unitary effect, the patent proprietor provides a full translation of the patent into an official language of the participating Member State in which e ither the alleged infringement took place or in which the alleged infringer is domiciled. The patent proprietor would also be required to provide, at the request of the court competent in the territories of the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language of proceedings of that court. Such translations would be provided at the expense of the patent proprietor.

In the case of a dispute concerning a claim for damages the court hearing the dispute would take into consideration that, before having been provided with a translation in his own language, the alleged infringer may have acted in good faith and may have not known or had reasonable grounds to know that he was infringing the patent.

Administration of a compensation scheme: the proposal provides that the administration of a compensation scheme for applicants filing patent applications in one of the official languages of the Union that is not an official language of the EPO is entrusted by the participating Member States to the European Patent Office.

Transitional measures: the text provides for transitional measures to be applied during a certain period, before a system of high quality machine translations into all official languages of the Union becomes available.

Therefore, during a transitional period, a request for unitary effect as referred to in the Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection shall be accompanied by the following: (i) a full translation of the specification of such patent into English where the language of the proceedings before the EPO of the EPC is French or German; or (ii) a full translation of the specification of such patent into any official language of the participating Member States that is an official language of the Union where the language of the proceedings before the EPO is English.

The transitional period should terminate as soon as high quality machine translations into all official languages of the Union are available. The quality of machine translations should be regularly

and objectively evaluated by an independent expert committee established by the participating Member States in the framework of the European Patent Organisation and composed of representatives of the European Patent Office and users of the European patent system.

It is considered that the machine translations into all official languages of the Union should be developed within **12 years** at the latest. Therefore, if the transitional period is not terminated by the Council on the basis of the proposal of the Commission, it should automatically lapse 12 years after this Regulation becomes applicable.

BUDGETARY IMPLICATIONS: the proposal has no impact on the Union budget.