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

2011/0094(CNS) - 09/01/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted, in the framework of a special legislative procedure, the report drafted by Raffaele BALDASSARRE (EPP, IT) on the for a Council regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

It recommends that the European Parliament amend the Commission proposal as follows:

Purpose: the amendments stipulate that:

- the Regulation regulates the translation arrangements applicable to European patents to the extent that they have unitary effect;
- it is without prejudice to the rules governing the languages of the institutions of the Union established in accordance with Article 342 of the Treaty on the Functioning of the European Union and to Council Regulation 1/1958;
- it is based on the **linguistic regime of the European Patent Office** and should not be regarded as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.

Translation arrangements for the European patent with unitary effect: once available, the machine translations of patent applications and specifications into all languages of the Union shall be made available online and free of charge on publication of the patent application and of the granted patent.

After the end of the transitional period referred to in the Regulation, the participating Member States shall, pursuant to Article 143 of the EPC, give the European Patent Office the task of publishing an additional full translation of the specification into English, if such additional translation has been provided voluntarily by the applicant. Such translation shall not be carried out by automated means.

Disputes: in the case of a dispute relating to a European patent with unitary effect, 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 participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. Such translation **shall not be carried out by automated means.**

In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration whether, especially if it is a **small or medium-sized enterprise**, a natural person, a non-profit organisation, a university or a public research organisation, the alleged infringer has acted without knowing or having reasonable grounds to know that he was infringing the patent.

Compensation scheme: the compensation scheme referred to in the Regulation shall be funded through the fees referred to in Regulation on substantive provisions and shall be available only for small and medium-sized enterprises, natural persons, non profit organisations, universities and public research organisations having their residence or principal place of business within a Member State of the Union.

The compensation scheme shall ensure **full reimbursement of the translation costs up to a ceiling** set in such a way as to reflect the average market price for translations and to avoid abuse.

Entry into force: the Regulation shall apply from **1 January 2014** or from the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.