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

2011/0093(COD) - 17/12/2012 - Final act

PURPOSE: the creation of unitary patent protection.

LEGISLATIVE ACT: Regulation (EU) No 1257/2012 of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection.

CONTENT: this Regulation aims to implement enhanced cooperation in the area of the creation of unitary patent protection. The other Regulation concerns the applicable translation arrangements.

BACKGROUND: on 10 March 2011, the Council adopted Decision 2011/167/EU authorising enhanced cooperation between 25 countries - 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 ("participating Member States") in the area of the creation of unitary patent protection. On 15 February, the European Parliament approved the establishment of enhanced cooperation. The main obstacle to the creation of unitary patent protection valid in 27 Member States is the lack of unanimity on the choice of the language regime.

The main elements of this Regulation on unitary patent protection are as follows:

Treating a European patent with unitary effect as a national patent: a European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect

Uniform protection: the European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect. The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.

Uniform patent protection will be available to proprietors of a European patent from both the participating Member States and from other States, regardless of their nationality, residence or place of establishment.

Administrative tasks in the framework of the European Patent Organisation (EPO): the EPO has the task of granting European patents valid in the 25 participating States. Furthermore, the participating Member States shall give the EPO certain tasks, particularly: (i) to administer requests for unitary effect by proprietors of European patents; (ii) to administer the Register for unitary patent protection; (iii) to receive and register statements on licensing; (iv) publish translations; (v) to collect and administer renewal fees; (vi) to administer the compensation scheme for the reimbursement of translation costs.

As requested by the European Parliament, participating Member States shall ensure compliance with the Regulation in fulfilling their international obligations undertaken in the Convention on the Grant of European Patents (EPC) and shall cooperate to that end. They must also set the annual renewal fee and the setting of the share of distribution of the renewal fees in accordance with the Regulation.

Renewal fees: patent proprietors should pay a single annual renewal fee to the EPO for a European patent with unitary effect. At the request of Parliament, the level of the renewal fees should be set with the aim of

facilitating innovation and fostering the competitiveness of European businesses, taking into account the situation of specific entities such as small and medium-sized enterprises, for example in the form of lower fees.

The Regulation lays down that the EPO shall retain 50% of the renewal fees paid for European patents with unitary effect. The remaining amount shall be distributed to the participating Member States, and the share of distribution of renewal fees among the participating Member States shall be based on fair, equitable and relevant criteria. These include the size of the market, while ensuring a minimum amount to be distributed to each participating Member State.

Report: not later than three years from the date on which the first European patent with unitary effect takes effect, and every five years thereafter, the Commission shall present a report on the operation of the Regulation and, where necessary, make appropriate proposals for amending it. It shall also submit regular reports on the functioning of the renewal fees.

ENTRY INTO FORCE: 20/01/2013.

APPLICATION: from 01/01/2014 or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.