Protection of utility models in the single market. Green paper

1995/2225(COS) - 27/03/1996 - Economic and Social Committee: opinion, report

The Committee makes the following recommendations: - a further preventative analysis of protection systems complementary to the patent, to be described as "utility models" (UM), together with a more complete integration of available assessment data; special regard to be paid in this connection to weaknesses in the EU patent system, which is still seriously incomplete and disparate compared to its main competitors, the USA and Japan; - a guarantee, in case of future proposals for harmonizing the various national UM complementary protection systems, not only of measures for the harmonization of substantive laws, but also for procedures and timescales for obtaining and enforcing UMs; - the greatest attention to the need to provide firms - particularly SMEs - and research workers with a cheap, quick and easy assessment and enforcement method, i.e. one which excludes substances and processes from eligibility for protection; - a consistent, comprehensive approach to the whole range of instruments for the protection of industrial and intellectual property; any future harmonization measures for the UM should also take account of harmonization already carried out or planned for analogous protection rights; - a guarantee of eligibility for UMs for innovations which satisfy the following requirements: a) "absolute novelty"; b) "possibility of application in the industrial field"; c) "inventive step" (Art. 56 of the Convention on the European Patent) or which have a practical industrial advantage over the previous state of the art; - assurance that the scope of protection must emerge clearly from a limited number of "claims" and that the search for earlier "state of the art" be optional in general, and compulsory for those wishing to enforce MU rights vis-à-vis a third party; - investigation into the feasibility of active assistance and advice in respect of national UM deposit and registration procedures being provided for firms - particularly SMEs - by a central Community or European agency; and investigation of the scope for application of computer digital language to the European patent system; - deferral of any measures for mutual recognition until substantive and interpretative harmonization has taken place; - a feasibility study on creation of a Community UM covering the whole of Europe, but only when the above-mentioned harmonization and mutual recognition are in place, and following a thorough examination of the uniformity of practical implementation, and of the ways in which digital language might be exploited in the European patent system.