Community patent: jurisdiction on the Court of Justice in disputes

2003/0326(CNS) - 23/12/2003 - Legislative proposal

PURPOSE : to confer jurisdiction on the European court of Justice in disputes relating to the Community patent. PROPOSED ACT : Council Decision. CONTENT : this proposal is part of the overall project to establish the Community patent system. The European Patent Office will be empowered to grant Community patents which will confer rights on their holders according to the Regulation of the Council on the Community patent. Disputes concerning the infringement and the validity of these rights shall, after a transitional period, be brought before a Community jurisdiction. These measures will reform the system of patent protection in Europe. National patent titles have hitherto been enforced before national courts. The measures are designed to increase the competitiveness of the Union's innovative industries by creating a Community-wide uniform patent protection which can be enforced before a single Community jurisdiction rendering decisions with Community-wide effect. Within this overall project, the Community patent jurisdiction will be created by two Council decisions. The Commission presented a separate proposal for the establishment of a Community Patent Court and concerning appeals before the Court of First Instance. (The legal bases are Articles 225a and 245 of the Treaty.) The objective of the present proposal is to confer jurisdiction relating to the Community patent on the Court of Justice which then will be exercised at first instance by the newly established Community Patent Court and by the Court of First Instance on appeal. The legal base is Article 229a of the Treaty. The draft Decision provides that the Court of Justice will have jurisdiction over the following: - infringement or validity of a Community patent and a Community supplementary protection certificate; - the use of the invention after the publication of the Community patent application or the right based on prior use of the invention; - interim and evidence-protection measures in connection with the subject matters conferred; - damages or compensation in the circumstances set out in the above points; - the ordering of a penalty payment in case of non-compliance with a decision or order constituting an obligation to act or to abstain from an act. The Court of Justice will not have jurisdiction over those disputes of which a national court is already seised on the date at which the Decision enters into force. FINANCIAL IMPLICATIONS : this proposal does not contain any figures on the financial implications of the Community patent jurisdiction The parallel proposals for the establishment of the Community Patent Court and concerning appeals before the Court of First Instance will have budgetary consequences, involving human resources and other administrative expenditures. Judges, the registrar, assistant rapporteurs and other staff have to be appointed, court rooms, office space and equipment must be provided for. The present proposal, however, exclusively deals with the conferral of jurisdiction on the Court of Justice and does not itself engage the budget of the Community. It will only enter into force once the court system has been set up, i.e. onthe date of the publication of the ruling of the President of the Court of Justice that the Community Patent Court and the patent appeal chamber of the Court of First Instance have been constituted in accordance with law. Consequently, the detailed figures are contained in the legislative financial statement in the annex to the Commission proposal for the establishment of the Community Patent Court and concerning appeals before the Court of First Instance.