Basic information

2003/0326(CNS) CNS - Consultation procedure Decision	Procedure lapsed or withdrawn
Community patent: jurisdiction on the Court of Justice in disputes **Subject** 3.50.16 Industrial property, European patent, Community patent, design and pattern 8.40.04 Court of Justice, Court of First Instance	

Key players

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Competitiveness (Internal Market, Industry, Research and Space)	3074	2011-03-09
	Competitiveness (Internal Market, Industry, Research and Space)	2982	2009-12-03
European Commission	**Commission DG**	**Commissioner**	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	

Key events

Date	Event	Reference	Summary
23/12/2003	Legislative proposal published	COM(2003)0827	Summary
09/02/2004	Committee referral announced in Parliament		
16/09/2004	Committee referral announced in Parliament		
19/10/2009	Resumption of business from the previous parliamentary term		
03/12/2009	Resolution/conclusions adopted by Council		Summary
26/04/2012	Proposal withdrawn by Commission		Summary

Technical information

Procedure reference	2003/0326(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the European Union TFEU 262
Stage reached in procedure	Procedure lapsed or withdrawn

Committee dossier	JURI/7/00059 JURI/5/20554

Documentation gateway				
European Commission				
Document type		**Reference**	**Date**	**Summary**
Legislative proposal		COM(2003)0827	23/12/2003	Summary
Other institutions and bodies				
Institution/body	**Document type**	**Reference**	**Date**	**Summary**
EESC	Economic and Social Committee: opinion, report	CES0267/2004 OJ C 112 30.04.2004, p. 0081-0082	31/03/2004	
EESC	Economic and Social Committee: opinion, report	CES0522/2004	31/03/2004	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Community patent: jurisdiction on the Court of Justice in disputes

2003/0326(CNS) - 03/12/2009

The Council held a debate on an enhanced patent system in Europe and adopted **conclusions** on the main features of the future patent system based on two main pillars comprising:

- **the creation of a unified patent litigation system** that would have exclusive jurisdiction in respect of civil litigation related to the infringements and validity of EU and European patents, and would consist of a court of first instance (with a central division and local and regional divisions), and a court of appeal;
- **the creation of an EU patent as a unitary legal instrument for granting patents valid in the EU as a whole**. In a public session the Council also agreed on a general approach (i.e. an agreement in principle pending the opinion of the European Parliament) on a draft regulation establishing the EU patent.

Recalling that enhancing the patent system in Europe is a necessary prerequisite for boosting growth through innovation and for helping European business, in particular SMEs, face the economic crisis and international competition, the Council considers that such an enhanced patent system is a vital element of the Internal Market and that it should be based on two pillars, i.e. the creation of a European Union patent ("EU patent") and the setting up of an integrated specialised and unified jurisdiction for patent related disputes thus improving the enforcement of patents and enhancing legal certainty.

The Council conclusions concern the main features of the **European and EU Patents Court**. This should have exclusive jurisdiction in respect of civil litigation related to the infringement and validity of EU patents and European patents. The EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions. The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.

The Council considers that these conclusions should form part of the overall final agreement on a package of measures for an Enhanced Patent System in Europe comprising the creation of a European and EU Patents Court (EEUPC), an EU patent, including the separate regulation on the translation arrangements, an Enhanced Partnership between the European Patent Office and central industrial property offices of Member States and, to the extent necessary, amendments to the European Patent Convention.

These conclusions stress that the following conclusions are without prejudice to the request for an opinion of the European Court of Justice as well as to Member States' individual written submissions and are conditional on the opinion of the European Court of Justice. It stresses that that the system here envisaged should be established with due regard to the constitutional provisions of the Member States and is without prejudice to the request for an opinion of the European Court of Justice. It states that the establishment of the EEUPC would be based on an agreement, the ratification of which by the Member States would have to take place in full compliance with their respective constitutional requirements.

The Council recognises that some Member States have fundamental legal concerns concerning the creation of the EEUPC and its envisaged overall architecture as reflected in these conclusions, which would have to be revisited in the light of the opinion of the European Court of Justice.

The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.

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.

Community patent: jurisdiction on the Court of Justice in disputes

2003/0326(CNS) - 09/03/2011

The Council was informed by the Presidency that the Court of Justice of the EU had issued its Opinion 1/09 on a draft Treaty for the creation of a unified court for disputes related to European and EU patents. This Opinion, delivered on 8 March 2011, follows a Council request to the EU Court of Justice on the compatibility of the system with EU law made on 25 June 2009.