Basic information

2010/0384(NLE) NLE - Non-legislative enactments Decision	Procedure completed
Enhanced cooperation in the area of the creation of unitary patent protection See also 2011/0093(COD) See also 2011/0094(CNS) **Subject** 3.50.16 Industrial property, European patent, Community patent, design and pattern	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	LEHNE Klaus-Heiner (PPE)	15/12/2010

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3074	2011-03-09
Education, Youth, Culture and Sport	3066	2011-02-14

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
14/12/2010	Preparatory document	COM(2010)0790	Summary
27/01/2011	Vote in committee		Summary
02/02/2011	Committee report tabled for plenary, 1st reading/single reading	A7-0021/2011	
11/02/2011	Legislative proposal published	05538/2011	Summary
14/02/2011	Committee referral announced in Parliament		
14/02/2011	Debate in Parliament		
15/02/2011	Decision by Parliament	T7-0054/2011	Summary

15/02/2011	Results of vote in Parliament		
09/03/2011	Act adopted by Council after consultation of Parliament		Summary
09/03/2011	End of procedure in Parliament		
22/03/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0384(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Amendments and repeals	See also 2011/0093(COD) See also 2011/0094(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 329-p1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/04915

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE456.645	11/01/2011	
Amendments tabled in committee		PE456.861	21/01/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0021/2011	02/02/2011	
Text adopted by Parliament, 1st reading/single reading		T7-0054/2011	15/02/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	05538/2011	11/02/2011	Summary

European Commission

Document type	Reference	Date	Summary
Preparatory document	COM(2010)0790	14/12/2010	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary

Contribution	PT_PARLIAMENT	COM(2010)0790	03/03/2011	
Contribution	IT_SENATE	COM(2010)0790	14/03/2011	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Decision 2011/0167 OJ L 076 22.03.2011, p. 0053	Summary

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

2010/0384(NLE) - 14/02/2011

The Council decided to **request the consent of the European Parliament** to a draft decision aimed at authorising enhanced cooperation with a view to creating a unitary patent protection system in the EU.

In accordance with **article 329(1)** of the Lisbon Treaty (TFEU), the consent of the Parliament is necessary prior to the Council's authorisation to launch enhanced cooperation between several Member States.

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

2010/0384(NLE) - 14/12/2010 - Preparatory document

PURPOSE: the authorisation of enhanced cooperation in the area of the creation of unitary patent protection.

PROPOSED ACT: Council Decision.

BACKGROUND: on **1 August 2000**, the Commission adopted a proposal for a Council Regulation on the Community patent. It proposed the creation of a unitary Community patent which would co-exist with national patents granted by national patent offices of the Member States and European patents granted under the European Patent Convention (EPC) by the European Patent Office (EPO). The proposal was extensively discussed in the meetings of the Council, but failed to reach the required unanimity in particular because of the language arrangements.

On **3 March 2003**, the Council adopted a **common political approach** on the Community patent. This provided that patent proprietors would have to supply translations of the claims into all the official languages of the Member States. This arrangement was rejected by all users of the patent system as too costly and too risky. The Council concluded that due to the issue of the translation regime it was unable to reach a political agreement on the proposed Regulation on the Community Patent.

Discussions in the Council were re-launched after adoption of the Commission Communication "Enhancing the patent system in Europe" in **April 2007**.

In **December 2009**, the Council adopted conclusions on an "Enhanced patent system for Europe" and a general approach on the proposal for a Regulation on the EU Patent. However, the translation arrangements for the EU patent remained out of the scope of these Council conclusions due to the change of the legal basis for the creation of the EU patent under the Lisbon Treaty.

On this basis, on **30 June 2010,** the Commission adopted a proposal for a Council Regulation on the translation arrangements for the EU patent without obtaining the required unanimity of the Council of Ministers of the EU.

On **10 December 2010**, the Council that insurmountable difficulties existed, making a decision requiring unanimity impossible now and in the foreseeable future. It follows that the objectives of the proposed Regulations to establish unitary patent protection in the entire European Union can not be attained within a reasonable period by applying the relevant provisions of the Treaties.

Twelve Member States (Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom) have addressed formal requests to the Commission indicating that they wish to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection and that the Commission should submit a proposal to the Council to that end.

This proposal is the Commission's response to those requests.

ASSESSMENT OF THE LEGAL CONDITIONS FOR ENHANCED COOPERATION: the current national patent systems of Member States and the European patent system only provide territorially-limited protection. This resulted in ‘gaps’ that gave rise to the following undesirable effects: i) lost business opportunities; ii) innovative firms are at a disadvantage; iii) the value of patents is weakened, given that patent holders cannot count on Regulation (EC) No 1383/2003 (the EU Customs Border Regulation) to prevent infringing goods and products from third countries from entering the internal market through Member States in which there is no patent protection.

The creation of a unitary patent title for a group of Member States would entail **immediate tangible advantages** for users of the patent system in Europe:

- **improved access to patent protection**: the unitary patent for the area covered by enhanced cooperation would ensure easier access to patent protection for all users of the patent system in Europe both for applicants from participating Member States and from non-participating Member States. The area for enhanced cooperation would cover a market that is much larger than any market of a single Member State, resulting in reduced costs of protection relative to the size of the economy.
- **cost reduction and simplification**: unitary patent protection created under enhanced cooperation would result in significant cost reduction and simplification of the system for the users due to the central administration of the unitary patent and the simplified translation requirements. Today, the validation costs would be more than EUR 12 000 when protection in thirteen selected Member States is sought, Union-wide coverage would cost between EUR 22 000 to EUR 26 000 in validation costs. The translation costs under the simplified translation arrangements of enhanced cooperation would amount to approximately **EUR 680 per patent**.

LEGAL BASE: enhanced cooperation is regulated by Article 20 of the Treaty on European Union (TEU) and Articles 326 to 334 of the Treaty on the Functioning of the European Union (TFEU). This proposal is based on Article 329(1) TFEU.

CONTENT: following the request of the twelve Member States, the purpose of this proposal is to authorise enhanced cooperation in the area of the creation of unitary patent protection. Once this enhanced cooperation has been authorised by the Council, specific measures will be proposed for its implementation.

It is, however, appropriate to outline some key elements of the envisaged implementing measures. Since the creation of unitary patent protection is not possible without an agreement on the applicable translation arrangements, both the substantive provisions applicable to the unitary patent and the translation arrangements should be part of the envisaged implementing measures.

The **envisaged implementing measures** should, therefore, include the following elements:

1) a proposal for a Regulation of the European Parliament and the Council creating unitary patent protection. That proposal could be based on the text agreed (general approach) in the Council in December 2009, as well as certain elements of the draft political orientation proposed by the Belgian Presidency, in particular:

- the unitary patent protection should be **optional** to the users of the patent system and should co-exist with national and European patents. The unitary patent should be a specific category of a European patent, granted by the European Patent Office, designating the Member States participating in enhanced cooperation on unitary basis;
- consequently, a **single procedure in accordance with the EPC would apply to unitary patents and to all other European patents**. Until the moment of grant, applicants would have the choice between i) a European patent valid in the territories of the participating Member States for which this patent would have unitary character, ii) a European patent valid in the territories of the participating Member States for which this patent would have unitary character but also designating selected other Contracting States of the EPC, or iii) a European patent designating only selected Contracting States of the EPC;
- the unitary patent should be of **autonomous nature** and provide equal protection throughout the territories of the participating Member States. It may only be granted, transferred, revoked or may lapse in respect of those territories as a whole.

2) a proposal for a Council Regulation on the translation arrangements for the unitary patent. This proposal would take over the main elements of the Commission's proposal for a Council Regulation on the translation arrangements for the EU patent, as well as certain elements of the draft political orientation proposed by the Belgian Presidency, in particular:

- it is envisaged that the **specification** of the unitary patent be published by the EPO in accordance with Article 14(6) EPC. Without prejudice to any transitional arrangements deemed necessary, no further translations would be required. Any additional translation requirements under such transitional arrangements would be proportionate and required only on a temporary basis and not have legal value thus ensuring legal certainty for the users of the patent system. In any case, transitional arrangements would terminate when high quality machine translations are made available, subject to an objective evaluation of the quality;
- **translations should not have legal value**, thus ensuring legal certainty for the users of the patent system;
- **in case of a dispute** relating to a unitary patent, a full manual translation of the patent specification would have to be provided by the patent proprietor at his expense a) into an official language of the Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled (at the choice of the alleged infringer); and b) into the language of proceedings of the court hearing the dispute (at the request of the court).

3) a scheme for compensating the costs of translating patent applications filed in an official language of the Union into an official language of the EPO at the beginning of the procedure for applicants based in the Member States which have an official language other than one of the official languages of the EPO, should be set up in addition to what is currently in place for other European patents, **including financial and technical assistance** for preparing those translations.

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

2010/0384(NLE) - 09/03/2011

The Council authorised the launch of enhanced cooperation among EU Member States for the creation of a unitary patent title. The use of enhanced cooperation has been requested by 25 out of 27 Member States with the aim of establishing a single patent that will be valid across the territory of participating Member States. The European Parliament has given its consent to the use of this procedure on 15 February 2011.

All Member States except Italy and Spain are in favour of the use of enhanced cooperation. The main obstacle to unanimity on the creation of an EU patent is the number of languages in which the future unitary patent will be valid. Hence the recourse to enhanced cooperation.

The language regime for the future unitary patent system would be based on the language regime of the European Patent Office (EPO), where the official languages are English, French and German.

The existing European patent requires validation of the grant separately in each and every EPO Member State Member State as well a full translation of the patent in the official language of that Member State. The future unitary patent will automatically be valid throughout the territory of the Member States participating in the enhanced cooperation in the (EPO) languages in which it has been granted.

Enhanced cooperation would remain open to non-participating countries, and access to the unitary patent on the territory of participating Member State would also be available to businesses from non-participating Member States.

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

2010/0384(NLE) - 11/02/2011 - Legislative proposal

PURPOSE: the authorisation of enhanced cooperation in the area of the creation of unitary patent protection.

PROPOSED ACT: Council Decision.

BACKGROUND: on **1 August 2000**, the Commission adopted a proposal for a Council Regulation on the Community patent. It proposed the creation of a unitary Community patent which would co-exist with national patents granted by national patent offices of the Member States and European patents granted under the European Patent Convention (EPC) by the European Patent Office (EPO).

On 30 June 2010, the Commission adopted a proposal for a Council Regulation on the translation arrangements for the European Union patent providing for the translation arrangements applicable to the European Union patent.

At the Council meeting on 10 November 2010, it was recorded that there was **no unanimity** to go ahead with the proposed Regulation on the translation arrangements. It was confirmed on 10 December 2010 that insurmountable difficulties existed, making unanimity impossible at the time and in the foreseeable future. Since the agreement on the proposed Regulation on the translation arrangements is necessary for a final agreement on unitary patent protection in the Union, it is established that the objective to create unitary patent protection for the Union could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

In these circumstances, **twelve Member States**, namely Denmark, Germany, Estonia, France, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Finland, Sweden and the United Kingdom, addressed requests to the Commission in December 2010 indicating that they wished to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection on the basis of the existing proposals supported by these Member States during the negotiations and that the Commission should submit a proposal to the Council to that end (*please refer to the previous initial legislative document dated 14/12/2010*).

In the meantime, **thirteen more Member States**, namely Belgium, Bulgaria, the Czech Republic, Ireland, Greece, Cyprus, Latvia, Hungary, Malta, Austria, Portugal, Romania and Slovakia have written to the Commission indicating that they also wish to participate in the envisaged enhanced cooperation. In total, twenty-five Member States have requested enhanced cooperation.

CONTENT: by this proposal, **25 Member States**: 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 are **authorised to establish enhanced cooperation** between themselves in the area of the creation of unitary patent protection, by applying the relevant provisions of the Treaties.

Enhanced cooperation should **provide the necessary legal framework for the creation of unitary patent protection in participating Member States** and ensure the possibility for undertakings throughout the Union to improve their competitiveness by having the choice of seeking uniform patent protection in participating Member States, as well as contributing to scientific and technological advance.

Enhanced cooperation should aim at creating a unitary patent, providing uniform protection throughout the territories of the participating Member States, which would be granted in respect of all those Member States by the European Patent Office (EPO). As a necessary part of the unitary patent, the applicable **translation arrangements** should be simple and cost-effective and correspond to those provided for in the proposal for a Council Regulation on the translation arrangements for the European Union patent, presented by the Commission on 30 June 2010, combined with the elements of compromise proposed by the Presidency in November 2010 that had wide support in Council.

The translation arrangements would maintain the possibility of filing patent applications in any language of the Union at the EPO, and would ensure compensation of the costs related to the translation of applications filed in languages other than an official language of the EPO.

The patent having unitary effect should be granted only in one of the official languages of the EPO as provided for in the Convention on the Grant of European Patents (European Patent Convention). No further translations would be required without prejudice to transitional arrangements which would be proportionate and require additional translations on a temporary basis, without legal effect and purely for information purposes.

In any case, transitional arrangements would terminate when high quality machine translations are made available, subject to an objective evaluation of their quality.

In case of a dispute, mandatory translation obligations should apply to the patent proprietor.

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

2010/0384(NLE) - 10/03/2011 - Final act

PURPOSE: to authorise enhanced cooperation in the area of the creation of unitary patent protection.

NON-LEGISLATIVE ACT: Council Decision 2011/167/EU authorising enhanced cooperation in the area of the creation of unitary patent protection.

CONTENT: the Council authorised the launch of an **enhanced cooperation among 25 EU Member States** for the creation of a unitary patent title.

The use of an enhanced cooperation has been requested by 25 out of 27 Member States with the aim of establishing a single patent that will be valid across the territory of the participating Member States. All Member States except Italy and Spain are in favour of using enhanced cooperation. The main obstacle to agreeing by unanimity on the creation of an EU patent is the number of languages in which the future unitary patent will be valid, hence the recourse to enhanced cooperation.

Enhanced cooperation provides the necessary **legal framework** for the creation of unitary patent protection in participating Member States and ensures the possibility for undertakings throughout the Union to improve their competitiveness by having the choice of seeking uniform patent protection in participating Member States, as well as contributing to scientific and technological advance.

The aim of enhanced cooperation is to create a unitary patent, providing **uniform protection throughout the territories of the participating Member States,** which would be granted in respect of all those Member States by the European Patent Office (EPO).

The translation arrangements to be applied should be simple and cost-effective and correspond to those provided for in the proposal for a Council Regulation on the translation arrangements for the European Union patent, presented by the Commission on 30 June 2010, combined with the elements of compromise proposed by the Presidency in November 2010 that had wide support in Council. The translation arrangements would maintain the possibility of filing patent applications in any language of the Union at the EPO, and would ensure compensation of the costs related to the translation of applications filed in languages other than an official language of the EPO.

The patent having unitary effect should be granted only in **one of the official languages of the EPO** (English, French, and German) as provided for in the Convention on the Grant of European Patents (European Patent Convention). No further translations would be required without prejudice to transitional arrangements which would be proportionate and require additional translations on a temporary basis, without legal effect and purely for information purposes.

The possibility of obtaining unitary patent protection on the territories of the Member States participating **does not affect the availability or the conditions of patent protection on the territories of non-participating Member States.** Moreover, undertakings from non-participating Member States will be able to obtain unitary patent protection on the territories of the participating Member States under the same conditions as undertakings from participating Member States.

ENTRY INTO FORCE: 22/03/2011.

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

2010/0384(NLE) - 15/02/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 471 votes to 160, with 42 abstentions, a legislative resolution on the draft Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection.

Parliament **gives its consent** to the draft Council decision, without prejudice to which are the participating Member States. It calls on the Council to adopt a decision pursuant to Article 333(2) of the Treaty on the Functioning of the European Union (TFEU) stipulating that, when it comes to the proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with respect to language arrangements for the European intellectual property rights pursuant to the second paragraph of Article 118 of the Treaty on the Functioning of the European Union, it will act under the **ordinary legislative procedure**.

The resolution underlines the creation of unitary patent protection for a group of Member States would improve the level of patent protection by making it possible to obtain uniform patent protection throughout the territories of the participating Member States and would eliminate the costs and complexity for those territories, thus fostering scientific and technological advances and the functioning of the internal market.

The Parliament considers that enhanced cooperation will facilitate the proper functioning of the internal market by: (i) eliminating obstacles to the free movement of goods; (ii) helping to tackle patent infringements; (iii) possibly increasing the number of inventors seeking patent protection throughout the Union, (iv) providing equal access to unitary patent protection to all inventors, innovative companies and patent-holders whether they come from participating Member States or non-participating Member States; (v) providing an additional instrument available to all patent-holders in the Union; (vi) improving the framework conditions for innovative businesses throughout the Union, and (vii) eliminating, among participating Member States, the current fragmentation where patent right ‘borders’ exist between Member States.