Basic information

2011/0094(CNS) CNS - Consultation procedure Regulation	Procedure completed
Enhanced cooperation in the area of the creation of unitary patent protection: implementation; translation arrangements See also 2010/0384(NLE) See also 2013/0268(COD) **Subject** 3.50.16 Industrial property, European patent, Community patent, design and pattern	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	BALDASSARRE Raffaele (PPE)	11/04/2011
	Shadow rapporteur BERLINGUER Luigi (S&D) THEIN Alexandra (ALDE) ENGSTRÖM Christian (Verts/ALE) KARIM Sajjad (ECR)	

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	3147	2012-02-20
Competitiveness (Internal Market, Industry, Research and Space)	3208	2012-12-10
Competitiveness (Internal Market, Industry, Research and Space)	3094	2011-05-30
Competitiveness (Internal Market, Industry, Research and Space)	3169	2012-05-30
Environment	3211	2012-12-17

European Commission

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

Key events

Date	Event	Reference	Summary

13/04/2011	Legislative proposal published	COM(2011)0216	Summary
30/05/2011	Debate in Council		Summary
07/06/2011	Committee referral announced in Parliament		
27/06/2011	Debate in Council		Summary
20/12/2011	Vote in committee		
09/01/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0002/2012	Summary
20/02/2012	Debate in Council		Summary
30/05/2012	Debate in Council		Summary
11/12/2012	Decision by Parliament	T7-0475/2012	Summary
11/12/2012	Results of vote in Parliament		
11/12/2012	Debate in Parliament		
17/12/2012	Act adopted by Council after consultation of Parliament		
17/12/2012	End of procedure in Parliament		
31/12/2012	Final act published in Official Journal		

Technical information

Procedure reference	2011/0094(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also 2010/0384(NLE) See also 2013/0268(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 118 -a2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/05847

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE472.334	27/09/2011	
Amendments tabled in committee		PE475.788	26/10/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0002/2012	09/01/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0475/2012	11/12/2012	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0216	13/04/2011	Summary
Document attached to the procedure	SEC(2011)0482	13/04/2011	
Document attached to the procedure	SEC(2011)0483	13/04/2011	
Commission response to text adopted in plenary	SP(2013)111	13/02/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2011)0216	23/05/2011	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2012/1260
OJ L 361 31.12.2012, p. 0089 Summary

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

2011/0094(CNS) - 09/01/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted, in the framework of a special legislative procedure, the report drafted by Raffaele BALDASSARRE (EPP, IT) on the for a Council regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

It recommends that the European Parliament amend the Commission proposal as follows:

Purpose: the amendments stipulate that:

- the Regulation regulates the translation arrangements applicable to European patents to the extent that they have unitary effect;
- it is without prejudice to the rules governing the languages of the institutions of the Union established in accordance with Article 342 of the Treaty on the Functioning of the European Union and to Council Regulation 1/1958;
- it is based on the **linguistic regime of the European Patent Office** and should not be regarded as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.

Translation arrangements for the European patent with unitary effect: once available, the machine translations of patent applications and specifications into all languages of the Union shall be made available online and free of charge on publication of the patent application and of the granted patent.

After the end of the transitional period referred to in the Regulation, the participating Member States shall, pursuant to Article 143 of the EPC, give the European Patent Office the task of publishing an additional full translation of the specification into English, if such additional translation has been provided voluntarily by the applicant. Such translation shall not be carried out by automated means.

Disputes: in the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. Such translation **shall not be carried out by automated means.**

In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration whether, especially if it is a **small or medium-sized enterprise**, a natural person, a non-profit organisation, a university or a public research organisation, the alleged infringer has acted without knowing or having reasonable grounds to know that he was infringing the patent.

Compensation scheme: the compensation scheme referred to in the Regulation shall be funded through the fees referred to in Regulation on substantive provisions and shall be available only for small and medium-sized enterprises, natural persons, non profit organisations, universities and public research organisations having their residence or principal place of business within a Member State of the Union.

The compensation scheme shall ensure **full reimbursement of the translation costs up to a ceiling** set in such a way as to reflect the average market price for translations and to avoid abuse.

Entry into force: the Regulation shall apply from **1 January 2014** or from the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

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

2011/0094(CNS) - 20/02/2012

The Presidency recalled the statement made on 30 January by the Heads of State or Government of the Member States participating in the enhanced cooperation for the creation of unitary patent protection in which they committed to reaching a final agreement on the last outstanding issue in the patent package in June 2012 at the latest.

The Presidency highlighted the significant benefits that the new system will provide to European companies in terms of innovation potential, economic savings and legal certainty, and committed itself to striving to facilitate a final compromise.

Several delegations and the Commission urged the finalisation of a draft agreement by Member States for establishing a Unified Patent Court.

Last December the Council and the Parliament reached a provisional agreement on the two draft regulations implementing enhanced cooperation in the area of unitary patent protection (COD/2011/0093).

The third pillar of the patent system, **the creation of a Unified Patent Court** that would judge patent litigation cases, is **still pending final agreement** on the seat of the Court.

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

2011/0094(CNS) - 30/05/2012

Ministers addressed the last outstanding issue in the draft agreement for the creation of a Unified Patent Court, with a view to **finalising the "patent package" without delay**, with a view to the European Council reaching a successful decision on the matter at its meeting on 28-29 June 2012.

The debate showed that **further work was needed to reach consensus** on the location of the Central Division of the Court of First instance for the future unitary patent jurisdiction.

The debate followed the statement issued by the Heads of State or Government of the EU Member States participating in enhanced cooperation on the creation of unitary patent protection in which they made a commitment to reach a final agreement on the last outstanding issue in the patent package in June 2012 at the latest.

In December 2011 the Council and the Parliament reached a provisional agreement on the two draft regulations implementing enhanced cooperation in the area of unitary patent protection (see also COD/2011/0093).

With regard to the third pillar of the patent system, the creation of a Unified Patent Court that would judge patent litigation cases, final agreement on the seat of the Court is still pending.

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

2011/0094(CNS) - 30/05/2011

The Council exchanged views at a public session on the creation of unitary patent protection. The outcome of the debate provides a **political orientation** for the implementation of enhanced cooperation among 25 Member States towards the creation of a unitary patent title.

It paves the way for further work with a view to reaching a general approach at the extraordinary Competitiveness Council meeting devoted to unitary patent protection in Luxembourg on 27 June 2011.

The debate was conducted on the basis of a Presidency compromise text, following the two proposals submitted by the Commission on 13 April with provisions to implement enhanced cooperation in the area of the creation of unitary patent protection:

- the first proposal prescribes how patent holders can obtain European patents with unitary effect that ensures uniform protection for their invention;
- the second proposal contains the translation arrangements.

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

2011/0094(CNS) - 13/04/2011 - Legislative proposal

PURPOSE: to implement enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

PROPOSED ACT: Council Regulation.

BACKGROUND: the current patent system in the EU, in particular in terms of translation requirements, involves very high costs and complexity. The overall cost of validation of an average European patent reaches 12 500 EUR if validated only in 13 Member States and over 32 000 EUR if validated in the whole EU. It is estimated that the actual validation costs are around 193 million EUR per year in the EU.

Despite of broad recognition of the competitive disadvantage European business faces in the absence of unitary patent protection, the Union has not been able to establish unitary patent protection.

The Commission first proposed a Council Regulation on the Community patentin August 2000. On 30 June 2010 the Commission adopted a proposal for a Council Regulation on the translation arrangements for the EU patent.

It was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed, making a decision requiring unanimity impossible now and in the foreseeable future.

25 Member States then asked for recourse enhanced cooperation in the area of unitary patent protection (all Member States except Italy and Spain) in the area of the creation of unitary patent protection.

The proposal for the authorising decision was adopted by the Council, after obtaining the consent of the European Parliament, on 10 March 2011. The present regulation implements the enhanced cooperation in the area of the creation of unitary patent protection as authorised by Council Decision 2011 /167/EU..

IMPACT ASSESSMENT : the proposal is accompanied by an impact assessment which analyses the impacts of the following options:

Option 1 **(base-line scenario):** the Commission takes no action;

Option 2**:** the Commission continues to work with the other institutions towards an EU patent covering 27 Member States;

Option 3**:** the Commission presents proposals for regulations implementing enhanced cooperation:

- **Sub-option 3.1** - the Commission proposes translation arrangements applicable in the area of unitary patent protection that correspond to its proposal of 30 June 2010, or
- Sub-option 3.2 – the Commission proposes translation arrangements applicable in the area of unitary patent protection based on its proposal of 30 June 2010 and incorporating elements of a compromise proposal discussed by the Council.

The analysis carried out in the impact assessment has demonstrated that **option 3 with sub-option 3.2 is the preferred option**.

LEGAL BASIS: Article 118(2) of the Treaty on the Functioning of the EU provides for a specific legal basis to establish language arrangements applicable to European intellectual property rights providing uniform protection throughout the Union by means of regulations adopted by a special legislative procedure with the Council acting unanimously after consulting the European Parliament.

CONTENT: the proposal aims to implement the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision No 2011/167/EU with regard to the applicable translation arrangements. The main provisions are as follows :

Translation arrangements for the European patent with unitary effect: the proposal provides that where the specification of a European patent with unitary effect has been published, no further translations are required. The EPC provides that the specification of a European patent is published in the

language of the proceedings before the European Patent Office (EPO) and includes a translation of the claims into the other two official languages of the EPO. Further translations are only requested in case of a dispute and during a transitional period as stated in the Regulation. A request for unitary effect is to be submitted in the language of the proceedings.

Translation in the case of a dispute: in the case of a dispute concerning a European patent with unitary effect, the patent proprietor provides a full translation of the patent into an official language of the participating Member State in which e ither the alleged infringement took place or in which the alleged infringer is domiciled. The patent proprietor would also be required to provide, at the request of the court competent in the territories of the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language of proceedings of that court. Such translations would be provided at the expense of the patent proprietor.

In the case of a dispute concerning a claim for damages the court hearing the dispute would take into consideration that, before having been provided with a translation in his own language, the alleged infringer may have acted in good faith and may have not known or had reasonable grounds to know that he was infringing the patent.

Administration of a compensation scheme: the proposal provides that the administration of a compensation scheme for applicants filing patent applications in one of the official languages of the Union that is not an official language of the EPO is entrusted by the participating Member States to the European Patent Office.

Transitional measures: the text provides for transitional measures to be applied during a certain period, before a system of high quality machine translations into all official languages of the Union becomes available.

Therefore, during a transitional period, a request for unitary effect as referred to in the Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection shall be accompanied by the following: (i) a full translation of the specification of such patent into English where the language of the proceedings before the EPO of the EPC is French or German; or (ii) a full translation of the specification of such patent into any official language of the participating Member States that is an official language of the Union where the language of the proceedings before the EPO is English.

The transitional period should terminate as soon as high quality machine translations into all official languages of the Union are available. The quality of machine translations should be regularly and objectively evaluated by an independent expert committee established by the participating Member States in the framework of the European Patent Organisation and composed of representatives of the European Patent Office and users of the European patent system.

It is considered that the machine translations into all official languages of the Union should be developed within **12 years** at the latest. Therefore, if the transitional period is not terminated by the Council on the basis of the proposal of the Commission, it should automatically lapse 12 years after this Regulation becomes applicable.

BUDGETARY IMPLICATIONS: the proposal has no impact on the Union budget.

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

2011/0094(CNS) - 11/12/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 481 votes to 152, with 49 abstentions, in the framework of a special legislative procedure (consultation of Parliament), a legislative resolution on the proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

The European Parliament approves the Commission’s proposal subject to the following amendments:

Purpose: the amendments stipulate that:

- the Regulation regulates the translation arrangements applicable to European patents to the extent that they have unitary effect;
- it is without prejudice to the rules governing the languages of the institutions of the Union established in accordance with Article 342 of the Treaty on the Functioning of the European Union and to Council Regulation 1/1958;
- it is **based on the linguistic regime of the European Patent Office** and should not be regarded as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.

Translation arrangements for the European patent with unitary effect: once available, the machine translations of patent applications and specifications into all languages of the Union shall be **made available online and free of charge** on publication of the patent application and of the granted patent.

After the end of the transitional period referred to in the Regulation, the participating Member States shall, pursuant to Article 143 of the EPC, give the European Patent Office the task of publishing an additional full translation of the specification into English, if such additional translation has been provided voluntarily by the applicant. Such translation shall not be carried out by automated means.

Disputes: in the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. **Such translation shall not be carried out by automated means**.

In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration whether, especially if it is a s**mall or medium-sized enterprise, a natural person, a non-profit organisation, a university or a public research organisation,** the alleged infringer has acted without knowing or having reasonable grounds to know that he was infringing the patent.

Compensation scheme: the compensation scheme referred to in the Regulation shall be funded through the fees referred to in Regulation on substantive provisions and shall be available only for small and medium-sized enterprises, natural persons, non profit organisations, universities and public research organisations having their residence or principal place of business within a Member State of the Union.

The compensation scheme shall ensure **full reimbursement of the translation costs up to a ceiling** set in such a way as to reflect the average market price for translations and to avoid abuse.

Entry into force: the Regulation shall apply from **1 January 2014** or from the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

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

2011/0094(CNS) - 17/12/2012 - Final act

PURPOSE: creation of a uniform and simple translation regime for European patents with unitary effect.

LEGISLATIVE ACT: Council Regulation (EU) No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

CONTENT: two regulations (the present one and Regulation (EU) n° 1257/2012) were adopted, with a view to implementing enhanced cooperation in the area of the creation of unitary patent protection and 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.

This Regulation sets out the applicable translation arrangements for unitary patent protection. The main elements are as follows:

Translation arrangements: these are based on the linguistic regime of the European Patent Office (EPO) responsible for issuing European patents, where the official languages are English, French and German. Those arrangements aim to achieve a balance between the interests of economic operators and the public interest, in terms of the cost of proceedings and the availability of technical information.

Without prejudice to transitional measures, where the specification of a European patent, which benefits from unitary effect has been published in accordance with the Convention on the Grant of European Patents (EPC), no further translations shall be required.

In order to facilitate access to unitary patents, in particular for SMEs, applicants will be able to file their patent applications in any official language of the Union.

Translation in the event of a dispute: in the event of a dispute relating to an alleged infringement of a European patent with unitary effect:

- the patent proprietor shall provide at the request of an alleged infringer, a full translation of the European patent with unitary effect into an official language of either the participating Member State in which the alleged infringement took place or the Member State in which the alleged infringer is domiciled;
- at the request of a court competent in the participating Member States for disputes concerning European patents with unitary effect, the patent proprietor shall also provide in the course of legal proceedings a full translation of the patent into the language used in the proceedings of that court. Such translations should not be carried out by automated means and should be provided at the expense of the patent proprietor.

Machine translations: in order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union are being developed by the EPO.

During the transitional period, before a system of high quality machine translations into all official languages of the Union becomes available, a request for unitary effect should be accompanied by:

- a full translation of the specification of the patent into English where the language of the proceedings before the EPO is French or German,
- or into any official language of the Member States that is an official language of the Union where the language of the proceedings before the EPO is English.

Given the state of technological development, the maximum period for the development of high quality machine translations cannot be considered to exceed 12 years. Consequently, the **transitional period should lapse 12 years from the date of application** of this Regulation, unless it has been decided to terminate that period earlier.

ENTRY INTO FORCE: 20/01/2013.

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