



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements
COMMON GUIDELINES
Consultation deadline for Croatia: 14.12.2012

COUNCIL REGULATION (EU) No .../2012

of

**implementing enhanced cooperation
in the area of the creation of unitary patent protection
with regard to the applicable translation arrangements**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 118 thereof,

Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection¹,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament²,

Acting in accordance with a special legislative procedure,

¹ OJ L 76, 22.3.2011, p. 53.

² OJ C , , p. .

Whereas:

- (1) Pursuant to Decision 2011/167/EU, 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 (hereinafter "participating Member States") were authorised to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection.
- (2) Under Regulation (EU) No .../2012 of the European Parliament and of the Council of ... implementing enhanced cooperation in the area of the creation of unitary patent protection^{1*}, certain European patents granted by the European Patent Office (hereinafter "EPO") under the rules and procedures of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter "EPC") should, at the request of the patent proprietor, benefit from unitary effect in the participating Member States.
- (3) Translation arrangements for European patents benefitting from unitary effect in the participating Member States (hereinafter "European patent with unitary effect") should be established by means of a separate Regulation, in accordance with the second paragraph of Article 118 of the Treaty on the Functioning of the European Union (TFEU).

¹ OJ L ... p. .

* OJ: Please insert the number and date for the Regulation contained in doc. PE-CONS 72/11 and complete the reference in the footnote.

- (4) In accordance with Decision 2011/167/EU the translation arrangements for European patents with unitary effect should be simple and cost-effective. They should 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 the Council.
- (5) Such translation arrangements should ensure legal certainty and stimulate innovation and should, in particular, benefit small and medium-sized enterprises (SMEs). They should make access to the European patent with unitary effect and to the patent system as a whole easier, less costly and legally secure.
- (6) Since the EPO is responsible for the grant of European patents, the translation arrangements for the European patent with unitary effect should be built on the current procedure in the EPO. Those arrangements should aim to achieve the necessary balance between the interests of economic operators and the public interest, in terms of the cost of proceedings and the availability of technical information.

- (7) Without prejudice to the transitional arrangements, where the specification of a European patent with unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations should be required. Article 14(6) of the EPC provides that the specification of a European patent is published in the language of the proceedings before the EPO and includes a translation of the claims into the other two official languages of the EPO.
- (8) In the event of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor at the request of the alleged infringer should provide a full translation of the patent 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. The patent proprietor should also be required to provide, at the request of a court competent in the participating Member States for disputes concerning the European patent with unitary effect, 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.

- (9) In the event of a dispute concerning a claim for damages, the court hearing the dispute should take into consideration the fact 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.
- The competent court should assess the circumstances of the individual case and, inter alia, should take into account whether the alleged infringer is a SME operating only at local level, the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.
- (10) In order to facilitate access to European patents with unitary effect, in particular for SMEs, applicants should be able to file their patent applications at the EPO in any official language of the Union. As a complementary measure, certain applicants obtaining European patents with unitary effect, having filed a European patent application in one of the official languages of the Union, which is not an official language of the EPO, and having their residence or principal place of business within a Member State, should receive additional reimbursements of the costs of translating from the language of the patent application into the language of the proceedings of the EPO, beyond what is currently in place at the EPO. Such reimbursements should be administered by the EPO in accordance with Article 9 of Regulation (EU) No .../2012*.

* OJ: Please insert the number for the Regulation contained in doc. PE-CONS 72/11.

- (11) 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 should be available as soon as possible. Machine translations are being developed by the EPO and are a very important tool in seeking to improve access to patent information and to widely disseminate technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages of the Union would benefit all users of the European patent system. Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect.
- (12) 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 as referred to in Article 9 of Regulation (EU) No .../2012* 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. Those arrangements would ensure that during a transitional period all European patents with unitary effect are made available in English which is the language customarily used in the field of international technological research and publications. Furthermore, such arrangements would ensure that with respect to European patents with unitary effect, translations would be published in other official languages of the participating Member States. Such translations should not be carried out by automated means and their high quality should contribute to the training of translation engines by the EPO. They would also enhance the dissemination of patent information.

* OJ: Please insert number for the Regulation contained in doc. PE-CONS 72/11.

- (13) The transitional period should terminate as soon as high quality machine translations into all official languages of the Union are available, subject to a regular and objective evaluation of the quality by an independent expert committee established by the participating Member States in the framework of the European Patent Organisation and composed of the representatives of the EPO and the users of the European patent system. 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.
- (14) Since the substantive provisions applicable to a European patent with unitary effect are governed by Regulation (EU) No .../2012* and are completed by the translation arrangements provided for in this Regulation, this Regulation should apply from the same date as Regulation (EU) No .../2012*.
- (15) This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 of the TFEU and to Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community¹. This Regulation is based on the linguistic regime of the EPO and should not be considered 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.

* OJ: Please insert the number for the Regulation contained in doc. PE-CONS 72/11.

¹ OJ 17, 6.10.1958, p. 385/58.

- (16) Since the objective of this Regulation, namely the creation of a uniform and simple translation regime for European patents with unitary effect, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, where appropriate by means of enhanced cooperation, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection authorised by Decision No 2011/167/EU with regard to the applicable translation arrangements.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "European patent with unitary effect" means a European patent which benefits from unitary effect in the participating Member States by virtue of Regulation (EU) No .../2012*;
- (b) "Language of the proceedings" means the language used in the proceedings before the EPO as defined in Article 14(3) of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter "EPC").

* OJ: Please insert the number for the Regulation contained in doc. PE-CONS 72/11.

Article 3

Translation arrangements for the European patent with unitary effect

1. Without prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations shall be required.
2. A request for unitary effect as referred to in Article 9 of Regulation (EU) No .../2012* shall be submitted in the language of the proceedings.

Article 4

Translation in the event of a dispute

1. 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 and the choice 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.
2. In the event of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the participating Member States for disputes concerning European patents with unitary effect, a full translation of the patent into the language used in the proceedings of that court.

* OJ: Please insert the number for the Regulation contained in doc. PE-CONS 72/11.

3. The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.
4. In the event of a dispute concerning a claim for damages, the court hearing the dispute shall assess and take into consideration, in particular where the alleged infringer is a SME, a natural person or a non profit organisation, a university or a public research organisation, whether the alleged infringer acted without knowing or without reasonable grounds for knowing, that he was infringing the European patent with unitary effect before having been provided with the translation referred to in paragraph 1.

Article 5

Administration of a compensation scheme

1. Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, the participating Member States shall in accordance with Article 9 of Regulation (EU) No .../2012*, give, within the meaning of Article 143 of the EPC, the EPO the task of administering a compensation scheme for the reimbursement of all translation costs up to a ceiling, for applicants filing patent applications at the EPO in one of the official languages of the Union that is not an official language of the EPO.
2. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 11 of Regulation (EU) No .../2012* and shall be available only for SMEs, natural persons, non profit organisations, universities and public research organisations having their residence or principal place of business within a Member State.

* OJ: Please insert the number for the Regulation contained in doc. PE-CONS 72/11.

Article 6
Transitional measures

1. During a transitional period starting on the date of application of this Regulation a request for unitary effect as referred to in Article 9 of Regulation (EU) No .../2012* shall be submitted together with the following:
 - (a) where the language of the proceedings is French or German, a full translation of the specification of the European patent into English; or
 - (b) where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the Union.
2. In accordance with Article 9 of Regulation (EU) No .../2012*, the participating Member States shall give, within the meaning of Article 143 of the EPC, the EPO the task of publishing the translations referred to in paragraph 1 of this Article as soon as possible after the date of the submission of a request for unitary effect as referred to in Article 9 of Regulation (EU) No .../2012*. The text of such translations shall have no legal effect and shall be for information purposes only.

* OJ: Please insert the number for the Regulation contained in doc. PE-CONS 72/11.

3. Six years after the date of application of this Regulation and every two years thereafter, an independent expert committee shall carry out an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all the official languages of the Union as developed by the EPO. This expert committee shall be established by the participating Member States in the framework of the European Patent Organisation and shall be composed of representatives of the EPO and of the non-governmental organisations representing users of the European patent system invited by the Administrative Council of the European Patent Organisation as observers in accordance with Article 30(3) of the EPC.
4. On the basis of the first of the evaluations referred to in paragraph 3 of this Article and every two years thereafter on the basis of the subsequent evaluations, the Commission shall present a report to the Council and, if appropriate, make proposals for terminating the transitional period.
5. If the transitional period is not terminated on the basis of a proposal of the Commission, it shall lapse 12 years from the date of application of this Regulation.

Article 7

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 January 2014 or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at,

For the Council

The President
