



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From: Presidency

To: Council (Competitiveness)

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No. Cion prop.: 11805/10 PI 77 + ADD 1 + ADD 2

Subject: Proposal for a Council Regulation on the translation arrangements for the European Union patent
- Political orientation

I. STATE OF PLAY

1. On 2 July 2010, the Commission submitted to the Council its proposal for a Council Regulation on the translation arrangements for the European Union patent¹.

This proposal, based on second paragraph of Article 118 of the Treaty on the Functioning of the European Union, aims to provide cost-effective, simplified and legally secure translation arrangements for the EU patent.

¹ 11805/10 + ADD 1 + ADD 2

The draft Regulation builds on the existing language regime of the EPO. The Commission proposes that EU patents, as all European patents, would be granted in one of the official languages of the EPO - English, French or German. The applicant would be free to choose between an EU patent and a "bundle" European patent. In the case of EU patents, only the translation of the claims into the other two EPO official languages would have to be provided by the applicant, as foreseen in Article 14(6) of the European Patent Convention. No further translations would have to be provided by the applicant and no validations in the Member States would have to take place to enforce the EU patent throughout the EU. The patent as granted in one of the official EPO languages will be the authentic text.

2. The Working Party on Intellectual Property (Patents) on 14 July, 28 July, 8 and 9 September 2010, examined the proposal, the impact assessment accompanying it and alternative suggestions made by delegations.

- Discussions on the Commission's proposal in the Council have clearly stressed the importance of the accompanying measures in order to make the patent system more accessible to all of its users and to create a level playing field for users from different countries.

A number of delegations have underlined that their support for the Commission's proposal is subject to the timely availability and high quality of machine translations into all EU languages. Delegations considered that high quality machine translations of EU patents and patent applications into all official languages of the EU should be available at the time when the first EU patents are granted. The availability of machine translations should allow users of the patent system throughout Europe to have better and earlier access to technical information on patents in their native language.

Taking into account those concerns, a number of delegations have supported the idea to foresee a transitional regime that would require a full translation of the patent into the language customary in the field of international technological research and publications in cases where the EU patent is granted in another official language of the EPO. The translation should be for information purposes only, without any legal effect and be published together with the EU patent specification. This would guarantee access for users to the EU patent as long as the quality of machine translations is not sufficiently established.

In order to facilitate access to the EU patent for applicants from EU Member States that have a language other than English, French or German among their official languages, the Commission's proposal foresees the possibility for applicants to file applications in their own language. The costs of the translation into the language of proceedings of the EPO will be eligible for additional compensation, beyond what is currently already in place for European patents. Delegations have also stressed that costs for these translations should be recoverable early on and not only at the end of the process.

- Some delegations expressed openness towards a limited translation regime based on English being the most frequently used language at the EPO and being the language customary in the field of international technological research and publications. An alternative proposal² from one delegation suggested processing and granting all EU patents in English as a separate route from European patents. Upon grant, an additional translation of the EU patent into one language out of the 22 other official EU languages would be required. The required additional translation would have limited legal effect. There would also be a separate route for obtaining an EU patent by the "conversion" of a European patent into an EU patent. In the latter case patents not granted in English would have to be accompanied by a translation into English with limited legal effect and with a limited geographical scope. This proposal has received little support.

² 13031/10

A large majority of delegations have found this proposal inappropriate for a variety of reasons (*inter alia* too costly, complicated and creating legal uncertainty due to the legal effect of translations).

Following the discussions in the Working Party, a large majority of delegations have voiced a clear support for the Commission's proposal.

3. On 29 September 2010, the informal Competitiveness Council had an exchange of views on the proposal for the translation arrangements for the EU patent. Again, a large majority of delegations has reiterated its support to the Commission's proposal. Almost all delegations expressed the need of finding a solution for the translation arrangements for the EU patent in short term, preferably during the Belgian presidency. In order to keep the system attractive for business, this solution needs to respect certain red lines expressed by a large majority of the delegations:
 - Significant additional costs resulting from additional translations cannot be accepted;
 - Legal insecurity resulting from giving legal effect to translations cannot be accepted.

The Presidency has presented elements for a compromise solution to delegations, which respect these red lines. The compromise builds on the Commission's proposal and takes into account some elements from the alternative proposal. Furthermore, the elements presented are aimed to address the concerns of delegations in relation to machine translations and the compensation of translation costs for applicants filing their patent applications in a language different from the official languages of the EPO.

4. The Permanent Representatives Committee examined on 6 October 2010 the present compromise text by the Presidency for a political orientation regarding the main principles and features of the translation arrangements for the European Union patent.

The proposal takes into account the elements discussed in the Council Working Party and at the dinner of the Informal Competitiveness Council on 29 September 2010. It seeks to find a balanced solution acceptable to all delegations.

II. CONCLUSION

The Council is invited to agree on the elements for a political orientation concerning the draft Council Regulation on the translation arrangements for the European Union patent as set out in the Annex to this note.

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**POLITICAL ORIENTATION ON THE TRANSLATION ARRANGEMENTS FOR
THE EU PATENT**

The Council considers that, as indicated in the EU 2020 Strategy³, the creation of an efficient patent system, based on the European Union patent and on a unified litigation system for European and EU patents, is an essential measure to reinforce innovation, to complete the internal market and to strengthen European competitiveness. Following the Commission's Communication of 3 April 2007 on "Enhancing the patent system in Europe"⁴ and on the basis of intensive work in the Council Working Party for more than two years, the Council on 4 December 2009 adopted conclusions⁵ on the unified patent jurisdiction and a general approach on the Regulation of the EU Patent. This breakthrough has created a real momentum to take this dossier forward and has confirmed the need to create the EU patent as a matter of urgency, in which the next step is to agree on the proposal for a Regulation on the translation arrangements for the European Union patent.

The EU patent, a unitary patent providing uniform protection throughout the 27 Member States is an important instrument for European business whose innovation capacity depends on the existence of a reliable and accessible system of patent protection throughout the internal market.

The current European patent system is very expensive and complex largely due to translation requirements and related transactional costs. The creation of an EU patent would be a considerable improvement of the conditions for private sector research and development in the EU due to the significant cost savings to be used for further investments into research and development.

The EU patent providing protection covering the entire EU is necessary for the completion of the internal market for innovative products. The complexity and high costs of the validation process for European patents entail a fragmented system for patent protection in the EU with negative effects on the functioning of the internal market.

³ 7110/10

⁴ 8302/07

⁵ 16114/09 + ADD 1

High patenting costs and complexity of the current fragmented system were identified by Small and Medium-sized Enterprises (SMEs) as the main obstacle to patent protection in the EU for innovative SMEs. In the context of the Small Business Act⁶, SMEs requested the creation of an EU patent as a matter of urgency.

The creation of the EU patent must therefore achieve substantial simplification and significant cost reduction. The translation arrangements for this unitary patent must fulfil the criteria of cost effectiveness (reducing the costs to ensure the accessibility to patent protection), simplification (less administrative burden and no unnecessary complexity for the users), and legal certainty (avoiding uncertainty caused by translations having legal effect).

The Council considers the proposal from the Commission for a Council Regulation on the translation arrangements for the European Union patent⁷ to be capable of achieving these objectives if the following elements are added to it.

1. Accompanying measures

1.1. Machine translations

In order to improve access to technical information on patents in local languages for all users of the patent system in Europe, the timely availability and high quality of machine translations into all EU languages is an indispensable element of the translation arrangements of the European Union patent. In order to achieve this, the Commission shall establish a cooperation programme with the EPO in order to ensure the timely availability of machine translations. The Commission shall provide all possible support, in particular financial support for the development and functioning of the system of machine translations at the EPO. It should be included in the draft Regulation on the translation arrangements for the European Union patent that the establishment and the functioning of the machine translation system should be subsidised from the EU budget.

⁶ 11262/08 + ADD 1 + ADD 2

⁷ 11805/10 + ADD 1 + ADD 2

1.2. Compensation of costs

In order to facilitate access to the EU patent for applicants from EU Member States that have a language other than English, French or German among their official languages, applicants shall continue to have the possibility to file applications in their own language. The costs of the translation into the language of proceedings of the EPO will be eligible for additional compensation, beyond what is currently already in place for European patents, including financial and technical assistance for preparing these translations. These measures should help applicants to apply for patents at the EPO with equal opportunities by compensating for the costs of translations into the language of procedure from the very beginning of the procedure at the EPO. The necessary arrangements shall be established by the Member States through the Select Committee of the Administrative Council of the EPO.

2. Single procedures for EU patents and other European patents until grant

There should be no distinct procedure for an EU patent and other European patents until grant. Until grant applicants should have the choice between an EU patent covering the entire territory of the EU or a European patent covering only a limited number of territories. It would have to be clarified in an appropriate way in the text of the Proposal for a Regulation on the translation arrangements for the EU Patent that there is only one route for EU patents and other European patents and that from the filing up to the grant of the patent, the rules provided by the European Patent Convention would apply. The translation arrangements of the EU patent should apply only once the applicant chooses at grant to obtain an EU patent.

3. Provisional protection

As a consequence of a single procedure until grant, provisional protection of patent applications shall be governed by the existing provisions of the European Patent Convention (Articles 67 and 70) for European patents. This issue would have to be clarified in an appropriate way in the Proposal for a Regulation on the translation arrangements for the EU Patent.

4. Transitional arrangements

During a transitional period, for EU patents which are not granted in the language customary in the field of international technological research and publications a translation into this language has to be provided by the applicant. Such translations would be important as long as high quality machine translations are not available from all of the three EPO languages into all other EU languages. This translation would be included in the publication of the EU patent specification. It would be for information purposes only and would have no legal effect.

The Council is of the view that even though such an additional translation would result in supplementary costs for certain proprietors of EU patents, these translations would be of interest for those companies and third parties who work only in the language customary in the field of international technological research and publications, as long as the quality of machine translations from all three EPO languages into all other EU languages is not fit for patent information purposes.

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