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PROPOSAL

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Subject:	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

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 216 final



EUROPEAN COMMISSION

Brussels, 13.4.2011
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2011/0094 (CNS)

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**

{COM(2011) 215 final}
{SEC(2011) 482 final}
{SEC(2011) 483 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. History of the proposal

In the European Union (EU), patent protection currently can be obtained either through the national patent offices of the Member States, which grant national patents, or through the European Patent Office (EPO) in the framework of the European Patent Convention (EPC)¹. However, once a European patent is granted by the EPO, it must be validated in each Member State where protection is sought. For a European patent to be validated in a territory of a Member State, national law may *inter alia* require that the patent proprietor files a translation of the European patent into the official language of that Member State². Therefore, 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.

Both the Europe 2020 Strategy³ and the Single Market Act⁴ identified the creation of an economy based on knowledge and innovation as a priority. Both initiatives seek to improve the framework conditions for business to innovate by creating unitary patent protection in the EU Member States together with a unified European patent litigation system.

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 patent in August 2000⁵. In 2002, the European Parliament adopted a Legislative Resolution⁶. In 2003, the Council adopted a common political approach⁷, but a final agreement could not be reached. Discussions on the proposal were re-launched in the Council after adoption by the Commission of the Communication "Enhancing the patent system in Europe" in April 2007⁸. The Communication confirmed the commitment to the creation of a single Community patent.

The Lisbon Treaty introduced a more specific legal basis for the creation of European intellectual property rights. According to Article 118(1) of the Treaty on the Functioning of the European Union (TFEU), measures for the creation of European intellectual property rights are to be established by the European Parliament and the Council acting under the ordinary legislative procedure. Article 118(2) TFEU, however, sets out a specific legal basis

¹ <http://www.epo.org>

² In order to reduce the costs caused by validation requirements, in 2000 the EPC Contracting States adopted the so-called "London Agreement" (Agreement on the application of Article 65 EPC, OJ EPO 2001, 550) which is currently in force in eleven EU Member States and results in reduced translation requirements.

³ COM(2010) 2020.

⁴ COM(2010) 608 final/2.

⁵ COM(2000) 412.

⁶ European Parliament legislative resolution on the proposal for a Council regulation on the Community patent (COM(2000) 412 - C5-0461/2000 - 2000/0177(CNS) (OJ C 127 E, 29.5.2003, p. 519–526).

⁷ Council document 7159/03.

⁸ COM(2007) 165.

for the language arrangements for European intellectual property rights, which are to be established under a special legislative procedure by the Council acting unanimously after consulting the European Parliament. Therefore, the translation arrangements for any unitary patent system in the EU must be established by a separate regulation.

In December 2009, the Council adopted conclusions on an "Enhanced patent system for Europe"⁹ and a general approach on the proposal for a Regulation on the EU Patent¹⁰. Translation arrangements, however, were not covered due to the abovementioned change in the legal basis.

On 30 June 2010 the Commission adopted a proposal for a Council Regulation on the translation arrangements for the EU patent¹¹. The proposal was accompanied by an Impact Assessment report¹² analysing various options for the possible translation arrangements. Regardless of the significant efforts made by the Presidency of the Council, it was recorded at the Competitiveness Council meeting of 10 November 2010 that no unanimous agreement on the translation arrangements could be reached¹³. It was confirmed at the Competitiveness Council meeting on 10 December 2010¹⁴ 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.

On the basis of the request of twelve Member States (Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom) the Commission submitted a proposal¹⁵ to the Council for authorising enhanced cooperation in the area of unitary patent protection. All Member States specified in their requests that the Commission's legislative proposals within the enhanced cooperation should be based on the recent negotiations in the Council. Following the adoption of the proposal, Belgium, Austria, Ireland, Portugal, Malta, Bulgaria, Romania, the Czech Republic, Slovakia Hungary, Latvia, Greece and Cyprus also requested to join the cooperation. 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/EU¹⁶.

1.2. Legal approach

In comparison to the Commission's proposal in 2000, this proposal builds on the existing system of European patents by providing unitary effect to European patents granted for the territories of the participating Member States. The unitary patent protection will be optional

⁹ Council document 17229/09.

¹⁰ Council document 16113/09 Add 1. The terminology changed (from the "Community" to "EU" patent) due to the entry into force of the Lisbon Treaty.

¹¹ COM(2010) 350.

¹² SEC(2010) 796.

¹³ Press Release of the Extraordinary Council meeting "Competitiveness (Internal Market, Industry, Research and Space)", 16041/10, 10.11.2010.

¹⁴ See press release 17668/10.

¹⁵ COM(2010) 790.

¹⁶ Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ L 76, 22.3.2011, p. 53).

and co-exist with national and European patents. The proprietors of European patents granted by the European Patent Office, may submit a request to the EPO within one month after the publication of the mention of the grant of the European patent, asking for the registration of the unitary effect. Once it is registered, the unitary effect will provide uniform protection and will have equal effect throughout the territories of all participating Member States. European patents with unitary effect may only be granted, transferred, revoked or may lapse in respect of those territories as a whole. The participating Member States shall give the task of the administration of European patents with unitary effect to the EPO.

2. CONSULTATIONS WITH THE INTERESTED PARTIES

In January 2006, the Commission launched a broad consultation on the future patent policy in Europe¹⁷. More than 2500 replies were received from a variety of stakeholders, including businesses in all sectors of the economy, business and SME associations, patent practitioners, public authorities and academics. Respondents were asking for a European patent system that provides incentives for innovation, ensures the diffusion of scientific knowledge, facilitates technology transfer, is available to all players in the market and is legally certain. The replies clearly showed stakeholders' disappointment with the lack of progress in the Community patent project. In particular, nearly all respondents (the users of the patent system) rejected the translation arrangements included in the Council's 2003 common political approach which laid down that the patent holder would have to supply a translation of the claims (having legal effect) into all official Community languages.

Stakeholders expressed an overall support for a "unitary, affordable and competitive" Community patent. This message was repeated at a public hearing held on 12 July 2006, where a large variety of stakeholders stated their support for the creation of a truly unitary high quality patent. They, however, underlined that political compromises should not undermine the usefulness of the project. In particular, the representatives of small and medium-sized enterprises (SMEs) highlighted the importance of moderate patenting costs.

The issue of unitary patent protection was also addressed extensively in the consultation on the Small Business Act for Europe, which consisted of a range of initiatives targeted to help European SMEs¹⁸. Small and medium-sized businesses identified the high level of patent fees and the legal complexity of the patent system as major obstacles¹⁹. In their submissions to the consultation, businesses in general and SME representatives in particular requested a significant reduction of the costs of patenting for a future unitary patent²⁰.

Recent position papers from various stakeholders refer to the unitary patent protection. European business associations, such as BusinessEurope²¹, UEAPME²² and Eurochambres²³

¹⁷ The consultation document, replies from stakeholders and a report on the preliminary findings of the consultation are available at http://ec.europa.eu/internal_market/indprop/patent/consultation_en.htm.

¹⁸ COM(2008) 394.

¹⁹ <http://ec.europa.eu/enterprise/policies/sme/small-business-act/>

²⁰ UEAPME Expectations on the Proposal for a European Small Business Act, available at www.ueapme.com. Response to the Consultation on a Small Business Act for Europe, available at <http://www.eurochambres.eu>

²¹ Views on key issues of the patent reform debate in Europe, available at <http://www.buinesseurope.eu>

²² Position on the recent policy developments on the European Community patent, available at <http://www.ueapme.com>

²³ Position paper on the European Patent System, available at <http://www.eurochambres.eu>

confirm that businesses, both large and small, want simplified, cost-effective and accessible patent protection. National business organisations in many Member States and across industry sectors have raised identical issues²⁴. Stakeholders underlined that any solution for the unitary patent protection should build on the existing mechanisms for granting patents in Europe and necessitate no revision of the European Patent Convention.

3. IMPACT ASSESSMENT

This proposal is accompanied by an impact assessment which identifies the main problems in the current European patent system: (i) high costs related to translation and publication of European patents, (ii) differences in the maintenance of patents in the Member States (annual renewal fees have to be paid each year in each country where the patent is validated); and (iii) administrative complexity of registering transfers, licences and other rights related to patents. As a consequence, access to comprehensive patent protection in Europe is so costly and complex that it is inaccessible to many inventors and companies.

The impact assessment 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.

These problems can only be addressed at EU level, as without an EU legal instrument Member States would not sufficiently be able to establish legal effects attached to patents that are uniform in several Member States.

4. LEGAL ELEMENTS OF THE PROPOSAL

Council Decision 2011/167/EU authorised the Member States listed in its Article 1 to establish enhanced cooperation in the area of the creation of unitary patent protection.

²⁴ Position papers from BDI (Bundesverband der Deutschen Industrie), DIHK (Deutscher Industrie- und Handelskammertag), CBI (Confédération of British Industries), CCIP (Chambre de commerce et d'industrie de Paris), CGPME (Confédération générale des petites et moyennes entreprises), Unioncamere, DigitalEurope, Orgalime, ACT (Association for Competitive Technology), Cefic and others.

Article 118(2) TFEU 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.

5. BUDGETARY IMPLICATIONS

This proposal has no impact on the Union budget.

6. DETAILED DESCRIPTION

Article 1 – Subject matter

This Article defines the subject matter of this Regulation.

Article 2 – Definitions

This Article provides for definitions of the main terms used in this Regulation.

Article 3 – Translation arrangements for the European patent with unitary effect

This Article provides that 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 are 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. Further translations are only requested in case of a dispute in accordance with Article 4 and during a transitional period under Article 6. A request for unitary effect is to be submitted in the language of the proceedings.

Article 4 – Translation in the case of a dispute

This Article requires that 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 either 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.

Article 5 – Administration of a compensation scheme

This Article 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 European Patent Office is entrusted by the participating Member States to the

European Patent Office, in accordance with Article 12 of Regulation xx/xx [substantive provisions].

Article 6 – Transitional measures

This Article 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 Article 12 of Regulation xx/xx 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 in accordance with Article 14(3) 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.

These translations required during the transitional period would be published by the European Patent Office as soon as possible after the date on which a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] is filed. Further, it is specified that the texts of these translations do not have any legal effect and are provided for information purposes only.

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 as referred to in Article 12 of Regulation xx/xx [substantive provisions] and composed of representatives of the European Patent Office and users of the European patent system. This expert group would present an objective evaluation of the availability of high quality machine translations every two years starting from the sixth year after the entry into application of this Regulation. On this basis, the Commission would present a report to the Council and, if appropriate, propose to terminate the transitional period.

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.

Article 7 - Entry into force

This Article provides that this Regulation shall enter into force on the twentieth day after its publication in the *Official Journal of the European Union*. However, since the substantive provisions applicable to a European patent with unitary effect are governed by Regulation xx/xx implementing enhanced cooperation in the area of the creation of unitary patent protection and are completed by the translation arrangements provided for in this Regulation, these Regulations shall be applied jointly. Therefore, the date of application of this Regulation will be a specific date which will coincide with the date of application of Regulation xx/xx [substantive provisions].

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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 118(2) 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 protection²⁵,

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 Parliament²⁶,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Pursuant to Council Decision 2011/167/EU authorising enhanced cooperation in the area of the creation of unitary patent protection, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Greece, France, Ireland, 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 of the European Parliament and of the Council xx/xx implementing enhanced cooperation in the area of the creation of unitary patent protection²⁷, certain European patents granted by the European Patent Office under the rules and procedures of the Convention on the Grant of European Patents of 5 October 1973, as amended (hereinafter "EPC") may be given unitary effect in the territories of the participating Member States upon the request of the patent proprietor.
- (3) Translation arrangements for European patents with unitary effect in the territories of the participating Member States (hereinafter "European patent with unitary effect")

²⁵ OJ, L 76, 22.3.2011, p. 53.

²⁶ OJ C , , p. .

²⁷ OJ C , , p. .

should be established by a separate Regulation in accordance with Article 118(2) of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

- (4) In accordance with Council Decision 2011/167/EU authorising enhanced cooperation in the area of the creation of unitary patent protection, the translation arrangements for European patents with unitary effect 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 patent²⁸, 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 Council²⁹.
- (5) Translation arrangements applicable to European patents with unitary effect that are cost-effective, simplified and ensure legal certainty should stimulate innovation and should, in particular, benefit small and medium-sized enterprises. Such translation arrangements should make access to the European patent with unitary effect and to the patent system as a whole easier, less costly and less risky.
- (6) Since the European Patent Office 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 European Patent Office. Those arrangements should aim at achieving 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 certain 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 European Patent Office and includes a translation of the claims into the other two official languages of the European Patent Office.
- (8) In the case of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor should provide 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. The patent proprietor should also be required to provide, at the request of a court competent in the territory 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 should not be carried out by automated means and should 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 should 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. The competent court should assess the circumstances of the individual case and *inter alia* should take into account whether the alleged infringer is a small and medium-sized enterprise operating only at local level, the language of the proceedings before the European

²⁸ COM(2010) 350.

²⁹ Council documents 15385/10 and 15385/10 ADD 1.

Patent Office and, during the transitional period, the translation submitted together with the request for unitary effect.

- (9) In order to facilitate access to European patents with unitary effect, in particular for small and medium-size enterprises, applicants who do not have a language in common with one of the official languages of the European Patent Office should be able to file their patent applications at the European Patent Office in any other official language of the Union. As a complementary measure, for applicants obtaining European patents with unitary effect and having their residence or principal place of business within a Member State of the Union which has as an official language a language other than one of the official languages of the European Patent Office, a system of additional reimbursements of the costs related to the translation from that language into the language of the proceedings of the European Patent Office, beyond what is currently already in place at the European Patent Office, should be administered by the European Patent Office in accordance with Article 12 of Regulation xx/xx [substantive provisions].
- (10) 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 European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the 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 the 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.
- (11) During a 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 12 of Regulation xx/xx [substantive provisions] shall be accompanied by a full translation of the specification of the patent into English where the language of the proceedings before the European Patent Office is French or German, or 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 European Patent Office 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 customary in the field of international technological research and publications. Furthermore, they 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 European Patent Office. They would also enhance the dissemination of patent information. The transitional period should terminate as soon as high quality machine translations into all official language of the Union are available, subject to an objective evaluation of the quality. 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 the representatives of the European Patent Office and the users of the European patent system. Given the 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.

- (12) Since the substantive provisions applicable to a European patent with unitary effect are governed by Regulation xx/xx implementing enhanced cooperation in the area of the creation of unitary patent protection and are completed by the translation arrangements provided for in this Regulation, this Regulation should apply on the same date as Regulation xx/xx [substantive provisions] [*the date to be determined*].
- (13) This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 TFEU and to Council Regulation 1/1958 determining the languages to be used by the European Economic Community³⁰. This Regulation is based on the linguistic regime of the European Patent Office 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.
- (14) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, the objective of the action to be taken, namely the creation of a uniform and simplified translation regime for European patents with unitary effect, can be only achieved at European level. 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 this objective.

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation implements 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.

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 territories of the participating Member States by virtue of Regulation xx/xx [substantive provisions].
- (b) "Specification of the European patent" means a specification of the European patent as defined in Rule 73 of the Implementing Regulations of the

³⁰ Council Regulation 1/1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385 – 386).

Convention on the Grant of European Patents of 5 October 1973, as amended (hereinafter "EPC");

- (c) "Language of the proceedings" means the language in the proceedings before the European Patent Office as defined in Article 14(3) of the EPC.

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 with unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations are required.
2. A request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] shall be submitted in the language of the proceedings.

Article 4

Translation in the case of a dispute

1. 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.
2. In the case 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 territories of the participating Member States for disputes concerning European patents with unitary effect, a full translation of the patent into the language of the proceedings of that court.
3. The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.
4. In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration that the alleged infringer may have acted without knowing or having reasonable grounds to know that he was infringing the patent before having been provided with the translation referred to in paragraph 1.

Article 5

Administration of a compensation scheme

Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, in accordance with Article 12 of Regulation xx/xx [substantive provisions], the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of administering a compensation scheme of reimbursing all translation costs up to a ceiling, from the fees referred to in Article 13 of that Regulation, for applicants filing patent applications at the European Patent Office in one of the official languages of the Union that is not an official language of the European Patent Office.

Article 6
Transitional measures

1. During a transitional period starting on the date of application of this Regulation in accordance with Article 7(2) of this Regulation, a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] 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 official language of the participating Member States that is an official language of the Union.
2. In accordance with Article 12 of Regulation xx/xx [substantive provisions], the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of publishing the translations referred to in paragraph 1 as soon as possible after the date on which a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] is filed. The text of such translations shall have no legal value and be for information purposes only.
3. Every two years from the sixth year calculated from the date of application of this Regulation, an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all official languages of the Union as developed by the European Patent Office shall be carried out by an independent expert committee. 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 European Patent Office 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 evaluation referred to in paragraph 3, every two years 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 [*a specific date will be set and it will coincide with the date of application of Regulation xx/xx on the implementation of enhanced cooperation in the area of the creation of unitary patent protection*].

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

Done at Brussels,

*For the Council
The President*