

ROADMAP

Title of the initiative: **Proposal for a Council Regulation on the translation arrangements for the European Union Patent**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: MARKT D2

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Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The Council adopted Conclusions on an Enhanced Patent System in Europe on 4 December 2009 along with a General Approach on the Regulation for an EU Patent. The Conclusions require the EU patent to be accompanied by a separate Regulation to govern the translation arrangements for the EU patent to be adopted by the Council with unanimity in accordance with Article 118 (2) TFEU. The EU Patent Regulation shall come into force together with the Regulation on the translation arrangements for the EU Patent.

What are the main problems identified?

The Communication "Enhancing the patent system in Europe" of April 2007 highlighted the serious consequences of the current fragmented patent system for Europe's competitiveness. A European patent designating 13 countries is about 11 times more expensive than a US patent, and more than 13 times more expensive than a Japanese patent when processing and translation costs are taken into account. This is because the fragmented European patent system requires validations of the currently available European patent at national patent offices in Member States, usually accompanied by a translation into the national language(s). A single EU patent title with an affordable translation system would remove the need to validate patent titles and supply translations to national offices, therefore reducing costs and administrative burden for European innovators, including SMEs, start-up companies and universities.

Who is affected?

The lack of a single EU patent results in the fragmentation of the Internal Market, complexity of the current system and high patenting costs. This negatively affects European businesses and, in particular, SMEs and start-up companies, as well as other innovators, including universities and research institutes.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Article 118(2) TFEU requires language arrangements for European intellectual property rights to be established by regulations adopted by the Council acting unanimously after consulting the European Parliament. Therefore, Article 118(2) TFEU is the applicable legal basis.

B. Objectives of EU initiative

What are the main policy objectives?

The EU patent must be accessible for all European innovators, including SMEs and universities, and result in the simplification of the system. The main policy objective is simplified, proportionate, cost-effective and legally secure translation arrangements for the EU patent.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

The policy objectives interrelate with the creation of a single, affordable and legally secure EU patent.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

According to Article 118(2) TFEU translation arrangements for the EU patent must be established by a regulation.

To address the problems identified, all options are based on the following principles: central filing of translations and electronic publication; automatic machine translations into all EU official languages; full translation of a patent in case of dispute; reimbursement of costs for translation for natural or legal persons applying from a Member State that does not have a language in common with the European Patent Office (EPO). On this basis, several options shall be explored: Base-line scenario – The Commission does not propose any translation arrangements for the EU patent. Option 1 – EU patents are processed, granted and published in English. Option 2 – EU patents are processed, granted and published in one of the three working languages of the EPO; the claims are translated into the other two working languages of the EPO. Option 3 – EU patents are processed, granted and published in one of the three working languages of the EPO; the claims are translated into the four other most commonly spoken languages in the EU. Option 4 – EU patents are processed, granted and published in one of the three working languages of the EPO; the claims are translated into the other official languages of the EU Member States.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The action is essential in the creation of the single EU patent. According to the Europe 2020 strategy adopted in March, the single EU patent is a key in improving the framework conditions for businesses to innovate. The uniform patent protection in the Internal Market would create favourable conditions for investment in R&D.

Explain how the options respect the proportionality principle.

The translation arrangements are an essential element for the creation of a single EU patent. The options analysed address only the problems identified in relation to translation arrangements and do not go beyond what is necessary.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

The economic impacts of the different policy options are assessed on the users of the patent system (overall and SMEs), innovators in general, patent information users and professional services related to translations. Considering the narrow scope of the exercise, it is not foreseen that other impacts may occur or that other groups of persons may be affected.

Under Option 1, the users of the patent system and innovators generally would be positively impacted due to low translation costs. However, this Option would result in a significant change to the current EPO system that offers flexibility on the procedural language.

Option 2 would result in benefits for most groups affected, including all users of the patent system (as well as SMEs), innovators in general and patent information users. The translation costs for an EU patent would be kept to minimum. However, translations would not be available in some of the most widely spoken EU languages.

Despite slightly higher costs than under Option 2, Option 3 would have equally positive impacts on the users of the patent system (including SMEs) and innovators in general would also benefit under Option 3 as the EU patent would be accessible and cost-effective. Patent information users would be positively affected by the availability of claims in the most spoken EU languages.

Under Option 4, due to very high costs innovators and users of the patent system (in particular SMEs) would be very negatively affected.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

The main policy objective is simplified, proportionate, cost-effective and legally secure translation arrangements for the EU patent. The action should thus necessarily lead to the simplification of the system and the reduction of the administrative burden for the businesses.

E. Planning of further impact assessment work

When will the impact assessment work start?

The impact assessment work has started in February 2010.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The Communication adopted in April 2007 followed an extensive consultation on the patent system in Europe performed from January to April 2006. This received more than 2500 replies and the preliminary responses were discussed at a public hearing in July 2006. This consultation included discussion of the language regime of the EU Patent. Since adoption of the April 2007 Communication, DG MARKT has regularly consulted industry associations. DG MARKT has received a number of position papers on the EU patent translation issue from various stakeholders, including industry representatives, SME associations, patent attorneys and other stakeholders concerned. The Conclusions adopted by the Council in December 2009 which agree on the need for a translation regulation for the EU Patent were endorsed by the industry associations as well as the pan-European SME association.

Which stakeholders & experts have been/will be consulted, how and at what stage?

See above – stakeholder and experts have already been extensively consulted.