



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, 16 AVR. 2010
D(2010)

Opinion

Title

DG MARKT - Impact Assessment on: the proposal for a Council regulation on the translating arrangements for the European Union patent

(draft version of 26 March 2010)

(A) Context

The Europe 2020 strategy recently reconfirmed the importance that establishing a Community patent system, as first proposed by the Commission in 2000, would have for innovation and smart growth. Establishing such a system, however, has not yet been possible, with agreement on an accompanying translation regime proving particularly elusive. New momentum was gained in December 2009 when the Council agreed on the major elements of the proposed EU system and called for the Commission to come forth with a regulation governing translation agreements. Following Art 118 of the Lisbon Treaty, such a regulation is to be adopted unanimously by the Council following a different legislative procedure from that envisaged for the main EU Patent Regulation.

(B) Overall assessment

While the IA report provides the necessary evidence base for action in this area, it should nevertheless improve the analysis on a number of issues. The report should provide a more comprehensive discussion of the factors explaining why Member States continue to insist on translations if there are significant economic benefits from not doing so, and why innovating firms validate European patents only in a limited number of Member States. This would facilitate the analysis of the impacts, political feasibility and subsidiarity of the proposed options. The comparison of the options should be improved by strengthening the analysis of the change in costs across different options and by clarifying on the basis of greater evidence the relevance for the initiative's objectives of factors other than direct translations costs. Finally, the comparison of options and the selection of the preferred option should more clearly distinguish between economic factors affecting the efficiency of different options and political constraints affecting their feasibility.

(C) Main recommendations for improvements

(1) Provide a more extensive analysis of the problem drivers. The report should provide a more comprehensive discussion of the factors explaining the behaviour under the current set up of both Member States and innovating firms: what explains the different choices made by Member States with respect to the cost-saving opportunities provided by the London Agreement? Why do they continue to insist on translation if there are clear economic benefits from not doing so? What explains firms' decisions to validate a European patent only in certain Member States? Do patenting costs influence this decision differently depending on the type of industry (for instance, relative to R&D intensity and average firm size)? The report should also highlight more transparently the role of national patenting offices and the reasons for, and problems of, granting limited legal effects to translations. This more comprehensive analysis of the problem drivers should allow the report to discuss more extensively how patent application and validation behaviour could change as a result of a decrease in patenting costs as well as to flag more transparently the political feasibility of various potential solutions and highlight more clearly why such solutions would require legislation at the EU level.

(2) Strengthen the comparative analysis of the costs incurred in the different options in the following ways. First, the analysis should focus on the change in patenting costs relative to the baseline (rather than stating absolute translation costs under some options). This assessment should clearly distinguish between the changes that result from the introduction of an EU patent (eliminating current national validation requirements) and those linked to the translation arrangements for the granting of the patent at the EU level. Secondly, cost estimates per patent should be complemented by aggregate cost estimates, at the EU level, and/or by illustrative examples of cost impacts on typical patents in terms of length and national validation patterns. To highlight the impact of the EU-wide coverage granted by the proposed EU patent and to facilitate comparison with third-countries patenting systems, per capita costs could also be calculated. Finally, the budgetary impact that the obligation to reimburse costs for applications in "non-selected" languages could have on the system should be explicitly assessed under the different options. The assumptions required to perform these calculations should be clearly spelled out and justified on the basis of current patenting patterns.

(3) Clarify the role of other factors beside direct translation costs in the comparison of options and provide greater evidence of their impacts. The report should more precisely identify on the basis of the objectives and the existing evidence the set of relevant factors / impacts for the comparison of different translation arrangements. It should, in particular, clearly spell out what other impacts beside those linked to the change in direct translation costs are expected when expanding or limiting the number and scope of patent translations. The report should also examine the source, size and distribution of the costs that companies currently filing in German and French would face in switching to an English-only regime (option 1). The report should also explain the rationale of selecting the criterion of most spoken languages for the design of the various options such options and assess its benefits, for instance by providing the percentage of the EU population covered by the various options. The report should also discuss more extensively what impact the various arrangements would have on the access of innovative firms to technological knowledge given the level of language skills they have. Finally, the report should analyze in greater depth the expected benefits in terms of legal clarity and

R&D intensity.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report largely respects the standards set out in the IA guidelines and remains within the suggested length. Additional annexes on the 2006 public consultation results and the main provisions envisaged by the main EU Patent Regulation proposal would be useful. A table clearly comparing for each option the different measures of cost and benefits suggested above should be added.

(E) IAB scrutiny process

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