

Brussels,  
C/2011/ 51042 8 JUL. 2011

Dear President,

*The Commission thanks the Italian Chamber of Deputies for its resolution concerning the proposal for a Council Regulation on the translation arrangements for the European Union patent {COM (2010) 350 final}.*

*The Commission takes note that this resolution raises a number of concerns in relation to the substance of the proposal for a Council Regulation on the translation arrangements for the European Union Patent to which the Commission would like to provide the following comments:*

*The Commission proposal {COM (2010) 350 final} of 30 June 2010, to which the resolution of the Italian Chamber of Deputies refers, sets out possible translation arrangements for a European Union patent for the whole EU. However, at the end of 2010, it became clear that it is not possible to reach unanimity on the translation arrangements in the foreseeable future and that the objective to create unitary patent protection for the Union could thus not be attained within a reasonable period. As a consequence, on 10 March 2011, upon request of Member States, on the basis of the proposal from the Commission and after the consent of the EP, the Council has authorised 25 Member States to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection. The Council decision authorising enhanced cooperation sets out that the translation arrangements need to correspond to those provided for in the Commission proposal of June 2010 combined with the elements of compromise proposed by the Presidency in November 2010 that had wide support in Council. On 13 April, the Commission has made a proposal for the applicable translation arrangements (in addition to the proposal for the creation of unitary patent protection) on this basis.*

*Before making the proposal in June 2010, the Commission carried out a very careful analysis of all possible options. The Commission remains convinced that the basic solution proposed for the translation arrangements best responds to the objectives to be achieved. The suggested language regime builds on the current language regime of the European Patent Organisation while significantly reducing the translation requirements and thus ensuring better access to the patent system for applicants, especially SMEs. Unitary patent protection would, under the decision authorising enhanced cooperation, rely on the European patent system so that the language regime needs to be accommodated in the existing European patent system that is successfully functioning for more than 30 years, with the active participation of Italy from the very beginning.*

*Under an English-only system, these applicants would need to provide for a full translation of the patents (including the description) into English which would, on average, costs more than 1500 €.*

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*The suggested language regime cannot be seen as being against the Treaty as it provides for the possibility to set specific language arrangements for European intellectual property rights. This view is also in line with the judgment of the Court of Justice of the European Union on the language regime of OHIM (C-361/01, see also T-120/99).*

*For these reasons, the Commission believes that the suggested language regime strikes the right balance between the various objectives and is the most suitable. It reduces the translation costs by keeping the translation requirements to the minimum and ensures much better access to the patent system for applicants, especially SMEs.*

*Two other aspects should be noted as regards the future language regime:*

*First, as set out above, on the basis of the decision authorising enhanced cooperation, it is clear that any future language regime will also need to take into account the elements of compromise proposed by the Presidency in November 2010 that had wide support in Council. The Presidency had inter alia suggested that every European applicant should be able to apply for an EU patent/Unitary patent protection in his own language without additional costs and that the necessary translation of such an application into one of the three working languages of the EPO would be compensated from the fees payable for the unitary patent protection.*

*Second, as an accompanying measure, a high quality machine translation programme should also be made available. Such machine translations would be available into all EU official languages free of charge and on demand by any interested party. A programme of machine translations has already been developed by the EPO in a number of languages and will be extended to all EU official languages.*

*Finally, the Commission has carefully assessed and ensured that the creation of the unitary patent protection by ways of enhanced cooperation complies with the Treaty. Making use of enhanced cooperation does not violate the principle of unanimity foreseen in Art. 118. The possibility to use enhanced cooperation was especially provided for in the Treaties to unblock situations in which a number of Member States want to move towards further integration but cannot do so because an agreement cannot be obtained within a reasonable period by the Union with all Member States, as is the case in the area of unitary patent protection.*

*The enhanced cooperation may not lead to discriminations nor result in distortions of competition. For this reason, the decision authorising enhanced cooperation states that undertakings from non-participating Member States should have the possibility to obtain unitary patent protection on the territories of the participating Member States under the same conditions as undertakings from participating Member States. The number of patents valid on both territories, the territories of the participating Member States and the territories of non-participating Member States, would, in any case, be likely to increase, as patent proprietors may wish to obtain unitary patent protection for the participating Member States while making use of the cost savings resulting from the use of the unitary patent protection to obtain European patents for the territories of the non-participating Member States.*

*Yours faithfully,*