



EUROPEAN COMMISSION

Brussels, 3 OCT. 2011
C/2011/ 6898

Mr Renato Schifani
President
Senate of the Republic of Italy
Piazza Madama
00186 Roma

Dear President,

The Commission thanks the Senate of the Republic of Italy for its opinion concerning the proposal for a Council Decision authorising enhanced cooperation in the area of the creation of unitary patent protection (COM (2010) 790 final).

It should be noted from the outset that the European Parliament gave its consent to the draft Council Decision on 15 February 2011. On 10 March 2011, the Council adopted Council Decision 2011/167/EU authorising enhanced cooperation in the area of the creation of unitary patent protection¹. In accordance with Article 1 of this Council Decision, 25 Member States were authorised to establish enhanced cooperation between themselves in this area, by applying the relevant provisions of the Treaties. In June 2011, Italy and Spain lodged appeals with the Court of Justice of the European Union (CJEU) seeking the annulment of Council Decision 2011/167/EU. These cases are currently pending before the CJEU.

On 13 April 2011, the Commission presented two proposals for regulations implementing the enhanced cooperation: one on the creation of unitary patent protection, the other on the applicable translation arrangements². The legislative procedure for the adoption of these regulations is currently ongoing in the Council and the European Parliament. On 27 June 2011, the Member States participating in the enhanced cooperation agreed in the Council on a general approach on both proposals for regulations.

The Commission would like to address the observations of the Senate of the Republic of Italy concerning the proposal of the Commission.

The Senate has first of all raised concerns on the compliance of the enhanced cooperation in the area of unitary patent protection with the Treaties. The Commission

¹ 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).

² Proposal for a Regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection (COM (2011) 215 final) and Proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to applicable translation arrangements (COM (2011) 216 final).

has carefully analysed if each of the conditions for enhanced cooperation set out in the Treaties is fulfilled. The Explanatory Memorandum of the proposal analyses in detail how the enhanced cooperation in this area furthers the objectives of the Union, protects its interests, reinforces its integration process, complies with the Treaties and Union law, does not undermine the internal market or economic, social and territorial cohesion, is not barrier to or discrimination in trade, does not distort competition and respects the rights of non-participating Member States. The Legal Services of the European Parliament and the Council have also confirmed that the conditions set out in the Treaties are fully met for the enhanced cooperation to be authorised.

Further, the proposal also explains in detail how the enhanced cooperation fulfils the criteria set out in Article 20(2) of the Treaty on European Union (TEU), namely that the decision authorising enhanced cooperation may be adopted "as a last resort and that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole". It was recorded at the Competitiveness Council meeting of 10 November 2010 that there was no unanimity to go ahead with the proposal for a Council Regulation on the translation arrangements for the EU patent. It was confirmed at the Council meeting on 10 December 2010 that insurmountable difficulties existed, making a decision requiring unanimity impossible at the time and in the foreseeable future.

Finally, the opinion 1/09 of the Court of Justice of the European Union (CJEU) on the compatibility of the draft agreement creating the European and EU Patents Court (EEUPC) was indeed adopted on 8 March 2011. It must be noted, however, that the creation of unitary patent protection and the establishment of a common European patent court are two legally distinct aspects of patent reform. Work on them may therefore be carried out separately and in parallel. The Commission, in cooperation with the Presidency of the Council and the Member States, is committed to finding appropriate solutions to the issues raised by the CJEU while the work on the creation of unitary patent protection continues in the European Parliament and the Council.

I hope that these clarifications address the issues raised in the opinion of the Italian Senate.

Yours faithfully,

*Maroš Šefčovič
Vice-President*