



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
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Opinion

Title

DG MARKT - Impact Assessment on the proposals for a Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection and a Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.

(draft version of 8 February 2011)

(A) Context

The failure to reach an agreement among all Member States on a suitable translation regime has held up the establishment of unitary patent protection across the EU – a measure first proposed by the Commission in 2000. Following extensive discussions of the last Commission proposal for such a translation regime - COM(2010)350 - the December 2010 Competitiveness Council confirmed the existence of insurmountable difficulties in reaching a unanimous agreement. In view of this finding, 25 Member States have since requested the establishment of enhanced cooperation in this policy area. The Commission has approved an authorization proposal to this end and is drafting the relevant proposals on the basis of Art. 118 TFEU.

(B) Overall assessment

While the report provides a considerable amount of analysis to support decision-making, it should be further improved in some specific respects. The analysis of patenting costs should be updated and extended to cover aggregate and per capita costs. Cost savings under different options should be analysed against an improved baseline scenario that takes into due account the current pattern of country validation choices. The report should also strengthen its analysis of impacts, including on employment, and its argumentation in favour of the preferred option. Finally, the report should clarify some of the choices made in the design of options, including the preferred one.

(C) Main recommendations for improvements

(1) Improve the analysis of costs. The analysis of the different components of patenting costs should be further improved in several respects. First, it should be updated to reflect the fact that the number of Member States demanding enhanced cooperation has risen to 25. Second, it should also present both total aggregated and per capita costs. Third, the presentation of maintenance costs should be clarified, specifying their components and providing figures for individual Member States. Finally, the calculation of the savings in patenting costs under sub-options 3.1 and 3.2 should be corrected by taking as a baseline reference current validation choices and the ensuing total patenting costs.

(2) Strengthen the analysis of impacts and the comparison of options. Relying on the improved analysis of costs and referring more explicitly to the factors driving patenting decisions, the report should more clearly demonstrate the value added of the preferred option despite higher per-patent costs during the transition period (relative to the case of most patents currently sought and validated). In addition, the report should discuss at greater length how the preferred option would affect the international competitiveness of the EU patenting system and that of its main clients. The report should also further develop the analysis of social impacts in terms of job loss/creation. Finally, the report should explicitly analyze whether the proposal in question would have any impact on the language regimes of the planned follow-up proposal for an EU patent litigation system.

(3) Clarify some choices concerning options. The report should clarify the reasons why no options are provided with regard to the level of annual renewal fees for the European patent. In so doing, the report should explain the need "to ensure sufficient flexibility" and should briefly illustrate the procedures through which these fees would eventually be set. Given the costs of the additional "elements proposed by the Belgian Presidency" (p.30), the report should more clearly underline that such provisions are necessary to achieve the widest possible participation under enhanced cooperation (and were not simply proposed in an attempt to achieve unanimity on the previous COM(2010)350 proposal).

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 is written in clear and accessible language and can be read as a stand-alone document. A table summarizing the key features of the various options and one comparing all different costs components across options should be annexed.

(E) IAB scrutiny process

Reference number	2011/MARKT/037 and 038
External expertise used	No
Date of Board Meeting	Written procedure