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Enhanced cooperation in the area of the creation of unitary patent protection ***

P7_TA(2011)0054

European Parliament legislative resolution of 15 February 2011 on the draft Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection (05538/2011 – C7-0044/2011 – 2010/0384(NLE))

(2012/C 188 E/26)

(Consent)

The European Parliament,

- having regard to the draft Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection (05538/2011),
- having regard to the request for consent submitted by the Council in accordance with Article 329(1) of the Treaty on the Functioning of the European Union (C7-0044/2011),
- having regard to Rules 74 g and 81(1) of its Rules of Procedure,
- having regard to the recommendation of the Committee on Legal Affairs (A7-0021/2011),
- A. whereas in 2000 the Commission adopted a proposal for a Council regulation on the Community patent (COM(2000)0412); whereas that proposal contained six chapters: (i) Chapter I on general provisions, (ii) Chapter II on patent law, (iii) Chapter III on renewal, lapse and invalidity of the Community patent, (iv) Chapter IV on jurisdiction and procedure in legal actions relating to the Community patent, (v) Chapter V on impact on national law and (vi) Chapter VI on final provisions,
- B. whereas that proposal was based on Article 308 of the EC Treaty, which required consultation with Parliament and a unanimous vote in the Council,
- C. whereas in its position of 10 April 2002 on the proposal for a Council regulation on the Community patent ⁽¹⁾ Parliament, acting under the consultation procedure, approved the Commission proposal as amended,
- D. whereas it had quickly become clear that some Member States had specific problems which made it impossible for them to accept the proposed regulation; whereas, in particular, some Member States were unable to accept the translation arrangements for the Community patent, which led the Council to conclude that, on account of the translation regime issue, the Council was unable to reach a political agreement on the Commission proposal, due to the lack of a unanimous consensus,
- E. whereas on 9 January 2006 the Commission launched a consultation on future patent policy in Europe to which Parliament responded by adopting a resolution on 12 October 2006 ⁽²⁾,
- F. whereas discussions in the Council were re-launched after the adoption on 3 April 2007 of the Commission Communication on enhancing the patent system in Europe (COM(2007)0165),

⁽¹⁾ OJ C 127 E, 29.5.2003, p. 519.

⁽²⁾ OJ C 308 E, 16.12.2006, p. 169.

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- G. whereas on 4 December 2009 the Council adopted conclusions on the main features of the future patent system based on two pillars: (i) the creation of a unified patent litigation system, and (ii) the creation of an EU patent – a legal instrument for granting patents valid across the EU as a whole; whereas the Council considered that those conclusions should form part of the overall final agreement on a package of measures for an Enhanced Patent System in Europe comprising the creation of a European and EU Patents Court (EEUPC), an EU patent, including the separate regulation on the translation arrangements, an Enhanced Partnership between the European Patent Office and central industrial property offices of Member States and, to the extent necessary, amendments to the European Patent Convention,
- H. whereas the entry into force of the Lisbon Treaty on 1 December 2009 brought about a change of the legal basis for the creation of the EU patent by introducing Article 118 of the Treaty on the Functioning of the European Union (TFEU), according to which: 'In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements',
- I. whereas in accordance with the first paragraph of Article 118 TFEU the EU patent as a European intellectual property right can be established under the ordinary legislative procedure; whereas, however, in accordance with the second paragraph of Article 118 TFEU a special legislative procedure requiring unanimity within the Council must be followed for the establishment of the language arrangements for such rights,
- J. whereas following the entry into force of the Treaty of Lisbon the Commission confirmed its 2000 proposal ⁽¹⁾; whereas in order to accelerate the procedure and allow the Council to formally transpose its political conclusions of 4 December 2009 into a Council position, which would be the next step in the ordinary legislative procedure, Parliament in its resolution of 5 May 2010 on the consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures (COM(2009)0665) – 'omnibus' ⁽²⁾ confirmed its 2002 position as its first-reading position; whereas the Council has not transposed its conclusions into a position and, accordingly, no further work on the EU patent can be carried out on the basis of the 2000 Commission proposal,
- K. whereas on 30 June 2010 the Commission adopted a proposal for a Council Regulation on the translation arrangements for the European Union patent (COM(2010)0350), which built on the existing language regime of the European Patent Office,
- L. whereas despite several rounds of negotiations undertaken by the Council in 2010, it was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed making a decision on the translation arrangements requiring unanimity impossible now and in the foreseeable future and that the objectives of the proposed Regulations to establish unitary patent protection in the entire European Union could not be attained within a reasonable period by applying the relevant provisions of the Treaties,
- M. whereas several Member States indicated their readiness to consider the possibility of establishing a unitary patent within the framework of enhanced cooperation,
- N. whereas more than nine Member States have indicated their intention to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection by addressing a request to the Commission in accordance with Article 329(1) TFEU, and subsequently the Commission has presented a proposal for a Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection,
- O. whereas Parliament has verified compliance with Article 20 of the Treaty on European Union (TEU) and Articles 326 to 334 TFEU,

⁽¹⁾ COM(2009)0665.

⁽²⁾ Texts adopted, P7_TA(2010)0126.

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- P. whereas, according to Article 20 TEU, a minimum of nine Member States may establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences, while using its institutions and exercising those competences by applying the provisions of the Treaties in a legally consistent manner, subject to the limits and in accordance with the arrangements laid down in that Article and in Articles 326 to 334 TFEU,
- Q. whereas the creation of unitary patent protection is not included in the list of areas of exclusive competence of the Union set out in Article 3(1) TFEU; whereas the legal basis for the creation of European intellectual property rights is Article 118 TFEU, which makes a specific reference to the establishment and functioning of the internal market, one of the shared competences of the Union according to Article 4 TFEU; whereas the creation of unitary patent protection, including applicable translation arrangements, therefore falls within the framework of the Union's non-exclusive competence,
- R. whereas, in particular, this enhanced cooperation may be regarded as furthering the Union's objectives, protecting its interests and reinforcing its integration process within the meaning of Article 20 TEU, in the light of the Commission's impact assessment in connection with its above-mentioned 2010 proposal for a regulation on the translation arrangements for the European Union patent, which pointed to the lack of a unitary patent providing protection across the entire EU leading to a fragmented patent system; whereas this fragmentation is caused by the high costs and complexity of validating European patents in individual Member States, which can amount to 40 % of the overall costs of patenting in Europe; whereas the creation of unitary patent protection for a group of Member States would improve the level of patent protection by making it possible to obtain uniform patent protection throughout the territories of the participating Member States and would eliminate the costs and complexity for those territories, thus fostering scientific and technological advances and the functioning of the internal market,
- S. whereas it is apparent from the antecedents of this initiative that the proposed decision is being put forward as a last resort and that the objectives of the cooperation cannot be attained within a reasonable period by the Union,
- T. whereas the requirements of Articles 326 to 334 TFEU are also satisfied; whereas enhanced cooperation will facilitate the proper functioning of the internal market by eliminating obstacles to the free movement of goods, helping to tackle patent infringements, possibly increasing the number of inventors seeking patent protection throughout the Union, providing equal access to unitary patent protection to all inventors, innovative companies and patent-holders whether they come from participating Member States or non-participating Member States, providing an additional instrument available to all patent-holders in the Union, improving the framework conditions for innovative businesses throughout the Union, and eliminating, among participating Member States, the current fragmentation where patent right 'borders' exist between Member States,
- U. whereas, in particular, enhanced cooperation in this area complies with the Treaties and Union law since it will not affect the *acquis*, given that, to date, only a limited number of legal acts of the Union within the meaning of Article 288 TFEU have been adopted, none of them covering the creation of a European intellectual property right providing for uniform protection throughout the Union; whereas, with the exception of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions ⁽¹⁾, no approximation of substantive patent law exists at Union level, and whereas Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products ⁽²⁾ and Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products ⁽³⁾ concern patent term extensions for specific types of patented subject matter; whereas enhanced cooperation in the area of patents would not cause discrimination since access to the unitary patent will be open to users of the patent system from all over the Union,

⁽¹⁾ OJ L 213, 30.7.1998, p. 13.

⁽²⁾ OJ L 198, 8.8.1996, p. 30.

⁽³⁾ OJ L 152, 16.6.2009, p. 1.

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- V. whereas enhanced cooperation will respect the rights, competences and obligations of the non-participating Member States, inasmuch as the possibility of obtaining unitary patent protection on the territories of the participating Member States does not affect the availability or the conditions of patent protection on the territories of non-participating Member States,
- W. whereas Article 328(1) TFEU provides that enhanced cooperation is to be open at any time to all Member States that wish to participate; whereas the Commission and the Member States participating in the enhanced cooperation should promote from the beginning, and keep promoting and encouraging, the participation of as many Member States as possible,
- X. whereas the consent of Parliament concerns the enhanced cooperation and does not prejudice which Member States will participate in it,
- Y. whereas Article 333(2) TFEU allows the Council (or, more precisely, those members of the Council representing the Member States participating in enhanced cooperation) to adopt a decision stipulating that it will act under the ordinary legislative procedure, rather than the special legislative procedure provided for in the second paragraph of Article 118 TFEU, under which Parliament is merely consulted,
1. Consents to the draft Council decision, without prejudice to which are the participating Member States;
 2. Calls on the Council to adopt a decision pursuant to Article 333(2) of the Treaty on the Functioning of the European Union stipulating that, when it comes to the proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with respect to language arrangements for the European intellectual property rights pursuant to the second paragraph of Article 118 of the Treaty on the Functioning of the European Union, it will act under the ordinary legislative procedure;
 3. Instructs its President to forward its position to the Council and the Commission.

Radioactive contamination of foodstuffs ***I

P7_TA(2011)0055

European Parliament legislative resolution of 15 February 2011 on the proposal for a Council regulation (Euratom) laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (recast) (COM(2010)0184 – C7-0137/2010 – 2010/0098(COD))

(2012/C 188 E/27)

(Ordinary legislative procedure: first reading -recast)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2010)0184),
- having regard to Council's consultation of Parliament (C7-0137/2010),
- having regard to Article 294(3) and Article 168 (4) (b) of the Treaty on the Functioning of the European Union,