COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.12.2003
COM(2003) 827 final

2003/0326 (CNS)

Proposal for a

COUNCIL DECISION

conferring jurisdiction on the Court of Justice in disputes relating to the Community patent

(presented by the Commission)

Table of Contents

EXPLANATORY MEMORANDUM 4

1. Background 4

2. The Community patent 4

3. The Community patent jurisdiction 5

4. Transitional period 5

5. Need for a Community intervention 6

6. Proposed Provisions 6

COUNCIL DECISION conferring jurisdiction on the Court of Justice in disputes relating to the Community patent 9

LEGISLATIVE FINANCIAL STATEMENT 12

Title of action: Proposal for a Council decision conferring jurisdiction on the Court of Justice in disputes relating to the Community patent 12

1. BUDGET LINE(S) + HEADING(S) 12

2. OVERALL FIGURES 12

3. BUDGET CHARACTERISTICS 12

4. LEGAL BASIS 12

5. DESCRIPTION AND GROUNDS 13

5.1. Need for Community intervention 13

5.1.1. Objectives pursued 13

5.1.2. Measures taken in connection with ex ante evaluation 13

5.2. Action envisaged and budget intervention arrangements 14

5.3. Methods of implementation 14

6. FINANCIAL IMPACT 14

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE 14

8. FOLLOW-UP AND EVALUATION 14

8.1. Follow-up arrangements 14

8.2. Arrangements and schedule for the planned evaluation 14

9. ANTI-FRAUD MEASURES 14

IMPACT ASSESSMENT FORM THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs) 15

Title of proposal 15
Document reference number 15
The proposal 15
The impact on business 15
Consultation 17

EXPLANATORY MEMORANDUM

1. BACKGROUND

In the Community, patent protection has long been provided for in two ways, neither of which is based on a Community instrument: National patents are granted by national patent offices on the basis of legislation of the respective Member State. The protection conferred is limited to the territory of that Member State and in case of dispute the patent right has to be enforced before the competent national courts. European patents are granted by the European Patent Office established by the Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 providing for substantive patent law and a single procedure of grant. Once granted, the European patent confers protection on the territory of those Contracting States which are designated by the right holder. Whereas the harmonised patent law of the European Patent Convention is essentially limited to the phase up to the grant of the European patent, its effects are determined according to the respective national patent law of each designated Contracting State. In case of dispute, litigation must also take place before the competent national courts. This situation, where the patent right is only granted in or with effect for individual Member States of the European Union including for the right holder the risk to be forced to enter into multiple litigation in a number of Member States on the same patent issue with possibly even variable results has long been criticised as inappropriate and unsuitable for the needs of the European industry operating within the common market. Member States have already in the past undertaken great efforts to redress this situation in a Community context. The Community Patent Convention intending to create a unitary Community patent title was signed on 15 December 1975 in Luxembourg followed by the 15 December 1989 agreement relating to the Community patent including a protocol on the settlement of litigation concerning the infringement and validity of Community patents. However these agreements never entered into force.

2. THE COMMUNITY PATENT

The European Council held in Lisbon in March 2000 launched a general programme to increase the competitiveness of the Union's economy and took up the issue again. As one concrete measure for improvement, the Council called for the creation of a Community patent system to address existing shortcomings in the legal protection for inventions thus giving an incentive for investments in research and development and contributing to the competitiveness of the economy as a whole. In the wake of the Lisbon European Council, the Commission put forward on 1 August 2000 a proposal for a Council regulation on the Community patent [COM(2000) 412 final] containing the relevant provisions applying to Community patents, in particular the provisions for the creation of a unitary Community patent title including the rights conferred by it, the possible actions for the enforcement of these rights, the grounds for invalidity as well as the mechanisms for the administration of granted Community patents such as their yearly renewal. It is foreseen that the grant of Community patents will be carried out by the European Patent Office. For this purpose the Community must accede to the European Patent Convention thereby charging the European Patent Office with the task of granting Community patents. Thus the European Patent Office will grant European and Community patents according to the same standards

of the European Patent Convention ensuring uniformity and legal security of patent law in Europe. At the same time the European Patent Office's high expertise as an examining patent office can be put to use for the Community patent.

3. THE COMMUNITY PATENT JURISDICTION

The establishment of a Community patent jurisdiction is a key element of the Community patent system. The Community patent title covering the territory of all Member States will not only be governed by the uniform provisions of Community law contained in the regulation of the Council on the Community patent. It will, at the latest by 2010, after a transitional period during which national courts will retain jurisdiction for the subject matter, also be enforceable before a Community jurisdiction whose decisions enjoy Community wide effect.

The legal basis to be used for the establishment of a Community patent jurisdiction was introduced into the EC Treaty by Article 2 (26 ff.) of the Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts which entered into force on 1 February 2003, inserting Article 229a and Article 225a into the EC Treaty. It is proposed that the Community patent jurisdiction will be established by two Council decisions based on those Articles.

In order for the Court of Justice to assume jurisdictional responsibilities with regard to the Community patent, that jurisdiction must be conferred on it. Article 229a of the EC Treaty allows the Council to adopt provisions to confer jurisdiction to the extent that it shall determine on the Court of Justice in disputes relating to the application of acts adopted on the basis of the EC Treaty which create Community industrial property rights. The present decision sets out that conferral of jurisdiction with regard to the Community patent and at the same time specifying the extent of the conferral (Articles 1 and 2). As provided for by Article 229a of the EC Treaty the Council shall recommend the provisions conferring jurisdiction on the basis of that Article to the Member States for adoption in accordance with their respective constitutional requirements (Article 3).

The Commission put before the Council a separate proposal for a decision based on Articles 225a, 245 of the EC Treaty proposing the establishment of a judicial panel to be called "Community Patent Court" which would, within the Court of Justice, exercise at first instance the jurisdiction in disputes relating to the Community patent. That decision also contains the necessary provisions with a view to accommodating the new function of the Court of First Instance as appeal instance according to Article 225(2) of the EC Treaty against decisions of the Community Patent Court.

4. TRANSITIONAL PERIOD

As agreed by the Council in its 3 March 2003 common political approach, the Community jurisdiction shall be established at the latest by the year 2010. Until that time national courts of Member States will have jurisdiction. This would be relevant for those Community patents which come into effect before the establishment of the Community patent jurisdiction. The Community patent regulation will contain special provisions governing this transitional period. It is foreseen that each Member

State designates for this purpose a limited number of national courts to exercise the jurisdiction which will at the end of the transitional period be conferred on the Court of Justice. According to Article 2 of the present decision, legal actions of which national courts have been seised at the time when the conferral of jurisdiction on the Court of Justice will take effect will be decided by the competent national courts.

5. NEED FOR A COMMUNITY INTERVENTION

The present decision relating to jurisdictional aspects of the Community patent system intends to redress the existing shortcomings of the current situation of patent protection in the Union. The objective is to establish Community wide patent protection which can be enforced before one single court operating to uniform standards. This objective can only be achieved at a Community level.

6. PROPOSED PROVISIONS

Article 1 – Conferral of jurisdiction on the Court of Justice

This Article contains the subject matter for which exclusive jurisdiction is conferred on the Court of Justice.

Under point (a), the Court of Justice shall have jurisdiction in disputes relating to the infringement and the validity of the Community patent. Which actions relating to those disputes are allowed will be governed by the Community patent regulation. The draft Community patent regulation foresees in this respect an action to stop infringement (Articles 33, 43) as well as an action for the declaration of non-infringement (Article 34). The Court may also order the confiscation of infringing items or other appropriate penalties (Article 43). Concerning the validity of a Community patent, the draft regulation provides for an invalidity action (Article 31) and a counter claim for invalidity (Article 32).

Where a Community supplementary protection certificate extending the period of protection of an invention protected by a Community patent has been granted, disputes relating to its infringement or validity shall also come under the jurisdiction of the Court of Justice. In this regard, the Commission intends to come forward with a proposal for the creation of a Community supplementary protection certificate extending the protection conferred by Community patents in the way as is the case for national patents under Council regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products [OJ L 182, 2.7.1992, pp. 1-5] and regulation (EC) No 1610/96 of the European Parliament and the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products [OJ L 198, 8.8.1996, pp. 30-35].

Under point (b), jurisdiction is conferred for disputes relating to the use of the invention after the publication of the Community patent application and the right based on prior use of the invention. In that respect, the draft Community patent regulation allows a claim for reasonable compensation against any person who, in the period between the publication of the Community patent application and the grant of the Community patent, has made such use of the invention that would be prohibited by virtue of the granted Community patent (Articles 11, 35). Furthermore the draft

Community patent regulation provides for a right based on the prior use of the invention (Articles 12, 36). Where the invention was used before the filing date of a Community patent, the prior user has the right to continue use of the invention for his business purposes and may invoke this right against the Community patent or a Community supplementary protection certificate.

Under point (c), jurisdiction is also conferred with regard to interim measures in the subject matter conferred. To the extent that the Court of Justice has jurisdiction relating to the Community patent, circumstances may require appropriate interim measures to be ordered under Article 243 of the EC Treaty before a decision in main proceedings can be made. The conferral of jurisdiction for interim measures is not limited to orders of interim measures in pending cases making such orders possible even before main proceedings are brought. Also, the Court of Justice shall have jurisdiction for evidence-protection measures which will be provided for in the context of the Commission proposal for a Council decision establishing the Community Patent Court and concerning appeals before the Court of First Instance.

Under point (d), jurisdiction is conferred to award damages or compensation in the situations for which jurisdiction is conferred under number one to three of this Article. Claims falling into this category are granted in Article 44 of the draft Community patent regulation awarding e.g. claims for damages of the holder of the Community patent in particular in the case of an infringement of a Community patent but also claims of third parties against the right holder where the latter has unduly exercised his rights and caused prejudice to those parties. Finally, in the context of the Commission proposal for a Council decision establishing the Community Patent Court and concerning appeals before the Court of First Instance, a claim for compensation for injuries caused by provisional or evidence-protection measures is foreseen.

Under point (e), jurisdiction is conferred for orders of a penalty payment in case of non-compliance with a decision or order of the Community Patent Court constituting an obligation to act or to abstain from an act. The Community Patent Court itself should be able to order such a penalty payment for non-compliance with its decisions or orders. If for example the Community Patent Court orders a defendant to stop infringement, it should at the same time be able to make an order whereby the non-compliance would be sanctioned by an obligation to pay a certain sum of money. If such an order necessitated a separate application to the courts of Member States, valuable time could be lost in ensuring that the decision of the Community Patent Court is respected.

In so far as this decision does not confer jurisdiction on the Court of Justice, national courts retain their jurisdiction. Article 46 of the draft Community patent regulation clarifies in this regard that national courts remain competent for any action for which exclusive jurisdiction is not conferred on the Court of Justice which for example is the case in disputes concerning the ownership of a Community patent.

Article 2 – Transitional provision

Article 2 contains a transitional provision relating to the extent of the conferral of jurisdiction. The Community jurisdiction will only be established after a transitional period in which national court shall have jurisdiction. The question arises to what extent the conferral of jurisdiction on the Court of Justice will apply with regard to

disputes already existing at the time when the conferral takes effect. Article 2 provides for a clear cut rule that those disputes of which a national court has been seised prior to the conferral of jurisdiction on the Court of Justice will not be affected by the conferral. Consequently they will be decided by the respective national court before which the case is already pending.

Article 3 – Adoption by Member States

In Article 3, the Council recommends the provisions conferring jurisdiction as contained in Articles 1 and 2 of this decision to Member States for adoption in accordance with their respective constitutional requirements as foreseen in Article 229a of the EC Treaty. For reasons of transparency and in order for the Council to monitor developments, Member States shall notify the Council as soon as possible of necessary measures to be taken and of their adoption.

Article 4 – Entry into force

This Article governs the entry into force of this decision and with it the conferral of jurisdiction on the Court of Justice as laid down by it. The entry into force is made dependent on two events. The first condition is the notification by Member States of their acceptance of the conferral after adoption in accordance with their respective constitutional requirements as foreseen in Article 229a of the EC Treaty and Article 3 of the present decision. However, once Member States have effected that notification, the decision cannot automatically enter into force conferring the jurisdiction from Member States on the Court of Justice. The Council has agreed in its 3 March 2003 common political approach that national courts shall have jurisdiction in a transitional period where Community patents will already be granted but where the Community jurisdiction to be established at the latest by 2010 has not yet been created. In order to avoid a situation where there are granted Community patents but no competent jurisdiction before which rights can be enforced, the conferral of jurisdiction must not happen at a point in time where the Community jurisdiction is not yet operational. Hence, the entry into force of the present decision should secondly depend on a ruling published by the President of the Court of Justice in the Official Journal of the European Communities that the Community Patent Court and the patent appeal chamber within the Court of First Instance have been constituted in accordance with law.

2003/0326 (CNS)

Proposal for a

COUNCIL DECISION

conferring jurisdiction on the Court of Justice in disputes relating to the Community patent

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 229a thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Whereas:

(1) The European Council held in Lisbon in March 2000 called for the necessary steps to be taken to increase the competitiveness of the European Union in a modern knowledge based economy underlining the importance of effective Community-wide patent protection.

(2) The system of patent protection has been characterised by patents granted either by a national patent office in a Member State or by the European Patent Office with effect in a Member State, and by enforcement of those patents before the national courts of the Member State concerned.

(3) Innovative European industry relies on effective Community-wide legal protection for its inventions. The creation of a Community patent system comprising a unitary Community patent title and the possibility of enforcing such a right before a Community jurisdiction to be established at the latest by 2010 after a transitional period in which national courts retain competence will provide the missing elements for the system of patent protection in the Union.

(4) Council Regulation (EC) No …/2003 of … 2003 on the Community patent[4] creates a Community patent title. Holders of such a title enjoy Community-wide protection of an invention according to the uniform standards of that Regulation.

---

1 OJ C
2 OJ C
3 OJ C
4 OJ L

(5) The Court of Justice should be vested with jurisdiction in certain disputes relating to Community patents.

(6) The jurisdiction conferred on the Court of Justice is to be exercised by the Community Patent Court by virtue of Council Decision No …/2003[5], adopted on the basis of Articles 225a and 245 of the Treaty. Those Articles allow for the establishment of judicial panels attached to the Court of First Instance to hear and determine at first instance certain classes of action brought in specific areas.

(7) By virtue of Article 225(2) of the Treaty, the Court of First Instance has jurisdiction to hear and determine actions and proceedings brought against decisions of the judicial panels set up under Article 225a of the Treaty. Decisions given by the Court of First Instance on appeal against decisions of the Community Patent Court may, exceptionally, pursuant to Article 225(2) of the Treaty, be subject to review by the Court of Justice, where there is a serious risk to the unity or consistency of Community law,

HAS DECIDED AS FOLLOWS:

Article 1

Conferral of jurisdiction on the Court of Justice

The Court of Justice shall have exclusive jurisdiction over the following:

(a) infringement or validity of a Community patent and a Community supplementary protection certificate;

(b) the use of the invention after the publication of the Community patent application or the right based on prior use of the invention;

(c) interim and evidence-protection measures in connection with the subject matters conferred;

(d) damages or compensation in the circumstances set out in points (a), (b), and (c);

(e) the ordering of a penalty payment in case of non-compliance with a decision or order constituting an obligation to act or to abstain from an act.

Article 2

Transitional provision

The Court of Justice shall not have jurisdiction over those disputes of which a national court is already seised on the date at which this Decision enters into force.

---

5 OJ L

Article 3

Adoption by Member States

The Council recommends the provision contained in Articles 1 and 2 of this Decision to the Member States for adoption in accordance with their respective constitutional requirements. Members States shall notify the Council as soon as possible of the measures to be taken and their adoption.

Article 4

Entry into force

This Decision shall enter into force after the notification to the Council by the last Member State of its acceptance of this Decision on the date of the publication in the *Official Journal of the European Union* of the ruling by the President of the Court of Justice that the Community Patent Court and the patent appeal chamber within the Court of First Instance have been constituted in accordance with law.

Done at Brussels, […]

For the Council
The President
[…]

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Industrial property

Activity: Creation of the Community patent jurisdiction

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DECISION CONFERRING JURISDICTION ON THE COURT OF JUSTICE IN DISPUTES RELATING TO THE COMMUNITY PATENT

1. BUDGET LINE(S) + HEADING(S)

The Community patent jurisdiction is created by two Council decisions. The present decision, based on Article 229a of the EC Treaty, confers jurisdiction relating to the Community patent on the Court of Justice. The second decision, based on Articles 225a, 245 of the EC Treaty and for which the Commission tables a separate proposal, will contain the necessary provisions establishing the Community Patent Court and concerning appeals before the Court of First Instance. The budgetary consequences will follow from that second decision causing human resources and other administrative expenditures. Judges, the registrar, assistant rapporteurs and other staff have to be appointed, court rooms, office space and equipment must be provided for. The present proposal, however, exclusively deals with the conferral of jurisdiction on the Court of Justice and does not itself engage the budget of the Community. It will only enter into force once the court system has been set up, i.e. on the date of the publication of the ruling of the President of the Court of Justice that the Community Patent Court and the patent appeal chamber of the Court of First Instance have been constituted in accordance with law.

Consequently, the present proposal does not contain any figures on the financial implications of the Community patent jurisdiction. These detailed figures are contained in the legislative financial statement in the annex to the Commission proposal for a Council decision establishing the Community Patent Court and concerning appeals before the Court of First Instance.

2. OVERALL FIGURES

Not applicable (see no 1).

3. BUDGET CHARACTERISTICS

Not applicable (See no 1).

4. LEGAL BASIS

Article 229a of the EC Treaty.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

The proposed Council Decision is part of the overall project to establish the Community patent system. By way of a revision of the European Patent Convention and an accession of the Community to it, the European Patent Office shall be empowered to grant Community patents which will confer rights on their holders according to the Regulation of the Council on the Community patent. Disputes concerning in particular the infringement and the validity of these rights shall, after a transitional period, be brought before a Community jurisdiction. These measures shall reform the system of patent protection in Europe which has been characterised by national patent titles to be enforced before national courts and make the necessary adaptations for the needs of the European industry which increasingly operates trans-nationally within the common market. The measures are designed to increase the competitiveness of the Union's innovative industries by creating a Community-wide uniform patent protection which can be enforced before a single Community jurisdiction rendering decisions with Community-wide effect.

Within this overall project, the Community patent jurisdiction shall be created by two Council decisions. The Commission presented a separate proposal for the establishment of a Community Patent Court and concerning appeals before the Court of First Instance. The objective of the present proposal is to confer jurisdiction relating to the Community patent on the Court of Justice which then will be exercised at first instance by the newly established Community Patent Court and by the Court of First Instance on appeal.

5.1.2. Measures taken in connection with ex ante *evaluation*

The necessity to create a patent system covering the Community as a whole has been recognised for decades. The first initiative to create such a system resulted in the European Patent Convention of 5 October 1973 which harmonised the grant of the European patent by the European Patent Office but did neither include provisions on the rights conferred by such a patent nor create a single jurisdiction to deal with disputes. This was still left to national legislation and national jurisdiction of the Contracting States. In a second initiative, EC Member States tried to create a Community patent on the basis of an international agreement including an integrated jurisdiction. The Community Patent Convention was signed on 15 December 1975 in Luxembourg followed by the 15 December 1989 agreement relating to the Community patent which included a protocol on the settlement of litigation concerning the infringement and validity of Community patents. The Convention, however, never entered into force. In the context of the Amsterdam European Council of June 1997 (action plan for the single market), the Commission published a Green Paper on the promotion of innovation by patents. The consultations on the Green Paper including the comments made in the hearing on 25 and 26 November 1997 showed a clear support for the creation of a Community patent system. Finally, the Lisbon European Council in March 2000 took up the issue and called for the creation of a Community patent system. The Council in its 3 March 2003 common political approach reached agreement on a number of key issues of the Community

patent system including the jurisdictional aspects calling for the establishment of the Community Patent Court on the basis of Article 225a of the EC Treaty.

5.2. Action envisaged and budget intervention arrangements

Not applicable (see no 1).

5.3. Methods of implementation

Not applicable (see no 1).

6. FINANCIAL IMPACT

Not applicable (see no 1).

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Not applicable (see no 1).

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The Council in its 3 March 2003 common political approach (point 5) foresees a review mechanism of the Community patent system including the jurisdictional arrangements. Regarding the present Decision, the jurisdiction conferred on the Court of Justice would have to be reviewed as to the subject matter in the light of experience gathered. The Commission will need to consult the Court of Justice and interested circles to collect data on the functioning of the Community patent jurisdiction and will have to evaluate the collected data and, where appropriate, suggest changes to the current decision.

8.2. Arrangements and schedule for the planned evaluation

On the basis of the common political approach adopted by the Council on 3 March 2003, the Commission will present a report on the functioning of all aspects of the Community patent including the jurisdictional arrangements five years after the grant of the first Community patent. Further reviews will be made periodically.

9. ANTI-FRAUD MEASURES

This does not apply. The proposal deals with the conferral of jurisdiction on the Court of Justice relating to the Community patent and does not cover a policy area with a risk of fraud.

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSAL

Proposal for a Council decision conferring jurisdiction on the Court of Justice relating to the Community patent.

DOCUMENT REFERENCE NUMBER

[…]

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

   The object of the Community patent system is to provide a Community wide patent protection which can be enforced before one single court operating to uniform standards and whose decisions enjoy Community wide effect. This objective can only be achieved at a Community level.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

   – which sectors of business

   All sectors of business that deal with technical inventions which can be subject to patent protection are concerned by the Community patent system. They can in case of conflict be party to litigation before the Community Patent Court and on appeal before the Court of First Instance to the extent that jurisdiction is conferred on the Court of Justice.

   – which sizes of business (what is the concentration of small and medium-sized firms)

   Potentially every size of business can be a party to Community patent litigation before the Community patent jurisdiction. For example, the holder of a Community patent may, as a plaintiff, wish to enforce his rights flowing from the Community patent title before the Community Patent Court. A third person may as a plaintiff wish to attack the validity of such a Community patent granting exclusive rights to its holder that he considers to be invalid. As defendant the right holder may wish to defend the validity of his patent or as a third person defend himself against an alleged infringement of a Community patent.

The Community patent system intends to make patenting of inventions more attractive especially for SMEs which will particularly increase the significance for this group. So far patenting is done in or with effect for individual Member States and the enforcement must take place before the national courts of the respective Member States their national patent law and their national legislation on the court procedure which is particularly cumbersome for SMEs. The Community patent jurisdiction will allow to enforce a unitary patent right valid in the entire Community in one single court procedure operating to common standards.

3. What will business have to do to comply with the proposal?

The effect for businesses will be felt only in cases of litigation over a Community patent. In that case they have to familiarise themselves with the proceedings before the Community patent jurisdiction.

4. What economic effects is the proposal likely to have?

The proposal will only have an economic effect in combination with the other legal instruments creating a Community patent system. The Community patent system as a whole will have a positive economic impact. In particular:

– on investment and the creation of new businesses

The Community patent system will have a positive impact on investments due to a better Community wide legal protection of inventions. The return on investments in innovative technologies will be more secure serving as an incentive for more investment. Moreover, since better legal protection will be rendered less costly, businesses will be able to make more efficient use of their existing budget for research and development which will lead to more inventions which in turn will stimulate investments to economically exploit these inventions. Since effective patent protection often serves as the legal basis for an economically successfully operating business, a more comprehensive, easier and less costly patent protection will promote the creation of new businesses.

– on the competitiveness of businesses

The Community patent system will make patent protection more effective, easier and less costly not only for those businesses that already make use of patent protection but also make patenting more easily accessible for other businesses and in particular for SMEs. The possibility to protect an invention and with it the associated investment into it with Community wide effect will increase the ability of all businesses that make use of this possibility to compete in the common market. Moreover, the competitiveness of European industry will be increased on a global scale compared to the major trading partners and competitors. Today patent protection for example in the United States or Japan is considerably less costly than in Europe under the national and the European patent system. Consequently US and Japan based companies can develop patented products at a considerably lower price which later are marketed world wide. The Community patent system intends to eliminate this obstacle for the competitiveness of the European industry.

– on employment

An increased investment in inventive technologies and a strengthened competitiveness of the European industry will lead to the creation of new jobs. The creation of new jobs can be expected across the full range of technical fields and their related industries. In particular the modern, innovative technologies which are playing a steadily increasing role in a knowledge based global economy will benefit.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

This does not apply. No distinction according to the size of companies can be made with regard the subject matter of jurisdiction conferred on the Court of Justice.

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views:

The necessity to create a patent system covering the Community as a whole has been recognised for decades. The first initiative to create such a system resulted in the European Patent Convention of 5 October 1973 which harmonised the grant of the European patent by the European Patent Office but did neither include provisions on the rights conferred by such a patent nor create a single jurisdiction to deal with disputes. This was still left to national legislation and national jurisdiction of the Contracting States. In a second initiative, EC Member States tried to create a Community patent on the basis of an international agreement including an integrated jurisdiction. The Community Patent Convention was signed on 15 December 1975 in Luxembourg followed by the 15 December 1989 agreement relating to the Community patent which included a protocol on the settlement of litigation concerning the infringement and validity of Community patents. The Convention however never entered into force. In the context of the Amsterdam European Council of June 1997 (action plan for the single market), the Commission published a green paper on the promotion of innovation by patents. The consultations on the green paper including the comments made in the hearing on 25 and 26 November 1997 showed a clear support for the creation of a Community patent system. Finally, the Lisbon European Council in March 2000 took up the issue and called for the creation of a Community patent system. The Council in its 3 March 2003 common political approach reached agreement on a number of key issues of the Community patent system including the jurisdictional aspects calling for the establishment of the Community Patent Court on the basis of Article 225a of the EC Treaty.