Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 May 2015 *

(Action for annulment — Implementing enhanced cooperation — Unitary patent — Regulation (EU) No 1260/2012 — Provisions concerning translation — Principle of non-discrimination — Article 291 TFEU — Delegation of powers to bodies outside the European Union — Second paragraph of Article 118 TFEU — Legal basis — Principle of autonomy of EU law)

In Case C-147/13,

ACTION for annulment under Article 263 TFEU, brought on 22 March 2013,

Kingdom of Spain, represented by E. Chamizo Llatas and S. Centeno Huerta, acting as Agents,

applicant,

v

Council of the European Union, represented by T. Middleton, F. Florindo Gijón, M. Balta and L. Grønfeldt, acting as Agents,

defendant,

supported by:

Kingdom of Belgium, represented by C. Pochet, J.-C. Halleux and T. Materne, acting as Agents,

Czech Republic, represented by M. Smolek and J. Vláčil, acting as Agents,

Kingdom of Denmark, represented by C. Thorning and M. Wolff, acting as Agents,

Federal Republic of Germany, represented by T. Henze, M. Möller and J. Kemper, acting as Agents,

French Republic, represented by G. de Bergues, F.-X. Bréchot, D. Colas and N. Rouam, acting as Agents,

Grand Duchy of Luxembourg

Hungary, represented by Z. Fehér and K. Szíjjártó, acting as Agents,

Kingdom of the Netherlands, represented by M. Bulterman and J. Langer, acting as Agents,

Kingdom of Sweden, represented by A. Falk and C. Meyer-Seitz, acting as Agents,

* Language of the case: Spanish.

United Kingdom of Great Britain and Northern Ireland, represented by M. Holt, acting as Agent, and by J. Stratford QC and T. Mitcheson, Barrister,

European Parliament, represented by M. Gómez-Leal, U. Rösslein and M. Dean, acting as Agents,

European Commission, represented by I. Martínez del Peral, T. van Rijn, B. Smulders and F. Bulst, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič (Rapporteur), A. Ó Caoimh, C. Vajda and S. Rodin, Presidents of Chambers, A. Borg Barthet, J. Malenovský, E. Levits, E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 July 2014,

after hearing the Opinion of the Advocate General at the sitting on 18 November 2014,

gives the following

Judgment

1 By its action, the Kingdom of Spain seeks the annulment of Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ 2012 L 361, p. 89; 'the contested regulation').

2 That regulation was adopted by the Council of the European Union following Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53: 'the decision on enhanced cooperation').

Legal context

International law

The Convention on the Grant of European patents

3 Article 14 of the Convention on the Grant of European patents (European Patent Convention: 'the EPC'), which was signed in Munich on 5 October 1973 and entered into force on 7 October 1977, in the version applicable to these proceedings, headed 'Languages of the European Patent Office, European patent applications and other documents', states:

'(1) The official languages of the European Patent Office ["the EPO"] shall be English, French and German.

(2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before [the EPO], such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.

(3) The official language of [the EPO] in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before [the EPO], unless the Implementing Regulations provide otherwise.

(4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall, however, file a translation in an official language of [the EPO] in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.

(5) European patent applications shall be published in the language of the proceedings.

(6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the other two official languages of [the EPO].

...

(8) Entries in the European Patent Register shall be made in the three official languages of [the EPO]. In cases of doubt, the entry in the language of the proceedings shall be authentic.'

4 Article 142 of the EPC, headed 'Unitary patents', provides:

(1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.'

5 Article 143 of the EPC, headed 'Special departments of [the EPO]', states:

'(1) The group of Contracting States may give additional tasks to [the EPO].

(2) Special departments common to the Contracting States in the group may be set up within [the EPO] in order to carry out the additional tasks. The President of [the EPO] shall direct such special departments; Article 10, paragraph 2 and Article 10, paragraph 3, shall apply mutatis mutandis.'

6 Article 145 of the EPC, headed 'Select committee of the Administrative Council', provides:

'(1)

The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; [the EPO] shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of [the EPO] shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.'

Agreement on a Unified Patent Court

7 The Agreement on a Unified Patent Court, signed in Brussels on 19 February 2013 (OJ 2013 C 175, p. 1; 'the UPC Agreement'), provides, in Article 32(1)(i):

'The Court shall have exclusive competence in respect of:

...

(i) actions concerning decisions of [the EPO] in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012 [of the European Parliament and the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ 2012 L 361, p. 1)].'

8 Article 89(1) of the UPC Agreement provides:

'This Agreement shall enter into force on 1 January 2014 or on the first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession in accordance with Article 84, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place or on the first day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 [of the European Parliament and the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1)] concerning its relationship with this Agreement, whichever is the latest.'

EU law

Regulation No 1257/2012

9 Recitals 9, 24 and 25 in the preamble of Regulation (EU) No 1257/2012 are worded as follows:

'(9) The European patent with unitary effect ["the EPUE"] should confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection. This should be ensured through the establishment of a Unified Patent Court. In matters not covered by this Regulation or by [the contested regulation], the provisions of the EPC, [the UPC Agreement], including its provisions defining the scope of that right and its limitations, and national law, including rules of private international law, should apply.

...

(24) Jurisdiction in respect of [EPUEs] should be established and governed by an instrument setting up a unified patent litigation system for European patents and [EPUEs].

(25) Establishing a Unified Patent Court to hear cases concerning [the EPUE] is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors. It is therefore of paramount importance that the participating Member States ratify [the UPC Agreement] in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to become operational as soon as possible.'

10 Article 1 of Regulation No 1257/2012 provides:

‘1. This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection, authorised by [the decision on enhanced cooperation].

2. This Regulation constitutes a special agreement within the meaning of Article 142 of [the EPC].’

11 Article 2(e) of Regulation No 1257/2012 provides:

‘For the purposes of this Regulation:

...

(e) Register for unitary patent protection’ means the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of an [EPUE] are registered.’

12 The first subparagraph of Article 3(1) of that regulation provides:

‘A European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.’

13 Article 9 of Regulation No 1257/2012, headed ‘Administrative tasks in the framework of the European Patent Organisation’, provides:

‘1. The participating Member States shall, within the meaning of Article 143 of the EPC, give the EPO the following tasks, to be carried out in accordance with the internal rules of the EPO:

(a) to administer requests for unitary effect by proprietors of European patents;

(b) to include the Register for unitary patent protection within the European Patent Register and to administer the Register for unitary patent protection;

(c) to receive and register statements on licensing referred to in Article 8, their withdrawal and licensing commitments undertaken by the proprietor of [the EPUE] in international standardisation bodies;

(d) to publish the translations referred to in Article 6 of [the contested regulation] during the transitional period referred to in that Article;

(e) to collect and administer renewal fees for [EPUEs], in respect of the years following the year in which the mention of the grant is published in the European Patent Bulletin; to collect and administer additional fees for late payment of renewal fees where such late payment is made within six months of the due date, as well as to distribute part of the collected renewal fees to the participating Member States;

(f) to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of [the contested regulation];

(g) to ensure that a request for unitary effect by a proprietor of a European patent is submitted in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin; and

(h) to ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in Article 6 of [the contested regulation], has been submitted together with the translations referred to in that Article, and that the EPO is informed of any limitations, licences, transfers or revocations of [EPUEs].

2. The participating Member States shall ensure compliance with this Regulation in fulfilling their international obligations undertaken in the EPC and shall cooperate to that end. In their capacity as Contracting States to the EPC, the participating Member States shall ensure the governance and supervision of the activities related to the tasks referred to in paragraph 1 of this Article and shall ensure the setting of the level of renewal fees in accordance with Article 12 of this Regulation and the setting of the share of distribution of the renewal fees in accordance with Article 13 of this Regulation.

To that end they shall set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter "Select Committee") within the meaning of Article 145 of the EPC.

The Select Committee shall consist of the representatives of the participating Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or experts.

Decisions of the Select Committee shall be taken with due regard for the position of the Commission and in accordance with the rules laid down in Article 35(2) of the EPC.

3. The participating Member States shall ensure effective legal protection before a competent court of one or several participating Member States against the decisions of the EPO in carrying out the tasks referred to in paragraph 1.'

The contested regulation

14 Recitals 5, 6, 9 and 15 in the preamble of the contested regulation read as follows:

'(5) Such translation arrangements [for EPUEs] should ensure legal certainty and stimulate innovation and should in particular benefit small and medium-sized enterprises (SMEs). They should make access [to the EPUE] and to the patent system as a whole easier, less costly and legally secure.

(6) Since the EPO is responsible for the grant of European patents, the translation arrangements for [the EPUE] should be built on the current procedure in the EPO. Those arrangements should aim to achieve the necessary balance between the interests of economic operators and the public interest, in terms of the cost of proceedings and the availability of technical information.

...

(9) In the event of a dispute concerning a claim for damages, the court hearing the dispute should take into consideration the fact that, before having been provided with a translation in his own language, the alleged infringer may have acted in good faith and may have not known or had reasonable grounds to know that he was infringing the patent. The competent court should assess the circumstances of the individual case and, inter alia, should take into account whether the alleged infringer is a SME operating only at local level, the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.

...

(15) This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 … TFEU and to Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community [(OJ 1958, 17, p. 385)]. This Regulation is based on the linguistic regime of the EPO and should not be considered as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.'

15 Article 2(b) of the contested regulation defines 'language of the proceedings', for the purposes of that regulation as being 'the language used in the proceedings before the EPO, as defined in Article 14(3) of the [EPC]'.

16 Articles 3 to 7 of the contested regulation provide:

'Article 3

Translation arrangements for [the EPUE]

1. Without prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations shall be required.

2. A request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted in the language of the proceedings.

Article 4

Translation in the event of a dispute

1. In the event of a dispute relating to an alleged infringement of an [EPUE], the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the [EPUE] into an official language of either the participating Member State in which the alleged infringement took place or the Member State in which the alleged infringer is domiciled.

2. In the event of a dispute relating to an [EPUE], the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the participating Member States for disputes concerning [EPUEs], a full translation of the patent into the language used in the proceedings of that court.

3. The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.

4. In the event of a dispute concerning a claim for damages, the court hearing the dispute shall assess and take into consideration, in particular where the alleged infringer is a SME, a natural person or a non-profit organisation, a university or a public research organisation, whether the alleged infringer acted without knowing or without reasonable grounds for knowing, that he was infringing an [EPUE] before having been provided with the translation referred to in paragraph 1.

Article 5

Administration of a compensation scheme

1. Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, the participating Member States shall in accordance with Article 9 of Regulation (EU) No 1257/2012, give, within the meaning of Article 143 of the EPC, the EPO the task of administering

a compensation scheme for the reimbursement of all translation costs up to a ceiling, for applicants filing patent applications at the EPO in one of the official languages of the Union that is not an official language of the EPO.

2. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 11 of Regulation (EU) No 1257/2012 and shall be available only for SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within a Member State.

Article 6

Transitional measures

1. During a transitional period starting on the date of application of this Regulation a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted together with the following:

(a) where the language of the proceedings is French or German, a full translation of the specification of the European patent into English; or

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the Union.

2. In accordance with Article 9 of Regulation (EU) No 1257/2012, the participating Member States shall give, within the meaning of Article 143 of the EPC, the EPO the task of publishing the translations referred to in paragraph 1 of this Article as soon as possible after the date of the submission of a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012. The text of such translations shall have no legal effect and shall be for information purposes only.

3. Six years after the date of application of this Regulation and every two years thereafter, an independent expert committee shall carry out an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all the official languages of the Union as developed by the EPO. This expert committee shall be established by the participating Member States in the framework of the European Patent Organisation and shall be composed of representatives of the EPO and of the non-governmental organisations representing users of the European patent system invited by the Administrative Council of the European Patent Organisation as observers in accordance with Article 30(3) of the EPC.

4. On the basis of the first of the evaluations referred to in paragraph 3 of this Article and every two years thereafter on the basis of the subsequent evaluations, the Commission shall present a report to the Council and, if appropriate, make proposals for terminating the transitional period.

5. If the transitional period is not terminated on the basis of a proposal of the Commission, it shall lapse 12 years from the date of application of this Regulation.

Article 7

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 1 January 2014 or the date of entry into force of [the UPC Agreement], whichever is the later.'

Procedure before the Court and forms of order sought by the parties

17 By application lodged at the Court's Registry on 22 March 2013, the Kingdom of Spain brought the present action.

18 By decisions of the President of the Court of 12 September 2013, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the European Parliament and the Commission were granted leave to intervene in support of the forms of order sought by the Council, in accordance with Article 131(2) of the Rules of Procedure of the Court.

19 The Kingdom of Spain claims that the Court should:

— annul the contested regulation;

— in the alternative, annul Articles 4 to 6(2), and Article 7(2), of that regulation, and

— order the Council to pay the costs.

20 The Council, with the support of all the interveners, contends that the Court should:

— dismiss the action;

— order the Kingdom of Spain to pay the costs.

The action

21 In support of its action, the Kingdom of Spain relies on five pleas in law, claiming, respectively, infringement of the principle of non-discrimination on the ground of language, infringement of the principles stated in the judgment *Meroni* v *High Authority* (9/56, EU:C:1958:7) because of the delegation to the EPO of administrative tasks relating to the [EPUE], a lack of legal basis, infringement of the principle of legal certainty and infringement of the principle of the autonomy of EU law.

The first plea in law: infringement of the principle of non-discrimination on the ground of language

Arguments of the parties

22 The Kingdom of Spain claims that the Council, by adopting the contested regulation, disregarded the principle of non-discrimination, stated in Article 2 TEU, since it establishes, with respect to the EPUE, a language arrangement which is prejudicial to individuals whose language is not one of the official languages of the EPO. The effect of that arrangement is that there is unequal treatment of, on the one hand, European Union citizens and undertakings who have the means of understanding, to a certain level of competence, texts written in those languages, and, on the other, those who do not have such means and will have to produce translations at their own expense. Any restriction on the use of all the official languages of the European Union should be properly justified, with due regard to the principle of proportionality.

23 First, access to translations of texts which confer rights on the community is not safeguarded. That is due to the fact that the specification of an EPUE will be published in the language of the proceedings and will include the translation of the claims in the two other official languages of the EPO, with no

possibility of any other translation, which is discriminatory and in breach of the principle of legal certainty. The contested regulation does not even specify the language in which the granting of unitary effect will be issued nor whether the fact of it being granted will be subject to publication. The fact that the Council has relied on the existing arrangements of the EPO in order to establish the language arrangements of the European patent with unitary effect does not ensure its compatibility with EU law.

24 Secondly, the contested regulation is disproportionate and is not justified on public interest grounds. In the first place, there is no provision for making available a translation of, at the least, the claims, which could lead to significant legal uncertainty and which could negatively affect competition. In the second place, the EPUE is an intellectual property right which is essential for the internal market. In the third place, the contested regulation makes no provision for transitional rules to secure adequate knowledge of the patent. Neither the development of machine translations nor the obligation to submit a full translation in the event of a dispute are measures which are sufficient in that regard.

25 It follows, according to the Kingdom of Spain, that the introduction of an exception to the principle that the official languages of the European Union have equal status ought to have been justified by criteria other than those, purely economic, mentioned in recitals 5 and 6 in the preamble of the contested regulation.

26 The Council contends, first, that no principle can be deduced from the Treaties to the effect that all the official languages of the European Union must, in all circumstances, be treated equally, as is moreover confirmed by the second paragraph of Article 118 TFEU, which would be meaningless if there were only one possible language arrangement including all the official languages of the European Union.

27 Second, under the current system, any natural or legal person may apply for a European patent in any language, on condition however that there is produced, within a period of two months, a translation in one of the three official languages of the EPO, which becomes the language of the proceedings, the claims being then published in the other two official languages of the EPO. Thus, an application is translated into and published in Spanish only if the validation of the patent is requested for the Kingdom of Spain.

28 Third, the lack of publication in Spanish has only a limited effect. In the first place, the contested regulation provides for a cost compensation scheme. In the second place, the patents are generally administered by patent attorneys, who are familiar with other languages of the European Union. In the third place, the impact on access to scientific information in Spanish is limited. In the fourth place, only a small proportion of European patent applications are currently translated into Spanish. In the fifth place, the contested regulation provides for the introduction of a high quality machine translation system for all the official languages of the European Union. In the sixth place, and last, Article 4 of that regulation sets a limit on the possible liability of small and medium-sized enterprises, natural persons, non-profit organisations, universities and public research organisations.

29 Fourth, the restriction on the number of languages used in relation to the EPUE pursues a legitimate objective, namely that the costs should be reasonable.

30 The interveners support the Council's arguments. They stress that it has been particularly difficult to achieve a balance between different economic operators, as differences of view between Member States over the language arrangements have frustrated all previous unitary patent projects.

Findings of the Court

31 In accordance with the Court's case-law, references in the Treaties to the use of languages within the European Union cannot be regarded as evidencing a general principle of EU law to the effect that anything that might affect the interests of a European Union citizen should be drawn up in his language in all circumstances (the judgments in *Kik* v *OHIM*, C-361/01 P, EU:C:2003:434, paragraph 82, and *Polska Telefonia Cyfrowa*, C-410/09, EU:C:2011:294, paragraph 38).

32 In this case, it is undeniable that the contested regulation differentiates between the official languages of the European Union. Article 3(1) of that regulation, which outlines the translation arrangements for the EPUE, refers to the publication of the specifications of the EPUE in accordance with Article 14(6) of the EPC. Pursuant to that provision and Article 14(1) of the EPC, the specifications of the European patent are to be published in the language of the proceedings, which must be one of the official languages of the EPO, namely English, French or German, and are to include a translation of the claims in the other two official languages of the EPO. Provided that those requirements as laid down by those provisions of the EPC are satisfied, no further translation is to be required for the purposes of recognition of the unitary effect of the European patent concerned.

33 In so far as a legitimate objective of general interest may be relied upon and be shown to be genuine, it should be noted that a difference in treatment on the grounds of language must also observe the principle of proportionality, that is to say, it must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see the judgment in *Italy* v *Commission*, C-566/10 P, EU:C:2012:752, paragraph 93).

34 As regards, first, the objective pursued by the Council, it is stated in recital 16 in the preamble of the contested regulation that its objective is the creation of a uniform and simple translation regime for the EPUE established by Regulation No 1257/2012. Recitals 4 and 5 of the contested regulation add that, in accordance with the decision on enhanced cooperation, the translation arrangements for European patents with unitary effect should be simple and cost-effective. They should moreover ensure legal certainty, stimulate innovation and benefit, in particular, small and medium-sized enterprises, so as to make access to the EPUE and to the patent system as a whole easier, less costly and legally secure. It follows from the above that the aim of the contested regulation is to facilitate access to patent protection, particularly for small and medium-sized enterprises.

35 The legitimacy of such an objective cannot be denied. One of the choices facing an inventor when planning to obtain protection for his invention by the grant of a patent concerns the territorial scope of the desired protection, which will be decided after an overall assessment of the advantages and drawbacks of each option, which includes complex economic evaluations of the commercial interest of having protection in the various States compared with the sum of the costs entailed in obtaining the grant of a patent in those States, including translation costs (see, to that effect, *BASF*, C-44/98, EU:C:1999:440, paragraph 18).

36 Yet the European patent protection system created by the EPC can be described as complex and particularly costly for an applicant who seeks to obtain protection for his invention through the issue of a patent covering the territory of all the Member States. Such complexity and costs, which are due to, inter alia, the requirement that the holder of a European patent issued by the EPO must, in order to validate that patent on the territory of a Member State, submit a translation of that patent in the official language of that Member State, constitute an obstacle to patent protection within the European Union.

37 Further, there can be no doubt that the rules under the current patent protection system created by the EPC affect adversely the capacity to innovate and compete of European businesses, particularly small and medium-sized enterprises, which are unable to develop new technologies protected by

patents covering the whole of the European Union unless they pursue complex and costly procedures, whereas the language arrangements established by the contested regulation are capable of making access to the EPUE and the patent system as a whole easier, less costly and legally more secure.

38 Second, the Court must determine whether the arrangements established by the contested regulation are appropriate to achieve the legitimate objective of facilitating access to patent protection.

39 In that regard, it must be recalled that the aim of the contested regulation is to determine the translation arrangements for European patents to which unitary effect is granted under Regulation No 1257/2012. Since the EPO is responsible for the issue of European patents, the contested regulation is based on the translation arrangements in force at the EPO, which provide for the use of English, French and German, there being no requirement for a translation of the specification of the European patent, or at least its claims, in the official language of each State in which [the EPUE] is to be effective, as is the case for the European patent. Consequently, the arrangement established by the contested regulation does indeed make it possible to facilitate access to patent protection by reducing the costs associated with translation requirements.

40 Third, it must be determined whether the arrangement established by the contested regulation does not go beyond what is necessary to achieve the legitimate objective pursued.

41 In that regard, the Court emphasised, in paragraph 92 of the judgment in *Kik* v *OHIM* (C-361/01 P, EU:C:2003:434), that the necessary balance must be maintained between the interests of economic operators and the public interest in terms of the cost of proceedings, and also between the interests of applicants for intellectual property rights and those of other economic operators in regard to access to translations of texts which confer rights, or proceedings involving more than one economic operator.

42 As regards, first, maintaining the balance between the interests of economic operators and the public interest as regards the cost of the procedure for recognition of the unitary effect of the European patent, it must be observed that while the Union is committed to the preservation of multilingualism, the importance of which is stated in the fourth subparagraph of Article 3(3) TEU and in Article 22 of the Charter of Fundamental Rights of the European Union, it has been stated, in paragraph 36 of this judgment, that the high costs attached to the issue of a European patent covering the territory of all Member States constitute an obstacle to patent protection within the European Union, and consequently it was essential that the translation arrangements for the EPUE should be demonstrably cost-effective.

43 Second, it must be stated that the Council has provided for the introduction of a number of mechanisms designed to secure the necessary balance between the interests of applicants for the EPUE and the interests of other economic operators in regard to access to translations of texts which confer rights, or proceedings involving more than one economic operator.

44 Accordingly, first, in order to facilitate access to the EPUE, and in particular to enable applicants to file at the EPO their applications in any language of the European Union, Article 5 of the contested regulation provides for a compensation scheme for the reimbursement up to a ceiling of translation costs for some applicants, in particular small and medium-sized enterprises, who file their patent application at the EPO in an official language of the European Union other than one of the official languages of the EPO.

45 Further, in order to limit the disadvantages for economic operators who do not have the means of understanding, to a certain level of competence, texts written in English, French or German, the Council provided, in Article 6 of the contested regulation, for a transitional period, of a maximum duration of 12 years, until a high quality machine translation system is available for all the official languages of the European Union. During that transitional period, any request for unitary effect must

be accompanied either by a full translation in English of the specification, where the language of the proceedings is French or German, or by a full translation of the specification into any other official language of the European Union, where the language of the proceedings is English.

46 Last, in order to protect economic operators who do not have the means of understanding, to a certain level of competence, one of the official languages of the EPO, the Council set out, in Article 4 of the contested regulation, a number of provisions applicable in the event of a dispute, which are designed, first, to enable such operators, where they are suspected of infringement of a patent, to obtain, on the conditions set out in that article, a full translation of the EPUE and, second, in the event of a dispute concerning a claim for damages, to ensure that the court hearing the dispute assesses and takes into consideration whether an alleged infringer was acting in good faith.

47 In the light of the foregoing, it must be concluded that the contested regulation maintains the necessary balance between the various interests and, therefore, does not go beyond what is necessary to achieve the legitimate objective pursued. Consequently, as the Advocate General stated in essence in points 61 to 74 of his Opinion, the Council's decision, with respect to the establishment of the translation arrangements for the EPUE, to differentiate between the official languages of the European Union, and to choose only English, French and German, is appropriate and proportionate to the legitimate objective pursued by that regulation.

48 The first plea in law must therefore be rejected.

The second plea in law: infringement of the principles set out in the judgment in Meroni v High Authority (9/56, EU:C:1958:7)

Arguments of the parties

49 The Kingdom of Spain claims that the Council, by delegating to the EPO, in Articles 5 and 6(2) of the contested regulation, the administration of the compensation scheme for the reimbursement of translation costs and the task of publication of translations under the transitional rules, infringed the principles set out in the judgment in *Meroni* v *High Authority* (9/56, EU:C:1958:7), confirmed by the judgments in *Romano* (98/80, EU:C:1981:104) and *Tralli* v *ECB* (C-301/02 P, EU:C:2005:306).

50 According to the Kingdom of Spain, first, neither the recitals in the preamble of Regulation No 1257/2012 nor the recitals in the preamble of the contested regulation contain any objective justification of that delegation of powers.

51 Secondly, it is clear from the judgment in *Meroni* v *High Authority* (9/56, EU:C:1958:7) that there can only be delegation of clearly defined implementing powers with respect to which there is no discretion and the exercise of which is, accordingly, subject to strict review in the light of objective criteria determined by the delegating authority. However, that is not the case here.

52 In the first place, Article 5 of the contested regulation confers the administration of the compensation scheme on the EPO, which has the discretion to be able to decide on the application of the right to reimbursement of translation costs provided for by that scheme. Further, while, according to the Kingdom of Spain, Article 9(3) of Regulation No 1257/2012 imposes on Member States the obligation to ensure effective legal protection against decisions made by the EPO in carrying out the tasks listed in Article 9(1) thereof, and while that jurisdiction was exclusively conferred on the Unified Patent Court in Article 32(1)(i) of the UPC Agreement, the EPO has the privilege of immunity from legal proceedings or enforcement and, consequently, its acts are not capable of being subject any judicial review.

53 In the second place, the task of publishing translations, laid down in Article 6(2) of the contested regulation, is an activity with respect to which there is no discretion. It is not however subject to any judicial review.

54 The Council states, first, that the Kingdom of Spain does not dispute that it is the responsibility of the participating Member States, through the intermediary of the EPO, to administer the compensation scheme and carry out the task of publishing the translations. Yet the implementation of EU law is primarily the responsibility of the Member States and, with respect to the tasks relating to the compensation scheme and the publication of translations, it is not necessary to have uniform implementation conditions within the meaning of Article 291(2) TFEU. The principles stated in the judgments *Meroni* v *High Authority* (9/56, EU:C:1958:7), *Romano* (98/80, EU:C:1981:104) and *Tralli* v *ECB* (C-301/02 P, EU:C:2005:306) are not relevant. In any event, there has been no breach of those principles.

55 The interveners support the Council's arguments.

Findings of the Court

56 It must be observed, first, that it is clear from its written pleadings that the Kingdom of Spain claims that the conditions governing the purported delegation of powers effected by the Council in Articles 5 and 6(2) of the contested regulation are not satisfied, which constitutes an infringement of the principles stated in the judgment in *Meroni* v *High Authority* (9/56, EU:C:1958:7).

57 In that regard, it must be observed that Articles 5 and 6(2) of the contested regulation invite the participating Member States, in accordance with Article 9 of Regulation No 1257/2012, to confer the tasks specified in those articles on the EPO, within the meaning of Article 143 of the EPC.

58 As is stated in Article 1(2) of Regulation No 1257/2012, that regulation constitutes a special agreement within the meaning of Article 142 of the EPC, and consequently such an agreement is subject to the provisions of Part IX of the EPC, relating to special agreements, comprising Articles 142 to 149 thereof.

59 Under Articles 143 and 145 of the EPC, a group of Contracting States using the provisions in Part IX of the EPC may give tasks to the EPO.

60 In order to implement those provisions, Article 9(1)(d) and (f) of Regulation No 1257/2012 provide that participating Member States are to give to the EPO the tasks, first, to publish the translations referred to in Article 6 of the contested regulation during the transitional period referred to in that article and, second, to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of the contested regulation.

61 Yet those tasks are intrinsically linked to the implementation of the unitary patent protection created by Regulation No 1257/2012, the translation arrangements for which are fixed by the contested regulation.

62 The Court must therefore hold that the fact that the EPO is given additional tasks is a consequence of the fact that the participating Member States, as contracting parties to the EPC, entered into a special agreement within the meaning of Article 142 of the EPC.

63 Since the Council did not, contrary to what is asserted by the Kingdom of Spain, delegate to the participating Member States or to the EPO implementing powers which are uniquely its own under EU law, the principles set out by the Court in the judgment in *Meroni* v *High Authority* (9/56, EU:C:1958:7) cannot apply.

64 It follows that the second plea in law must be rejected.

The third plea in law: lack of a legal basis for Article 4 of the contested regulation

Arguments of the parties

65 The Kingdom of Spain claims that the legal basis used in order to introduce Article 4 into the contested regulation is incorrect, since that provision does not concern the 'language arrangement' for European intellectual property rights, in accordance with the second paragraph of Article 118 TFEU, but incorporates some procedural safeguards in the context of legal proceedings, which cannot be based on that provision in the FEU Treaty.

66 The Council contends that the contested regulation does in fact establish a language arrangement, since it determines the translations that are required after the issue and registration of an EPUE. Thus Article 3(1) of that regulation establishes the language arrangement for the EPUE by stating, with respect to the situation after registration of the unitary effect, that where the specification of a European patent has been published in accordance with the EPC, no further translations are required. Article 4 of that regulation fills a legal lacuna, given that the language arrangement laid down by the EPC does not govern language requirements in the event of a dispute. Further, given that the procedural rules of the Member States have not been approximated by EU law, it is necessary to ensure that an alleged infringer always has the right to obtain a full translation of the EPUE concerned.

67 The interveners support the Council's arguments.

Findings of the Court

68 According to settled case-law, the choice of the legal basis for a European Union measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure (the judgments in *Commission* v *Council*, C-377/12, EU:C:2014:1903, paragraph 34 and case-law cited, and *United Kingdom* v *Council*, C-81/13, EU:C:2014:2449, paragraph 35).

69 In this case, as regards the aim of the contested regulation, it must be observed that, according to the title of that regulation and Article 1 thereof, the regulation implements enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements. As is stated in recital 16 of the contested regulation, its objective is the creation of a uniform and simple translation regime for EPUEs.

70 As regards the content of the contested regulation, it must be observed that Article 3(1) of the contested regulation provides that, without prejudice to provisions relating to translations in the event of a dispute and transitional provisions, where the specification of a European patent which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations are required. Under Article 14(6) of the EPC, the specifications of a European patent are to be published in the language of the proceedings and are to contain translations of the claims in the other two official languages of the EPO.

71 It follows from the foregoing that the contested regulation establishes, in accordance with the second paragraph of Article 118 TFEU, the language arrangements for the EPUE, defined by reference to Article 14(6) of the EPC.

72 In that regard, it must be observed that the second paragraph of Article 118 TFEU does not preclude, when the language arrangements for European intellectual property rights are being determined, reference being made to the language arrangements of the organisation of which the body responsible for issuing the intellectual property right to which unitary effect will be attributed forms part. It is moreover of no relevance that the contested regulation does not establish an exhaustive body of rules for the language arrangements applicable to the EPUE. The second paragraph of Article 118 TFEU imposes no requirement on the Council to approximate all aspects of the language arrangements for intellectual property rights established on the basis of the first paragraph of Article 118 TFEU.

73 As regard Article 4 of the contested regulation, it is clear that this provision is directly part of the language arrangements for the EPUE, since it sets out the special rules governing the translation of the EPUE in the specific context of a dispute. Since the language arrangements for the EPUE are defined by all the provisions of the contested regulation and more specifically Articles 3, 4 and 6, which are intended to apply to different situations, Article 4 of the regulation cannot be detached, with respect to the legal basis, from the remainder of the provisions of the regulation.

74 In the light of the foregoing, the Kingdom of Spain's argument that the second paragraph of Article 118 TFEU cannot serve as a legal basis for Article 4 of the contested regulation must, therefore, be rejected.

75 The third plea in law must therefore be rejected.

The fourth plea in law: infringement of the principle of legal certainty

Arguments of the parties

76 The Kingdom of Spain claims that the Council infringed the principle of legal certainty. First, the contested regulation limits access to information for economic operators, since the specification of the EPUE is published only in the language of the proceedings, to the exclusion of other official languages of the EPO. Next, the contested regulation does not specify the arrangements, pertaining to language or otherwise, for the grant of the EPUE. Further, the contested regulation does not indicate, in the context of administration of the compensation scheme, either the costs ceiling or how compensation is to be determined. Moreover, the provisions of Article 4 of that regulation are not sufficient to offset the lack of information relating to the EPUE. A translation of the EPUE provided in the event of a dispute has no legal value and Article 4 does not set out the specific consequences of the possibility that an infringer of a patent has acted in good faith. Last, a machine translation system did not exist when the contested regulation was adopted and there is no guarantee that such a system can function in an area where accurate translation is of fundamental importance.

77 The Council considers that the Kingdom of Spain's claims disregard the principles of indirect administration and subsidiarity on which EU law is founded. The contested regulation leaves it to the Member States to adopt specific rules on such matters as the compensation scheme or machine translations. The principle of legal certainty does not require all rules to be laid down in minute detail in the base regulation, as some rules can be determined by the Member States or defined in delegated acts or implementing acts. Further, Article 4(4) of the contested regulation established the main elements and the criteria for their application by national courts.

78 The interveners support the Council's arguments.

Findings of the Court

79 In accordance with settled case-law, the principle of legal certainty requires that rules of law be clear and precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law (see the judgments in *France Télécom* v *Commission*, C-81/10 P, EU:C:2011:811, paragraph 100 and case-law cited, and *LVK — 56*, C-643/11, EU:C:2013:55, paragraph 51).

80 First, the Kingdom of Spain's argument that the contested regulation limits access to information for economic operators is in effect a challenge to the language arrangements established by that regulation on the ground that there is no provision for the translation of the EPUE into all the official languages of the European Union. Yet such an argument has already been rejected in the context of the first plea in law.

81 Second, as regards the argument that the contested regulation does not specify the arrangements, pertaining to language or otherwise, for the grant of unitary effect, a reading of the relevant provisions of that regulation together with those of Regulation No 1257/2012 precludes any infringement of the principle of legal certainty.

82 Article 3(2) of the contested regulation provides that any request for unitary effect as referred to in Article 9 of Regulation No 1257/2012 is to be submitted in the language of the proceedings. In that regard, the language of the proceedings is defined in Article 2(b) of the contested regulation as being the language used in the proceedings before the EPO, as defined in Article 14(3) of the EPC.

83 Under Article 3(1) of Regulation No 1257/2012, the unitary effect must be registered in the Register for unitary patent protection, such a register constituting, under Article 2(e) of that regulation, part of the European Patent Register, which is kept by the EPO. Yet entries in the European Patent Register are to be made in the three official languages of the EPO, in accordance with Article 14(8) of the EPC.

84 Third, as regards the alleged absence of a costs ceiling or method of establishing the compensation scheme, suffice it to find, as stated by the Advocate General, in essence, in points 110 and 111 of his Opinion, that, under Article 9(2) of Regulation No 1257/2012, the participating Member States, as Contracting States to the EPC, are to ensure the governance and monitoring of the activities related to the tasks referred to in Article 9(1) of that regulation and, to that end, are to set up a select committee of the Administration Council of the European Patent Organisation, within the meaning of Article 145 of the EPC, and consequently a decision on the costs ceiling or the method of establishing the compensation scheme are matters which fall to the participating Member States through such a select committee. It accordingly cannot be held that there has been an infringement of the principle of legal certainty in the present case.

85 Fourth, the fact that it is only the patent in the language in which it has been issued which produces legal effects and not the translation which, under Article 4 of the contested regulation, is to be provided in the event of a dispute, does not create any legal uncertainty, since it enables the operators involved to know with certainty which language is authentic in order to assess the extent of the protection conferred by the EPUE.

86 Fifth, nor does the omission to indicate the specific consequences of the possibility that an alleged patent infringer acted in good faith infringe the principle of legal certainty. On the contrary, as is stated in recital 9 in the preamble of the contested regulation, that circumstance enables the court with jurisdiction to undertake a case-by-case basis analysis by examining, inter alia, whether the alleged patent infringer is a small or medium-sized enterprise operating only at local level and taking into account the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.

87 Sixth, as regards the Kingdom of Spain's claims concerning the lack of a guarantee that the machine translation system, which was not operational when the contested regulation was adopted, will function properly, it must be observed that what is, in fact, called into question is the choice of the EU legislature to have provided for a transitional period of 12 years for the introduction of the component of the language arrangements which involves machine translation of patent applications and specifications into all the official languages of the European Union. While it is true that there is no guarantee that that system, which is to be operational at the end of a transitional period, will function properly, that is not sufficient ground for the annulment of the contested regulation because it infringes the principle of legal certainty, since no such guarantee could be given. Consequently, the Kingdom of Spain's argument must be rejected as being ineffective.

88 Thus, no breach of the principle of legal certainty can be identified.

89 The fourth plea in law must therefore be rejected.

The fifth plea in law: infringement of the principle of the autonomy of EU law

Arguments of the parties

90 The Kingdom of Spain claims that Article 7 of the contested regulation is contrary to the principle of the autonomy of EU law, since it distinguishes between, on the one hand, the entry into force of that regulation and, on the other, its application, by fixing that date at 1 January 2014 while stating that that date will be postponed if the UPC Agreement has not entered into force in accordance with Article 89(1) of that agreement. In this case, the contracting parties to the UPC Agreement were given the power to determine the date when provisions of EU law would become applicable, and consequently when the powers of the European Union are exercised. The Kingdom of Spain adds that the examples provided by the Council drawn from legislative practice are of no relevance.

91 The Council states that it is clear from a combined reading of recitals 9, 24 and 25 in the preamble of Regulation No 1257/2012 that the policy choice made by the legislature of the European Union, in order to ensure the proper functioning of the EPUE, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors, was to link the EPUE to the operation of a distinct judicial body, which would have to be established before the first EPUE could be issued. In that regard there is no legal obstacle to the establishment of a link between the EPUE and the Unified Patent Court, the reasons for which are sufficiently stated in recitals 24 and 25 of Regulation No 1257/2012. Moreover, there are, in legislative practice, a number of examples of the applicability of an act of the European Union being linked to an event unrelated to that act.

92 The interveners support the Council's arguments.

Findings of the Court

93 It must be observed that Article 7(2) of the contested regulation provides that it 'shall apply from 1 January 2014 or the date of entry into force of [the UPC Agreement], whichever is the latter.'

94 In accordance with the Court's case-law, the direct application of a regulation, laid down in the second paragraph of Article 288 TFEU, means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law, unless the regulation in question leaves it to the Member States themselves to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation (see the judgments in *Bussone*, 31/78, EU:C:1978:217, paragraph 32, and *ANAFE*, C-606/10, EU:C:2012:348, paragraph 72 and case-law cited).

95 Such is the case here, where the EU legislature has left it to the Member States, in order that the provisions of the contested regulation can be applied, first, to adopt a number of measures within the legal framework established by the EPC and, secondly, to undertake the establishment of the Unified Patent Court, which, as is stated in recitals 24 and 25 of Regulation No 1257/2012, is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors.

96 It follows from the foregoing that the fifth plea in law must be rejected.

97 In the light of the foregoing, the action, including the Kingdom of Spain's claim in the alternative for the partial annulment of the contested regulation, must be dismissed in its entirety.

Costs

98 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Council.

99 Under the first subparagraph of Article 140(1) of the Rules of Procedure, the Member States and institutions which intervene in proceedings must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby

1. **Dismisses the action;**

2. **Orders the Kingdom of Spain to bear its own costs and to pay the costs incurred by the Council of the European Union;**

3. **Orders the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the European Parliament and the European Commission to bear their own costs.**

[Signatures]