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Committee on Legal Affairs

2011/0094(CNS)

26.10.2011

AMENDMENTS

20 - 47

Draft report
Raffaele Baldassarre
(PE472.334v02-00)

Enhanced cooperation in the area of the creation of unitary patent protection
with regard to the applicable translation arrangements

Proposal for a regulation
(COM(2011)0216 – C7-0145/2011 – 2011/0094(CNS))

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Amendment 20

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) In the case of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor should provide a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. The patent proprietor should also be required to provide, at the request of a court competent in the territory of the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language of proceedings of that court. Such translations should not be carried out by automated means and should be provided at the expense of the patent proprietor. In the case of a dispute concerning a claim for damages the court hearing the dispute should take into consideration 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 small and medium-sized enterprise operating only at local level, the language of the proceedings before the European Patent Office and, during the transitional period, the translation submitted together with the request for unitary effect.

Amendment

(8) In the case of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor should provide a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. ***For reasons of legal certainty, the translation must be a faithful reflection of the original wording of the patent.*** The patent proprietor should also be required to provide, at the request of a court competent in the territory of the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language of proceedings of that court. Such translations should not be carried out by automated means and should be provided at the expense of the patent proprietor. In the case of a dispute concerning a claim for damages the court hearing the dispute should take into consideration that, before having been provided with a translation in his own language, the alleged infringer ***could not have*** known 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 small and medium-sized enterprise operating only at local level, the language of the proceedings before the European Patent Office and, during the transitional period, the translation submitted together with the request for unitary effect.

Amendment 21
Ramon Tremosa i Balcells

Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) In the case of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor should provide a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. The patent proprietor should also be required to provide, at the request of a court competent in the territory of the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language of proceedings of that court. Such translations should not be carried out by automated means and should be provided at the expense of the patent proprietor. In the case of a dispute concerning a claim for damages the court hearing the dispute should take into consideration 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 small and medium-sized enterprise operating only at local level, the language of the proceedings before the European Patent Office and, during the transitional period, the translation submitted together with the

Amendment

(8) In the case of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor should provide a full translation of the patent into an official ***or co-official*** language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. The patent proprietor should also be required to provide, at the request of a court competent in the territory of the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language of proceedings of that court. Such translations should not be carried out by automated means and should be provided at the expense of the patent proprietor. In the case of a dispute concerning a claim for damages the court hearing the dispute should take into consideration 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 small and medium-sized enterprise operating only at local level, the language of the proceedings before the European Patent Office and, during the transitional period, the translation submitted together with the

request for unitary effect.

request for unitary effect.

Or. en

Amendment 22

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) In order to facilitate access to European patents with unitary effect, in particular for small and medium-size enterprises, applicants who do not have a language in common with one of the official languages of the European Patent Office should be able to file their patent applications at the European Patent Office in any other official language of the Union. As a complementary measure, *for applicants* obtaining European patents with unitary effect and having their residence or principal place of business within a Member State of the Union which has as an official language a language other than one of the official languages of the European Patent Office, a system of additional reimbursements of the costs related to the translation from that language into the language of the proceedings of the European Patent Office, beyond what is currently already in place at the European Patent Office, should be administered by the European Patent Office in accordance with Article 12 of Regulation xx/xx [substantive provisions].

Amendment

(9) In order to facilitate access to European patents with unitary effect, in particular for small and medium-size enterprises, applicants who do not have a language in common with one of the official languages of the European Patent Office should be able to file their patent applications *and any other procedural documents* at the European Patent Office in any other official language of the Union. As a complementary measure, *small and medium-sized enterprises, natural persons and non-profit organisations* obtaining European patents with unitary effect and having their residence or principal place of business within a Member State of the Union which has as an official language a language other than one of the official languages of the European Patent Office *should benefit from* a system of additional reimbursements of the costs related to the translation from that language into the language of the proceedings of the European Patent Office, beyond what is currently already in place at the European Patent Office. *The system of additional reimbursements* should be administered by the European Patent Office in accordance with Article 12 of Regulation xx/xx [substantive provisions].

Or. en

Justification

The proposal is to limit reimbursement to just a group of European applicants, namely SMEs, natural persons and non-profit organisations. Even though this initiative may pose practical problems in the EPO's work, it is fair, since reimbursement should be made only to those individuals and organisations for whom the language regime constitutes a major hurdle.

Amendment 23

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) In the interests of persons who use a language for filing which is not one of the official languages of the European Patent Office, and taking into consideration European Union practice following the ruling of the Court of Justice in Case C-361/01 P¹, the European Patent Office should implement a system in which the language for filing should be used for all correspondence relating to the application unless the applicant expressly indicates that he wishes the European Patent Office to use one of its official languages.

¹ ***Judgment of the Court of Justice of 9 September 2003 in Case C-361/01 P Kik v OHIM [2003] ECR I-8283.***

Or. en

Justification

With regard to Community trade marks and designs, following the judgment in the Kik case, the OHIM decided that all correspondence would be made in the applicant's language, unless he or she decided otherwise. The OHIM explained that this was in the interests of applicants filing an application in a language other than its official languages, and that it would facilitate protection of trade marks and designs. A similar measure is required for patents.

Amendment 24

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are being developed by the European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages of the Union would benefit all the users of the European patent system. ***Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect.***

Amendment

(10) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are being developed by the European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages of the Union would benefit all the users of the European patent system. ***They should be made available online and free of charge on publication of the patent application and of the granted patent.***

Or. en

Amendment 25

Ramon Tremosa i Balcells

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are being

Amendment

(10) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are being

developed by the European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages *of the Union* would benefit all the users of the European patent system. Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect.

developed by the European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official *and co-official* languages *of the Member States* would benefit all the users of the European patent system. Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect.

Or. en

Amendment 26

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) During a transitional period, *before a system of high quality machine translations into all official languages of the Union becomes available*, a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] shall be accompanied by a full translation of the specification of the patent into English where the language of the proceedings before the European Patent Office is French or German, or into any official language of the participating Member States that is an official language of the Union where the language of the proceedings before the European Patent Office is English. Those arrangements would ensure that during a transitional period all European patents with unitary effect are made available in English which is the language customary in the field of international technological research and

Amendment

(11) During a transitional period a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] shall be accompanied by a full translation *with legal effects* of the specification of the patent into English where the language of the proceedings before the European Patent Office is French or German, or into any official language of the participating Member States that is an official language of the Union where the language of the proceedings before the European Patent Office is English. Those arrangements would ensure that during a transitional period all European patents with unitary effect are made available in English which is the language customary in the field of international technological research and publications. Furthermore, they would ensure that with respect to European

publications. Furthermore, they would ensure that with respect to European patents with unitary effect translations would be published in other official languages of the participating Member States. ***Such translations should not be carried out by automated means and their high quality should contribute to the training of translation engines by the European Patent Office.*** They would also enhance the dissemination of patent information. ***The transitional period should terminate as soon as high quality machine translations into all official language of the Union are available, subject to an objective evaluation of the quality. The quality of machine translations should be regularly and objectively evaluated by an independent expert committee established by the participating Member States in the framework of the European Patent Organisation and composed of the representatives of the European Patent Office and the users of the European patent system. Given the technological development, the maximum period for the development of high quality machine translations cannot be considered to exceed 12 years. Consequently, the transitional period should lapse 12 years from the date of application of this Regulation, unless it has been decided to terminate that period earlier.***

patents with unitary effect translations would be published in other official languages of the participating Member States. They would also enhance the dissemination of patent information. ***Such translations should not be carried out by automated means. The transitional period should not be longer than four years after the entry into force of this Regulation.***

Or. en

Amendment 27
Rolandas Paksas

Proposal for a regulation
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. A request for unitary effect as referred to

2. A request for unitary effect as referred to

in Article 12 of Regulation xx/xx
[substantive provisions] shall be submitted
in *the* language of the *proceedings*.

in Article 12 of Regulation xx/xx
[substantive provisions] shall be submitted
in *an official* language of *the European
Patent Office of the applicant's choosing*.

Or. It

Amendment 28

Antonio López-Istúriz White, Antonio Masip Hidalgo, Luis de Grandes Pascual

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled.
The translation must be a faithful reflection of the original wording of the patent.

Or. es

Amendment 29

Ramon Tremosa i Balcells

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either

Amendment

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official ***or co-official*** language of the participating Member State in which

the alleged infringement took place or in which the alleged infringer is domiciled.

either the alleged infringement took place or in which the alleged infringer is domiciled.

Or. en

Amendment 30
Rolandas Paksas

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer **is domiciled**.

Amendment

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer **resides on a permanent basis**.

Or. It

Amendment 31
Antonio López-Istúriz White, Antonio Masip Hidalgo, Luis de Grandes Pascual

Proposal for a regulation
Article 4 – paragraph 4

Text proposed by the Commission

4. In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration that the alleged infringer **may have acted without knowing or having reasonable grounds to know** that he was infringing the patent before having been provided with the translation referred to in paragraph 1.

Amendment

4. In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration that the alleged infringer **could not have known** that he was infringing the patent before having been provided with the translation referred to in paragraph 1.

Amendment 32

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, in accordance with Article 12 of Regulation xx/xx [substantive provisions], the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of administering a compensation scheme of reimbursing all translation costs up to a ceiling, from the fees referred to in Article 13 of that Regulation, for applicants filing patent applications at the European Patent Office in one of the official languages of the Union that is not an official language of the European Patent Office.

Amendment

1. Applicants who do not have a language in common with one of the official languages of the European Patent Office should be able to file their patent applications and any other procedural documents at the European Patent Office in any other official language of the Union.

Amendment 33

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

1a. The participating Member States, shall, within the meaning of Article 143 of the EPC, give the European Patent Office the task of administering a compensation scheme for the reimbursement of all translation costs up to a ceiling, from the

Amendment

fees referred to in Article 13 of Regulation xx/xx [substantive provisions], for applicants filing patent applications or any other procedural documents at the European Patent Office in one of the official languages of the Union that is not an official language of the European Patent Office.

Or. en

Amendment 34
Raffaele Baldassarre

Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 13 of Regulation xx/xx [substantive provisions] and shall be available only for small and medium-sized enterprises, natural persons, non-profit organisations and academic institutions having their residence or principal place of business within a Member State of the Union.

Or. en

Amendment 35
Raffaele Baldassarre

Proposal for a regulation
Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The compensation scheme referred to in paragraph 1 shall ensure full reimbursement of the translation costs up to a ceiling set in such a way as to reflect

*the average market price for translations
and to avoid abuse.*

Or. en

Amendment 36

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 13 of Regulation xx/xx [substantive provisions] and shall be available only for small and medium-sized enterprises, natural persons and non-profit organisations having their residence or principal place of business within a Member State of the Union.

Or. en

Amendment 37

Antonio López-Istúriz White, Antonio Masip Hidalgo, Luis de Grandes Pascual

Proposal for a regulation

Article 5 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

1c. The compensation scheme referred to in paragraph 1 shall ensure full of the translation costs up to a ceiling set in such a way as to reflect the average market price for translations and to avoid abuse. Those costs shall not be reimbursed where the European Patent Office rules that a translation into an official language is not necessary.

Or. en

Amendment 38

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 5 – paragraph 1 d (new)

Text proposed by the Commission

Amendment

1d. In the interests of persons who use a language for filing which is not one of the official languages of the European Patent Office, and taking into consideration European Union practice following the ruling of the Court of Justice in Case C-361/01 P¹, the European Patent Office shall implement a system in which the language for filing is used for all correspondence relating to the application unless the applicant expressly indicates that he wishes the European Patent Office to use one of its official languages.

¹ Judgment of the Court of Justice of 9 September 2003 in Case C-361/01 P Kik v OHIM [2003] ECR I-8283.

Or. en

Amendment 39

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. During a transitional period starting on the date of application of this Regulation in accordance with Article 7(2) of this Regulation, a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] shall be submitted together with the following:

1. During a transitional period ***of not more than four years*** starting on the date of application of this Regulation in accordance with Article 7(2) of this Regulation, a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] shall be

submitted together with the following:

Or. en

Amendment 40

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 41

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any official language of the participating Member States that is an official language of the Union.

Amendment

(b) where the language of the proceedings is English, a full translation ***with legal effects*** of the specification of the European patent into any official language of the participating Member States that is an official language of the Union.

Or. en

Amendment 42

Ramon Tremosa i Balcells

Proposal for a regulation

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any official language of the participating Member States ***that is an official language of the Union.***

Amendment

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any official ***or co-official*** language of the participating Member States.

Or. en

Amendment 43

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

2. In accordance with Article 12 of Regulation xx/xx [substantive provisions], the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of publishing the translations referred to in paragraph 1 as soon as possible after the date on which a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] is filed. ***The text of such translations shall have no legal value and be for information purposes only.***

Amendment

2. In accordance with Article 12 of Regulation xx/xx [substantive provisions], the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of publishing the translations referred to in paragraph 1 as soon as possible after the date on which a request for unitary effect as referred to in Article 12 of Regulation xx/xx [substantive provisions] is filed.

Or. en

Amendment 44

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Every two years from the sixth year calculated from the date of application of this Regulation, an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all official languages of the Union as developed by the European Patent Office shall be carried out by an independent expert committee. 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 European Patent Office 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.

deleted

Or. en

Amendment 45
Rolandas Paksas

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. Every two years from the **sixth** year calculated from the date of application of this Regulation, an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all official languages of the Union as developed by the European Patent Office shall be carried out by an independent expert committee. This expert committee shall be established by the participating Member States in the framework of the European Patent

3. Every two years from the **fourth** year calculated from the date of application of this Regulation, an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all official languages of the Union as developed by the European Patent Office shall be carried out by an independent expert committee. 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 European Patent Office 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.

Organisation and shall be composed of representatives of the European Patent Office 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.

Or. It

Amendment 46

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. *On the basis of the evaluation referred to in paragraph 3, every two years the Commission shall present a report to the Council and, if appropriate, make proposals for terminating the transitional period.*

Amendment

4. *Not later than four years after the date of application of this Regulation, the Commission shall make the necessary proposals for terminating the transitional period and ensuring that the language for filling, granting and prosecuting is English alone.*

Or. en

Amendment 47

Antonio López-Istúriz White, Antonio Masip Hidalgo

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

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.*

Amendment

deleted

Or. en

