



## The unitary patent

Harmonising patent law in Europe has been a constant goal since the 1960s. However significant challenges, particularly relating to languages and litigation of patent cases, have repeatedly blocked attempts. Now, 25 Member States have signed up to a compromise under enhanced cooperation. Spain and Italy abstained because of objections to the language rules.

### Patents in the EU today

Currently, the granting of patents in Europe is governed by the European Patent Convention (EPC). The EPC is an intergovernmental agreement amongst 38 European States, including all 27 Member States (MS) but not the EU itself. Applicants can apply at the European Patent Office (EPO) for a "European Patent" which, in fact, constitutes a bundle of national patents because it has to be validated by each state in which the applicant wishes protection. Where disputes arise, litigation has to be heard before relevant national courts.

### Unitary patent package

After no compromise could be found with Italy and Spain on the language regime, the other MS opted for [enhanced cooperation](#). The Commission subsequently proposed a package of two Regulations implementing this.

#### Unitary patent protection

Under this [regulation](#) an application for a "European patent with unitary effect" would be filed at the EPO as with the current procedure. Once such a patent is granted, and registered in the European Patent Register, it takes effect in the 25 participating MS.

#### Translation arrangements

The [regulation](#) allows patent applications in any language, with a translation into one of the EPO's official languages (EN, FR and DE). Translation costs are covered for certain EU residents filing in another EU language. The applicant has to translate the patent claims (defining the scope of the invention) into the two remaining EPO languages. No further translation is needed unless required in a specific case of litigation.

#### Agreement on a Unified Patent Court

A March 2011 [opinion](#) of the Court of Justice of the EU (CJEU) declared an earlier draft agreement on a patent court [incompatible with EU law](#). Consequently, the participating MS have drafted a new [version](#) to which only they, and not the EU, will be party. MS are expected to sign it in February, and [commit](#) to having it operational in early 2014.

A first reading agreement on the package was reached in December 2011 (pending a decision on the seat of the court). In [June 2012](#), the European Council agreed the central division would be in Paris, and specialised sections in London and Munich. But they also called for Articles 6-8 (relating to the CJEU's competence) to be deleted from the draft unitary patent regulation, causing a [debate](#) between EP and Council. A compromise, whereby these provisions move to the court agreement (Articles 14f-h), with references in the Regulation was agreed on 19 November.

The EP is expected to vote in December on the reports on the [unitary patent](#) by Bernhard Rapkay, S&D, the [language regime](#) by Raffaele Baldassarre, EPP and the [jurisdictional system for patent disputes](#) by Klaus Heiner Lehne, EPP.

[Italy](#) and [Spain](#) are contesting the decision to authorise enhanced cooperation on the unitary patent before the CJEU, [stressing](#) *inter alia* that enhanced cooperation is restricted to matters of non-exclusive EU competence while the patent would be an exclusive competence.

### Stakeholders

It is feared that the current proposal leads to [uncertainties about the legal nature](#) of patent protection. Moreover, it is [noted](#) that the proposal leads to more complexity, creating [fragmentation](#) between participating MS and those which do not take part, between different national laws applying to different unitary patents and between different national and international courts. Authors do [not consider](#) enhanced cooperation a [feasible](#) or favourable solution to achieve real integration in the field of patent law.