AMENDMENTS
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Draft report
Klaus-Heiner Lehne
(PE456.645v01-00)

on the proposal for a Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection
(COM(2010)0790 – 2010/0384(NLE))
Amendment 1
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Citation -1 (new)

Motion for a resolution
- having regard to the proposal for a Council regulation on the translation arrangements for the European Union patent (COM(2010)0350) and its impact assessment,

Amendment

Or. en

Amendment 2
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital D

Motion for a resolution
D. whereas it had quickly become clear that some Member States had specific problems which made it impossible for them to accept the proposed regulation; whereas, in particular, some Member States were unable to accept the translation arrangements for the Community patent, which led the Council to conclude that, on account of the translation regime issue, it would be unable to reach a political agreement on the Commission proposal,

Amendment
D. whereas it had quickly become clear that some Member States had specific problems which made it impossible for them to accept the proposed regulation; whereas, in particular, some Member States were unable to accept the translation arrangements for the Community patent, which led the Council to conclude that, on account of the translation regime issue, the Council was unable to reach a political agreement on the Commission proposal, due to the lack of a unanimous consensus,
Amendment 3
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital H

H. whereas the entry into force of the Lisbon Treaty on 1 December 2009 brought about a change of the legal basis for the creation of the EU patent by introducing Article 118 of the Treaty on the Functioning of the European Union ("TFEU"),

Amendment
H. whereas the entry into force of the Lisbon Treaty on 1 December 2009 brought about a change of the legal basis for the creation of the EU patent by introducing Article 118 of the Treaty on the Functioning of the European Union ("TFEU"), according to which: “In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.”

Or. en

Amendment 4
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital L

L. whereas despite considerable efforts and several rounds of negotiations undertaken by the Council in 2010, it was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed making a decision on the translation arrangements requiring unanimity impossible now and in

Amendment
L. whereas despite several rounds of negotiations undertaken by the Council in 2010, it was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed making a decision on the translation arrangements requiring unanimity impossible problematical now
the foreseeable future and that the objectives of the proposed Regulations to establish unitary patent protection in the entire European Union could not be attained within a reasonable period by applying the relevant provisions of the Treaties,

and in the foreseeable future and that the objectives of the proposed Regulations to establish a unitary patent protection in the entire European Union could not be attained within a reasonable period by applying the relevant provisions of the Treaties, whereas the Parliament considers it important that the Commission does not abandon its efforts to reach a comprehensive agreement on the EU patent

Amendment 5
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital L

Motion for a resolution
Amendment

L. whereas despite considerable efforts and several rounds of negotiations undertaken by the Council in 2010, it was confirmed at the Competitiveness Council meeting on 10 December 2010 that insurmountable difficulties existed making a decision on the translation arrangements requiring unanimity impossible now and in the foreseeable future and that the objectives of the proposed Regulations to establish unitary patent protection in the entire European Union could not be attained within a reasonable period by applying the relevant provisions of the Treaties,

L. whereas at the Competitiveness Council meeting on 10 December 2010 it was not possible to make a decision on the translation arrangements; whereas there exists different alternatives to the translations arrangements –such as OHIM-like system, English only or English always-, that has never been discussed or even taken into consideration; whereas all these facts could lead to the conclusion that the proposed enhanced cooperation is not the last resort, as stated in article 20 TEU,

Amendment 6
Klaus-Heiner Lehne

Motion for a resolution
Recital N
Motion for a resolution

N. whereas, to date, twelve Member States have indicated their intention to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection by addressing a request to the Commission in accordance with Article 329(1) TFEU,

Amendment

N. whereas more than nine Member States have indicated their intention to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection by addressing a request to the Commission in accordance with Article 329(1) TFEU and subsequently the Commission has presented a proposal for a Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection.

Or. en

Amendment 7
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital N a (new)

Motion for a resolution

Na. whereas the Commission has not assessed the impact of its proposal on enhanced cooperation,

Amendment

Or. en

Amendment 8
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital O

Motion for a resolution

O. whereas Parliament has verified compliance with Article 20 of the Treaty on European Union ("TEU") and Articles 326 to 334 TFEU,

Amendment

deleted

1 Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom.
Amendment 9  
Antonio López-Istúriz White, Antonio Masip Hidalgo  

Motion for a resolution  
Recital O  

**Amendment**  
O. whereas Parliament has verified non-compliance with Article 20 of the Treaty on European Union ("TEU") and Articles 326 to 334 TFEU,

**Motion for a resolution**  
O. whereas Parliament has verified compliance with Article 20 of the Treaty on European Union ("TEU") and Articles 326 to 334 TFEU,

Amendment 10  
Toine Manders  

Motion for a resolution  
Recital P  

**Amendment**  
P. whereas, according to Article 20 TEU, a minimum of nine Member States may establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences, while using its institutions and exercising those competences by applying the provisions of the Treaties in a judicial consistent manner, subject to the limits and in accordance with the arrangements laid down in that Article and in Articles 326 to 334 TFEU,

**Motion for a resolution**  
P. whereas, according to Article 20 TEU, a minimum of nine Member States may establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences, while using its institutions and exercising those competences by applying the provisions of the Treaties subject to the limits and in accordance with the arrangements laid down in that Article and in Articles 326 to 334 TFEU,
Amendment 11
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital R

R. whereas, in particular, this enhanced cooperation may be regarded as furthering the Union's objectives, protecting its interests and reinforcing its integration process within the meaning of Article 20 TEU, in the light of the Commission's impact assessment in connection with its above-mentioned 2010 proposal for a regulation on the translation arrangements for the European Union patent, which pointed to the lack of a unitary patent providing protection across the entire EU leading to a fragmented patent system; whereas this fragmentation is caused by the high costs and complexity of validating European patents in individual Member States which can amount to 40% of the overall costs of patenting in Europe; whereas the creation of unitary patent protection for a group of Member States would improve the level of patent protection by making it possible to obtain uniform patent protection throughout the territories of the participating Member States and would eliminate the costs and complexity for those territories, thus fostering scientific and technological advances and the functioning of the internal market,

Amendment 12
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital R

Or. en
Motion for a resolution

R. whereas, in particular, this enhanced cooperation may be regarded as furthering the Union's objectives, protecting its interests and reinforcing its integration process within the meaning of Article 20 TEU, in the light of the Commission's impact assessment in connection with its above-mentioned 2010 proposal for a regulation on the translation arrangements for the European Union patent, which pointed to the lack of a unitary patent providing protection across the entire EU leading to a fragmented patent system; whereas this fragmentation is caused by the high costs and complexity of validating European patents in individual Member States which can amount to 40% of the overall costs of patenting in Europe; whereas the creation of unitary patent protection for a group of Member States would improve the level of patent protection by making it possible to obtain uniform patent protection throughout the territories of the participating Member States and would eliminate the costs and complexity for those territories, thus fostering scientific and technological advances and the functioning of the internal market,

Amendment

R. whereas notwithstanding the previous paragraph, the creation of a unitary patent protection extends to exclusive competence of the Union, as it will be necessary to adopt two International Agreements:

The adhesion of the Union to the European Patent Convention (EPC), in order for the European Patent Office to be entitled to grant EU patents;

The Agreement on the European and EU Patents Court, to be negotiated and signed by the Union, its Member States and third parties.

Or. en
Amendment 13
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital S

*S. whereas it is clearly apparent from the antecedents of this initiative that the proposed decision is being put forward as a last resort and that the objectives of the cooperation cannot be attained within a reasonable period by the Union as a whole; whereas at least nine Member States intend to participate in it; whereas, therefore, the requirements of Article 20 TEU are satisfied,

Amendment deleted

Or. en

Amendment 14
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital S

*S. whereas it is clearly apparent from the antecedents of this initiative that the proposed decision is being put forward as a last resort and that the objectives of the cooperation cannot be attained within a reasonable period by the Union as a whole; whereas at least nine Member States intend to participate in it; whereas, therefore, the requirements of Article 20 TEU are satisfied,

Amendment S. whereas it is clearly apparent from the antecedents that the proposed decision is not being put forward as a last resort, since alternative translation arrangements have not been seriously nor deeply discussed,

Or. en
Amendment 15
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital T

Motion for a resolution

T. whereas the requirements of Articles 326 to 334 TFEU are also satisfied,

Amendment

T. whereas the requirements of Articles 20, 326 to 334 TFEU are not satisfied, as the proposed enhanced cooperation undermines the internal market and the economic cohesion of the EU, is a discrimination to trade between Member States, distorts competition and does not respect the linguistic diversity of the EU; whereas there is also noncompliance with the requirements of Article 118 TFEU, since the enhanced cooperation does not provide uniform protection of intellectual property rights throughout the EU,

Or. en

Amendment 16
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital T

Motion for a resolution

T. whereas the requirements of Articles 326 to 334 TFEU are also satisfied,

Amendment

T. whereas the requirements of Articles 326 to 334 TFEU are also satisfied; whereas enhanced cooperation will facilitate the proper functioning of the internal market by eliminating obstacles to free movement of goods, helping to tackle patent infringements, possibly increasing the number of inventors seeking patent protection throughout the Union, providing equal access to unitary patent protection to all inventors, innovative companies and patent-holders whether they come from participating Member States or non-participating
Member States, providing an additional instrument available to all patent-holders in the Union, improving the framework conditions for innovative businesses throughout the Union, and eliminating, among participating Member States, the current fragmentation where patent right "borders" exist between Member States,

Amendment 17
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital U

U. whereas, in particular, enhanced cooperation in this area complies with the Treaties and Union law since it will not affect the acquis, given that, to date, only a limited number of legal acts of the Union within the meaning of Article 288 TFEU have been adopted, none of them covering the creation of a European intellectual property right providing for uniform protection throughout the Union;


Amendment

U. whereas, in particular, enhanced cooperation in this area does not comply with the Treaties and Union law - Article 326 TFEU - since it will affect the acquis, even if, to date, only a limited number of legal acts of the Union would be affected such as the Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, the Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products and Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products,
matter; whereas enhanced cooperation in the area of patents would not cause discrimination since access to the unitary patent will be open to users of the patent system from all over the Union,

Amendment 18
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital V

V. whereas enhanced cooperation will not undermine the internal market or economic, social and territorial cohesion, will not constitute a barrier to or give rise to discrimination in trade between Member States and will not distort competition between them; whereas, instead, it will facilitate the proper functioning of the internal market by eliminating obstacles to free movement of goods, helping to tackle patent infringements, possibly increasing the number of inventors seeking patent protection throughout the Union, providing equal access to unitary patent protection to all inventors, innovative companies and patent-holders whether they come from participating Member States or non-participating Member States, providing an additional instrument available to all patent-holders in the Union, improving the framework conditions for innovative businesses throughout the Union, and eliminating, among participating Member States, the current fragmentation where patent right "borders" exist between Member States,
Amendment 19
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital V

Motion for a resolution

V. whereas enhanced cooperation will not undermine the internal market or economic, social and territorial cohesion, will not constitute a barrier to or give rise to discrimination in trade between Member States and will not distort competition between them; whereas, instead, it will facilitate the proper functioning of the internal market by eliminating obstacles to free movement of goods, helping to tackle patent infringements, possibly increasing the number of inventors seeking patent protection throughout the Union, providing equal access to unitary patent protection to all inventors, innovative companies and patent-holders whether they come from participating Member States or non-participating Member States, providing an additional instrument available to all patent-holders in the Union, improving the framework conditions for innovative businesses throughout the Union, and eliminating, among participating Member States, the current fragmentation where patent right "borders" exist between Member States,

Or. en

Amendment 20
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital W

Motion for a resolution

W. whereas enhanced cooperation will not
respect the rights, competences and obligations of the non-participating Member States, inasmuch as the possibility of obtaining unitary patent protection on the territories of the participating Member States does not affect the availability or the conditions of patent protection on the territories of non-participating Member States,

respect the rights of third parties - who must respect patents - to receive the patent information in equal conditions, leading thus to an increase in the number of patent infringements,

Amendment 21
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital X

**Motion for a resolution**

X. whereas Article 328(1) TFEU provides that enhanced cooperation is to be open at any time to all Member States that wish to participate,

Amendment

deleted

Or. en

Amendment 22
Raffaele Baldassarre, Luigi Berlinguer

Motion for a resolution
Recital X

**Motion for a resolution**

X. whereas Article 328(1) TFEU provides that enhanced cooperation is to be open at any time to all Member States that wish to participate; whereas the Commission should promote from the beginning participation of as many Member States as possible,

Or. en
Amendment 23
Toine Manders

Motion for a resolution
Recital X

X. whereas Article 328(1) TFEU provides that enhanced cooperation is to be open at any time to all Member States that wish to participate,

Amendment
X. whereas Article 328(1) TFEU provides that enhanced cooperation is to be open at any time to all Member States that wish to participate; whereas the Member States participating in enhanced cooperation shall ensure that they keep promoting and encouraging participation by as many Member States as possible,

Or. en

Amendment 24
Klaus-Heiner Lehne

Motion for a resolution
Recital X a (new)

Motion for a resolution
Xa. whereas the consent of the Parliament concerns the enhanced cooperation and does not prejudice which Member States will participate in it,

Amendment

Or. en

Amendment 25
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Recital Y

Motion for a resolution
Y. whereas Article 333(2) TFEU allows

Amendment
Y. whereas the second paragraph of Article
the Council (or, more precisely, those members of the Council representing the Member States participating in enhanced cooperation) to adopt a decision stipulating that it will act under the ordinary legislative procedure, rather than the special legislative procedure provided for in the second paragraph of Article 118 TFEU, under which Parliament is merely consulted,

118 TFEU obliges the Council to consult the Parliament on the regulation on the translation arrangements for the European Union patent; whereas this consultation has not taken place, yet,

Amendment 26
Klaus-Heiner Lehne

Motion for a resolution
Paragraph 1

Motion for a resolution  Amendment

1. Consents to the proposal for a Council decision;
1. Consents to the draft Council decision without prejudice to which are the participating Member States;

Amendment 27
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Paragraph 1

Motion for a resolution  Amendment

1. Consents to the proposal for a Council decision;
1. Does not consent to the proposal for a Council decision;

Or. en
Amendment 28
Antonio López-Istúriz White, Antonio Masip Hidalgo

Motion for a resolution
Paragraph 2

2. Calls on the Council to adopt a decision pursuant to Article 333(2) of the Treaty on the Functioning of the European Union stipulating that, when it comes to the proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with respect to language arrangements for the European intellectual property rights pursuant to the second paragraph of Article 118 of the Treaty on the Functioning of the European Union, it will act under the ordinary legislative procedure;