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

COUNCIL REGULATION (EU) No 1260/2012

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 118 thereof,

Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection[(1)],

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

(1) Pursuant to Decision 2011/167/EU, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (hereinafter "participating Member States") were authorised to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection.

(2) Under Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection[(2)], certain European patents granted by the European Patent Office (hereinafter ‘EPO’) under the rules and procedures of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter ‘EPC’) should, at the request of the patent proprietor, benefit from unitary effect in the participating Member States.

(3) Translation arrangements for European patents benefiting from unitary effect in the participating Member States (hereinafter ‘European patent with unitary effect’) should be established by means of a separate Regulation, in accordance with the second paragraph of Article 118 of the Treaty on the Functioning of the European Union (TFEU).

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 1260/2012. (See end of Document for details)*

(4) In accordance with Decision 2011/167/EU the translation arrangements for European patents with unitary effect should be simple and cost-effective. They should correspond to those provided for in the proposal for a Council Regulation on the translation arrangements for the European Union patent, presented by the Commission on 30 June 2010, combined with the elements of compromise proposed by the Presidency in November 2010 that had wide support in the Council.

(5) Such translation arrangements should ensure legal certainty and stimulate innovation and should, in particular, benefit small and medium-sized enterprises (SMEs). They should make access to the European patent with unitary effect 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 European patent with unitary effect 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.

(7) Without prejudice to the transitional arrangements, where the specification of a European patent with unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations should be required. Article 14(6) of the EPC provides that the specification of a European patent is published in the language of the proceedings before the EPO and includes a translation of the claims into the other two official languages of the EPO.

(8) In the event of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor at the request of the alleged infringer should provide a full translation of the patent 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. The patent proprietor should also be required to provide, at the request of a court competent in the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language used in the 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.

(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.

(10) In order to facilitate access to European patents with unitary effect, in particular for SMEs, applicants should be able to file their patent applications at the EPO in any official language of the Union. As a complementary measure, certain applicants

obtaining European patents with unitary effect, having filed a European patent application in one of the official languages of the Union, which is not an official language of the EPO, and having their residence or principal place of business within a Member State, should receive additional reimbursements of the costs of translating from the language of the patent application into the language of the proceedings of the EPO, beyond what is currently in place at the EPO. Such reimbursements should be administered by the EPO in accordance with Article 9 of Regulation (EU) No 1257/2012.

(11) 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 EPO and are a very important tool in seeking to improve access to patent information and to widely disseminate 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 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.

(12) During the 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 9 of Regulation (EU) No 1257/2012 should be accompanied by a full translation of the specification of the patent into English where the language of the proceedings before the EPO is French or German, or into any official language of the Member States that is an official language of the Union where the language of the proceedings before the EPO 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 customarily used in the field of international technological research and publications. Furthermore, such arrangements 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 EPO. They would also enhance the dissemination of patent information.

(13) The transitional period should terminate as soon as high quality machine translations into all official languages of the Union are available, subject to a regular and objective evaluation of the quality 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 EPO and the users of the European patent system. Given the state of 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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 1260/2012. (See end of Document for details)*

(14) Since the substantive provisions applicable to a European patent with unitary effect are governed by Regulation (EU) No 1257/2012 and are completed by the translation arrangements provided for in this Regulation, this Regulation should apply from the same date as Regulation (EU) No 1257/2012.

(15) This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 of the TFEU and to Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community[(3)]. 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.

(16) Since the objective of this Regulation, namely the creation of a uniform and simple translation regime for European patents with unitary effect, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, where appropriate by means of enhanced cooperation, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection authorised by Decision No 2011/167/EU with regard to the applicable translation arrangements.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) ‘European patent with unitary effect’ means a European patent which benefits from unitary effect in the participating Member States by virtue of Regulation (EU) No 1257/2012;

(b) ‘Language of the proceedings’ means the language used in the proceedings before the EPO as defined in Article 14(3) of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter ‘EPC’).