

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Decision	Procedure lapsed or withdrawn
Community patent: establishing a Court, appeals before the Court of First Instance	
Subject 3.50.16 Industrial property, European patent, Community patent, design and pattern 8.40.04 Court of Justice, Court of First Instance	

Key players			
European Parliament			
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2982</a>	03/12/2009
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	BARNIER Michel	

Key events			
22/12/2003	Legislative proposal published	<a href="#">COM(2003)0828</a>	Summary
09/02/2004	Committee referral announced in Parliament, 1st reading		
16/09/2004	Committee referral announced in Parliament, 1st reading		
19/10/2009	Committee referral announced in Parliament, 1st reading		
02/12/2009	Additional information		Summary
03/12/2009	Resolution/conclusions adopted by Council		Summary
26/04/2012	Proposal withdrawn by Commission		Summary

Technical information	
Procedure reference	2003/0324(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Decision

Legal basis	Treaty on the Functioning of the EU TFEU 257; Treaty on the Functioning of the EU TFEU 281-p2
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/5/20581; JURI/7/00061

#### Documentation gateway

Legislative proposal	<a href="#">COM(2003)0828</a>	23/12/2003	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0266/2004</a> <a href="#">OJ C 112 30.04.2004, p. 0076-0080</a>	31/03/2004	ESC	
Economic and Social Committee: opinion, report	<a href="#">CES0521/2004</a>	31/03/2004	ESC	

#### Additional information

European Commission	<a href="#">EUR-Lex</a>
---------------------	-------------------------

## Community patent: establishing a Court, appeals before the Court of First Instance

**PURPOSE :** to establish the Community Patent Court and concerning appeals before the Court of First Instance. **PROPOSED ACT :** Council Decision. **CONTENT :** this proposal aims to create a judicial panel, to be called "Community Patent Court", shall be attached to the Court of First Instance of the European Communities. Its seat shall be at the Court of First Instance. The present Decision relating to jurisdictional aspects of the Community patent system intends to redress the existing shortcomings of the current situation of patent protection in the Union. The objective is to establish Community wide patent protection which can be enforced before one single court operating to uniform standards. This objective can only be achieved at a Community level. The proposed Council Decision is part of the overall project to establish the Community patent system. By way of revision of the European Patent Convention and accession of the Community to the same, the European Patent Office shall be empowered to grant Community patents which will confer rights on their holders according to the regulation of the Council on the Community patent. Disputes concerning in particular the infringement and validity of these rights shall, after a transitional period, be brought before a Community jurisdiction. These measures shall reform the system of patent protection in Europe, which has been characterised by national patent titles enforceable before national courts, and make the necessary adaptations for the needs of European industry which increasingly operates trans-nationally within the common market. The measures are designed to increase the competitiveness of the Union's innovative industries by creating a Community wide uniform patent protection which can be enforced before a single Community jurisdiction rendering decisions with Community wide effect. Within this overall project, the objective of the present proposal is to establish a Community Patent Court for first instance Community patent litigation and to provide for the necessary provisions with a view to accommodating the new function of the Court of First Instance as appeal instance against decisions of the Community Patent Court.

**FINANCIAL IMPLICATIONS :** - Total allocation for action (Part B): none; - Period of application : Start: 2009; - Overall financial impact of human resources and other administrative expenditure: - 2009 : EUR 3 257 000; - 2010 : EUR 7 115 000 - 2011 : EUR 10 472 000; - 2012 : EUR 11 606 000 - 2013 : EUR 12 740 000; - 2014 : EUR 13 982 000.?

## Community patent: establishing a Court, appeals before the Court of First Instance

The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the proposal for a Council Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance, the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis ? Treaty/EC/Art.225a, Art.245 ? became Art. 257, Art. 281 of the TFEU. Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;

- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an ordinary legislative procedure (COD).

## Community patent: establishing a Court, appeals before the Court of First Instance

---

The Council held a debate on an enhanced patent system in Europe and adopted conclusions on the main features of the future patent system based on two main pillars comprising:

- the creation of a unified patent litigation system that would have exclusive jurisdiction in respect of civil litigation related to the infringements and validity of EU and European patents, and would consist of a court of first instance (with a central division and local and regional divisions), and a court of appeal;
- the creation of an EU patent as a unitary legal instrument for granting patents valid in the EU as a whole. In a public session the Council also agreed on a general approach (i.e. an agreement in principle pending the opinion of the European Parliament) on a draft regulation establishing the EU patent.

The Council conclusions concern, inter alia, the main features of the European and EU Patents Court. This should have exclusive jurisdiction in respect of civil litigation related to the infringement and validity of EU patents and European patents. The EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions. The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.

The Composition of the Panels:

- it is vital that the composition of the panels is organised in a way which makes best use of experience of patent litigation among judges and practitioners at national level through pooling of resources. Experience could also be acquired through theoretical and practical training which should be provided in order to improve and increase available patent litigation expertise and to ensure a broad geographic distribution of such specific knowledge and experience;
- all panels of the local and regional divisions and the central division of the Court of First Instance should guarantee the same high quality of work and the same high level of legal and technical expertise;
- divisions in a Contracting State where, during a period of three successive years, less than 50 cases per year have been commenced, should either join a regional division with a critical mass of at least 50 cases per year or sit in a composition whereby one of the legally qualified judges is a national of the Contracting State concerned and two of the legally qualified judges, who are not nationals of the Contracting State concerned, come from the pool of judges to be allocated to the division on a case by case basis;
- divisions in a Contracting State where, during a period of three successive years, more than 50 cases per calendar year have been commenced should sit in a composition whereby two of the legally qualified judges are nationals of the Contracting State. The third legally qualified judge, who would be of a different nationality, would be allocated from the pool of judges. The legally qualified judges from the pool should be allocated on a long term basis where this is necessary for the efficient functioning of divisions with a high work load;
- all panels of the local and regional divisions should comprise an additional technical judge in the case of a counterclaim for revocation or, in the case of an action for infringement, when requested by one of the parties;
- all panels of the central division should sit in a composition of two legally qualified judges and one technically qualified judge. The technically qualified judge should be qualified in the field of technology concerned and be allocated to the panel from the pool of judges on a case by case basis. Under certain conditions to be defined in the Rules of Procedure and with the agreement of the parties, cases in the First Instance may be heard by a single legally qualified judge;
- the allocation of judges should be based on their legal or technical expertise, linguistic skills and relevant experience.

Actions and counterclaims for revocation: in order to ensure that local and regional divisions work in an expeditious and highly efficient way, it is vital that the divisions have some flexibility on how to proceed with counterclaims for revocation.

- Direct actions for revocation of patents should be brought before the central division.
- A counterclaim for revocation can be brought in the case of an action for infringement before a local or regional division. The local or regional division concerned may; (i) proceed with the counterclaim for revocation; or, (ii) refer the counterclaim to the central division and either proceed with the infringement action or stay those proceedings; or, (iii) with the agreement of the parties, refer the whole case for decision to the central division.

Languages of proceedings: the Draft Agreement, the Statute and the Rules of procedure should provide for arrangements which would guarantee fairness and predictability of the language regime for the parties. Furthermore, any division of the EEUPC should provide translation and interpretation facilities in oral proceedings to assist the parties concerned to the extent deemed appropriate, in particular when one of the parties is an SME or a private party.

The language of proceedings of the local and regional divisions should in general be the language(s) of the Contracting State(s) where they would be established. Contracting States may however designate one or more of the official languages of the European Patent Office as language of proceedings of the local or regional division they host. The language of proceedings of the central division should be the language of the patent. The language of proceedings of the Court of Appeal should be the language of the proceedings at the First Instance.

Any subsequent decisions which would in any way affect the arrangements regarding the language of proceedings under the Agreement on the EEUPC should be adopted by unanimity.

Transitional period: the transitional period should not last longer than five years after the entry into force of the Agreement on the EEUPC. During the transitional period, proceedings for infringement or for revocation of a European patent may still be initiated before the national courts or other competent authorities of a Contracting State having jurisdiction under national law. Any proceedings pending before a national

court at the end of the transitional period should continue to be subject to the transitional regime.

Financing: the EEUPC should be financed by its own financial revenues consisting of the court fees, and at least in the transitional period, by contributions from the European Union and from the Contracting States which are not Member States. A Contracting State setting up a local division should provide the facilities necessary for that purpose.

The court fees should be fixed by the Mixed Committee on a proposal by the Commission which should include an assessment by the Commission of the expected costs of the EEUPC. The court fees should be fixed at such a level as to ensure a right balance between the principle of fair access to justice, in particular for SMEs and micro-entities, and an adequate contribution of the parties for the costs incurred by the EEUPC.

The EEUPC should be organised in the most efficient and cost effective manner and should ensure equitable access to justice, taking into account the needs of SMEs and micro-entities.

At the end of the transitional period, on the basis of a report from the Commission on costs and financing of the EEUPC, the Mixed Committee should consider the adoption of measures aimed at the objective of self-financing.

## Community patent: establishing a Court, appeals before the Court of First Instance

---

As announced in Official Journal C 156 of 2 June 2012, the Commission decided to withdraw this proposal, which had become obsolete.