

Court of Justice, 5 May 2015, Spain v Council

See: [IPPT20150505, CJEU, Spain v Parliament and Council](#)



PATENT LAW – UNITARY PATENT

The Regulation Unitary Patent Translation Arrangements has a legitimate aim: the translations arrangements make the access to the unitary patent and patent system as a whole easier, it is cheaper and ensures legal certainty

- As regards, first, the objective pursued by the Council, it is stated in recital 16 in the preamble of the contested regulation that its objective is the creation of a uniform and simple translation regime for the EPUE established by Regulation No 1257/2012. Recitals 4 and 5 of the contested regulation add that, in accordance with the decision on enhanced cooperation, the translation arrangements for European patents with unitary effect should be simple and cost-effective. They should moreover ensure legal certainty, stimulate innovation and benefit, in particular, small and medium-sized enterprises, so as to make access to the EPUE and to the patent system as a whole easier, less costly and legally secure. It follows from the above that the aim of the contested regulation is to facilitate access to patent protection, particularly for small and medium-sized enterprises.
- The legitimacy of such an objective cannot be denied.

Since it is not required to translate a patent in an official language of a State, the current framework is suitable for this purpose

- Since the EPO is responsible for the issue of European patents, the contested regulation is based on the translation arrangements in force at the EPO, which provide for the use of English, French and German, there being no requirement for a translation of the specification of the European patent, or at least its claims, in the official language of each State in which [the EPUE] is to be effective, as is the case for the European patent. Consequently, the arrangement established by the contested regulation does indeed make it possible to facilitate access to patent protection by reducing the costs associated with translation requirements.

Regulation is proportional: cost-effective and preserves the necessary balance between the interests of patent applicants and other market participants.

- Accordingly, first, in order to facilitate access to the EPUE, and in particular to enable applicants to file at the EPO their applications in any language of the European Union, Article 5 of the contested regulation provides for a compensation scheme for the reimbursement up to a ceiling of translation costs for some applicants, in particular small and medium-sized enterprises, who file their patent application at the EPO in an official language of the European Union other than one of the official languages of the EPO.
- Further, in order to limit the disadvantages for economic operators who do not have the means of understanding, to a certain level of competence, texts written in English, French or German, the Council provided, in Article 6 of the contested regulation, for a transitional period, of a maximum duration of 12 years, until a high quality machine translation system is available for all the official languages of the European Union.
- Last, in order to protect economic operators who do not have the means of understanding, to a certain level of competence, one of the official languages of the EPO, the Council set out, in Article 4 of the contested regulation, a number of provisions applicable in the event of a dispute, which are designed, first, to enable such operators, where they are suspected of infringement of a patent, to obtain, on the conditions set out in that article, a full translation of the EPUE

No violation of judgment Meroni/High Authority: The Council did not delegate powers to Member States or the EPO

- Since the Council did not, contrary to what is asserted by the Kingdom of Spain, delegate to the participating Member States or to the EPO implementing powers which are uniquely its own under EU law, the principles set out by the Court in the judgment in Meroni v High Authority (9/56, EU:C:1958:7) cannot apply.

Article 118 TFEU correct foundation for article 4 Regulation Unitary Patent Translation Arrangements

- In this case, as regards the aim of the contested regulation, it must be observed that, according to the title of that regulation and Article 1 thereof, the regulation implements enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements. As is stated in recital 16 of the contested regulation, its objective is the creation of a uniform and simple translation regime for EPUEs.
- As regards the content of the contested regulation, it must be observed that Article 3(1) of

the contested regulation provides that, without prejudice to provisions relating to translations in the event of a dispute and transitional provisions, where the specification of a European patent which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations are required. Under Article 14(6) of the EPC, the specifications of a European patent are to be published in the language of the proceedings and are to contain translations of the claims in the other two official languages of the EPO.

No violation of the principle of legal certainty

- Fourth, the fact that it is only the patent in the language in which it has been issued which produces legal effects and not the translation which, under Article 4 of the contested regulation, is to be provided in the event of a dispute, does not create any legal uncertainty, since it enables the operators involved to know with certainty which language is authentic in order to assess the extent of the protection conferred by the EPUE.
- Fifth, nor does the omission to indicate the specific consequences of the possibility that an alleged patent infringer acted in good faith infringe the principle of legal certainty. On the contrary, as is stated in recital 9 in the preamble of the contested regulation, that circumstance enables the court with jurisdiction to undertake a case-by-case basis analysis by examining, inter alia, whether the alleged patent infringer is a small or medium-sized enterprise operating only at local level and taking into account the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.

Source: curia.europa.eu

Court of Justice, 5 May 2015

(A. Borg Barthet, J. Malenovský, E. Levits, E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça)
JUDGMENT OF THE COURT (Grand Chamber)

5 May 2015 (*)

(Action for annulment — Implementing enhanced cooperation — Unitary patent — Regulation (EU) No 1260/2012 — Provisions concerning translation — Principle of non-discrimination — Article 291 TFEU — Delegation of powers to bodies outside the European Union — Second paragraph of Article 118 TFEU — Legal basis — Principle of autonomy of EU law)

In Case C-147/13,

ACTION for annulment under Article 263 TFEU, brought on 22 March 2013,

Kingdom of Spain, represented by E. Chamizo Llatas and S. Centeno Huerta, acting as Agents,
applicant,

v

Council of the European Union, represented by T. Middleton, F. Florindo Gijón, M. Balta and L. Grønfeldt, acting as Agents,
defendant,

supported by:

Kingdom of Belgium, represented by C. Pochet, J.-C. Halleux and T. Materne, acting as Agents,

Czech Republic, represented by M. Smolek and J. Vlácil, acting as Agents,

Kingdom of Denmark, represented by C. Thorning and M. Wolff, acting as Agents,

Federal Republic of Germany, represented by T. Henze, M. Möller and J. Kemper, acting as Agents,

French Republic, represented by G. de Bergues, F.-X. Bréchet, D. Colas and N. Rouam, acting as Agents,

Grand Duchy of Luxembourg

Hungary, represented by Z. Fehér and K. Szijjártó, acting as Agents,

Kingdom of the Netherlands, represented by M. Bulterman and J. Langer, acting as Agents,

Kingdom of Sweden, represented by A. Falk and C. Meyer-Seitz, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by M. Holt, acting as Agent, and by J. Stratford QC and T. Mitcheson, Barrister,

European Parliament, represented by M. Gómez-Leal, U. Rösslein and M. Dean, acting as Agents,

European Commission, represented by I. Martínez del Peral, T. van Rijn, B. Smulders and F. Bulst, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič (Rapporteur), A. Ó Caoimh, C. Vajda and S. Rodin, Presidents of Chambers, A. Borg Barthet, J. Malenovský, E. Levits, E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 July 2014,

after hearing [the Opinion of the Advocate General](#) at the sitting on 18 November 2014,

gives the following

Judgment

1 By its action, the Kingdom of Spain seeks the annulment of 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 (OJ 2012 L 361, p. 89; ‘the contested regulation’).

2 That regulation was adopted by the Council of the European Union following Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53: ‘the decision on enhanced cooperation’).

Legal context
International law

The Convention on the Grant of European patents

3 Article 14 of the Convention on the Grant of European patents (European Patent Convention: ‘the EPC’), which was signed in Munich on 5 October 1973 and entered into force on 7 October 1977, in the version applicable to these proceedings, headed ‘*Languages of the European Patent Office, European patent applications and other documents*’, states:

‘(1) *The official languages of the European Patent Office [“the EPO”] shall be English, French and German.*

(2) *A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before [the EPO], such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.*

(3) *The official language of [the EPO] in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before [the EPO], unless the Implementing Regulations provide otherwise.*

(4) *Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall, however, file a translation in an official language of [the EPO] in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.*

(5) *European patent applications shall be published in the language of the proceedings.*

(6) *Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the other two official languages of [the EPO].*

...

(8) *Entries in the European Patent Register shall be made in the three official languages of [the EPO]. In cases of doubt, the entry in the language of the proceedings shall be authentic.’*

4 Article 142 of the EPC, headed ‘Unitary patents’, provides:

(1) *Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.*

(2) *Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.’*

5 Article 143 of the EPC, headed ‘Special departments of [the EPO]’, states:

‘(1) *The group of Contracting States may give additional tasks to [the EPO].*

(2) *Special departments common to the Contracting States in the group may be set up within [the EPO] in order to carry out the additional tasks. The President of [the EPO] shall direct such special departments; Article 10, paragraph 2 and Article 10, paragraph 3, shall apply mutatis mutandis.’*

6 Article 145 of the EPC, headed ‘Select committee of the Administrative Council’, provides:

‘(1) *The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; [the EPO] shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of [the EPO] shall be responsible for the activities of the special departments to the select committee of the Administrative Council.*

(2) *The composition, powers and functions of the select committee shall be determined by the group of Contracting States.’*

Agreement on a Unified Patent Court

7 The Agreement on a Unified Patent Court, signed in Brussels on 19 February 2013 (OJ 2013 C 175, p. 1; ‘the UPC Agreement’), provides, in Article 32(1)(i):

‘*The Court shall have exclusive competence in respect of:*

...

(i) *actions concerning decisions of [the EPO] in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012 [of the European Parliament and the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ 2012 L 361, p. 1)].’*

8 Article 89(1) of the UPC Agreement provides:

‘*This Agreement shall enter into force on 1 January 2014 or on the first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession in accordance with Article 84, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place or on the first day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 [of the European Parliament and the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1)] concerning its relationship with this Agreement, whichever is the latest.’*

EU law

Regulation No 1257/2012

9 Recitals 9, 24 and 25 in the preamble of Regulation (EU) No 1257/2012 are worded as follows:

‘(9) *The European patent with unitary effect [“the EPUE”] should confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection. This should be ensured through the establishment of a Unified Patent Court. In matters not covered by this Regulation or by [the contested regulation], the provisions of the EPC, [the UPC Agreement], including its provisions defining the scope of that right and its limitations, and national law, including rules of private international law, should apply.*

...

(24) *Jurisdiction in respect of [EPUEs] should be established and governed by an instrument setting up a unified patent litigation system for European patents and [EPUEs].*

(25) *Establishing a Unified Patent Court to hear cases concerning [the EPUE] is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors. It is therefore of paramount importance that the participating Member States ratify [the UPC Agreement] in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to become operational as soon as possible.’*

10 Article 1 of Regulation No 1257/2012 provides:

‘1. *This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection, authorised by [the decision on enhanced cooperation].*

2. *This Regulation constitutes a special agreement within the meaning of Article 142 of [the EPC].’*

11 Article 2(e) of Regulation No 1257/2012 provides:

‘For the purposes of this Regulation:

...

(e) *Register for unitary patent protection’ means the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of an [EPUE] are registered.’*

12 The first subparagraph of Article 3(1) of that regulation provides:

‘A European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.’

13 Article 9 of Regulation No 1257/2012, headed ‘Administrative tasks in the framework of the European Patent Organisation’, provides:

‘1. *The participating Member States shall, within the meaning of Article 143 of the EPC, give the EPO the following tasks, to be carried out in accordance with the internal rules of the EPO:*

(a) *to administer requests for unitary effect by proprietors of European patents;*

(b) *to include the Register for unitary patent protection within the European Patent Register and to administer the Register for unitary patent protection;*

(c) *to receive and register statements on licensing referred to in Article 8, their withdrawal and licensing commitments undertaken by the proprietor of [the EPUE] in international standardisation bodies;*

(d) *to publish the translations referred to in Article 6 of [the contested regulation] during the transitional period referred to in that Article;*

(e) *to collect and administer renewal fees for [EPUEs], in respect of the years following the year in which the mention of the grant is published in the European Patent Bulletin; to collect and administer additional fees for late payment of renewal fees where such late payment is made within six months of the due date, as well as to distribute part of the collected renewal fees to the participating Member States;*

(f) *to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of [the contested regulation];*

(g) *to ensure that a request for unitary effect by a proprietor of a European patent is submitted in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin; and*

(h) *to ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in Article 6 of [the contested regulation], has been submitted together with the translations referred to in that Article, and that the EPO is informed of any limitations, licences, transfers or revocations of [EPUEs].*

2. *The participating Member States shall ensure compliance with this Regulation in fulfilling their international obligations undertaken in the EPC and shall cooperate to that end. In their capacity as Contracting States to the EPC, the participating Member States shall ensure the governance and supervision of the activities related to the tasks referred to in paragraph 1 of this Article and shall ensure the setting of the level of renewal fees in accordance with Article 12 of this Regulation and the setting of the share of distribution of the renewal fees in accordance with Article 13 of this Regulation.*

To that end they shall set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter “Select Committee”) within the meaning of Article 145 of the EPC.

The Select Committee shall consist of the representatives of the participating Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or experts.

Decisions of the Select Committee shall be taken with due regard for the position of the Commission and in accordance with the rules laid down in Article 35(2) of the EPC.

3. *The participating Member States shall ensure effective legal protection before a competent court of one or several participating Member States against the*

decisions of the EPO in carrying out the tasks referred to in paragraph 1.’

The contested regulation

14 Recitals 5, 6, 9 and 15 in the preamble of the contested regulation read as follows:

‘(5) Such translation arrangements [for EPUEs] should ensure legal certainty and stimulate innovation and should in particular benefit small and medium-sized enterprises (SMEs). They should make access [to the EPUE] 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 EPUE] 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.

...

(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.

...

(15) This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 ... TFEU and to Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community [(OJ 1958, 17, p. 385)]. 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.’

15 Article 2(b) of the contested regulation defines ‘language of the proceedings’, for the purposes of that regulation as being ‘the language used in the proceedings before the EPO, as defined in Article 14(3) of the [EPC]’.

16 Articles 3 to 7 of the contested regulation provide:

‘Article 3

Translation arrangements for [the EPUE]

1. Without prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations shall be required.

2. A request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted in the language of the proceedings.

Article 4

Translation in the event of a dispute

1. In the event of a dispute relating to an alleged infringement of an [EPUE], the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the [EPUE] 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.

2. In the event of a dispute relating to an [EPUE], the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the participating Member States for disputes concerning [EPUEs], a full translation of the patent into the language used in the proceedings of that court.

3. The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.

4. In the event of a dispute concerning a claim for damages, the court hearing the dispute shall assess and take into consideration, in particular where the alleged infringer is a SME, a natural person or a non-profit organisation, a university or a public research organisation, whether the alleged infringer acted without knowing or without reasonable grounds for knowing, that he was infringing an [EPUE] before having been provided with the translation referred to in paragraph 1.

Article 5

Administration of a compensation scheme

1. Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, the participating Member States shall in accordance with Article 9 of Regulation (EU) No 1257/2012, give, within the meaning of Article 143 of the EPC, the EPO the task of administering a compensation scheme for the reimbursement of all translation costs up to a ceiling, for applicants filing patent applications at the EPO in one of the official languages of the Union that is not an official language of the EPO.

2. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 11 of Regulation (EU) No 1257/2012 and shall be available only for SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within a Member State.

Article 6

Transitional measures

1. During a transitional period starting on the date of application of this Regulation a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted together with the following:

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

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the Union.

2. In accordance with Article 9 of Regulation (EU) No 1257/2012, the participating Member States shall give, within the meaning of Article 143 of the EPC, the EPO the task of publishing the translations referred to in paragraph 1 of this Article as soon as possible after the date of the submission of a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012. The text of such translations shall have no legal effect and shall be for information purposes only.

3. Six years after the date of application of this Regulation and every two years thereafter, an independent expert committee shall carry out an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all the official languages of the Union as developed by the EPO. 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 EPO 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.

4. On the basis of the first of the evaluations referred to in paragraph 3 of this Article and every two years thereafter on the basis of the subsequent evaluations, the Commission shall present a report to the Council and, if appropriate, make proposals for terminating the transitional period.

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.

Article 7

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 1 January 2014 or the date of entry into force of [the UPC Agreement], whichever is the later.'

Procedure before the Court and forms of order sought by the parties

17 By application lodged at the Court's Registry on 22 March 2013, the Kingdom of Spain brought the present action.

18 By decisions of the President of the Court of 12 September 2013, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the European Parliament and the Commission were granted leave to intervene in support of the forms of order sought by the Council, in accordance with Article 131(2) of the Rules of Procedure of the Court.

19 The Kingdom of Spain claims that the Court should:
– annul the contested regulation;
– in the alternative, annul Articles 4 to 6(2), and Article 7(2), of that regulation, and

– order the Council to pay the costs.

20 The Council, with the support of all the interveners, contends that the Court should:

– dismiss the action;

– order the Kingdom of Spain to pay the costs.

The action

21 In support of its action, the Kingdom of Spain relies on five pleas in law, claiming, respectively, infringement of the principle of non-discrimination on the ground of language, infringement of the principles stated in the judgment *Meroni v High Authority* (9/56, EU:C:1958:7) because of the delegation to the EPO of administrative tasks relating to the [EPUE], a lack of legal basis, infringement of the principle of legal certainty and infringement of the principle of the autonomy of EU law.

The first plea in law: infringement of the principle of non-discrimination on the ground of language

Arguments of the parties

22 The Kingdom of Spain claims that the Council, by adopting the contested regulation, disregarded the principle of non-discrimination, stated in Article 2 TEU, since it establishes, with respect to the EPUE, a language arrangement which is prejudicial to individuals whose language is not one of the official languages of the EPO. The effect of that arrangement is that there is unequal treatment of, on the one hand, European Union citizens and undertakings who have the means of understanding, to a certain level of competence, texts written in those languages, and, on the other, those who do not have such means and will have to produce translations at their own expense. Any restriction on the use of all the official languages of the European Union should be properly justified, with due regard to the principle of proportionality.

23 First, access to translations of texts which confer rights on the community is not safeguarded. That is due to the fact that the specification of an EPUE will be published in the language of the proceedings and will include the translation of the claims in the two other official languages of the EPO, with no possibility of any other translation, which is discriminatory and in breach of the principle of legal certainty. The contested regulation does not even specify the language in which the granting of unitary effect will be issued nor whether the fact of it being granted will be subject to publication. The fact that the Council has relied on the existing arrangements of the EPO in order to establish the language arrangements of the European patent with unitary effect does not ensure its compatibility with EU law.

24 Secondly, the contested regulation is disproportionate and is not justified on public interest grounds. In the first place, there is no provision for making available a translation of, at the least, the claims, which could lead to significant legal uncertainty and which could negatively affect competition. In the second place, the EPUE is an intellectual property right which is essential for the internal market. In the third place, the contested regulation makes no provision for transitional rules to secure adequate knowledge of the

patent. Neither the development of machine translations nor the obligation to submit a full translation in the event of a dispute are measures which are sufficient in that regard.

25 It follows, according to the Kingdom of Spain, that the introduction of an exception to the principle that the official languages of the European Union have equal status ought to have been justified by criteria other than those, purely economic, mentioned in recitals 5 and 6 in the preamble of the contested regulation.

26 The Council contends, first, that no principle can be deduced from the Treaties to the effect that all the official languages of the European Union must, in all circumstances, be treated equally, as is moreover confirmed by the second paragraph of Article 118 TFEU, which would be meaningless if there were only one possible language arrangement including all the official languages of the European Union.

27 Second, under the current system, any natural or legal person may apply for a European patent in any language, on condition however that there is produced, within a period of two months, a translation in one of the three official languages of the EPO, which becomes the language of the proceedings, the claims being then published in the other two official languages of the EPO. Thus, an application is translated into and published in Spanish only if the validation of the patent is requested for the Kingdom of Spain.

28 Third, the lack of publication in Spanish has only a limited effect. In the first place, the contested regulation provides for a cost compensation scheme. In the second place, the patents are generally administered by patent attorneys, who are familiar with other languages of the European Union. In the third place, the impact on access to scientific information in Spanish is limited. In the fourth place, only a small proportion of European patent applications are currently translated into Spanish. In the fifth place, the contested regulation provides for the introduction of a high quality machine translation system for all the official languages of the European Union. In the sixth place, and last, Article 4 of that regulation sets a limit on the possible liability of small and medium-sized enterprises, natural persons, non-profit organisations, universities and public research organisations.

29 Fourth, the restriction on the number of languages used in relation to the EPUE pursues a legitimate objective, namely that the costs should be reasonable.

30 The interveners support the Council's arguments. They stress that it has been particularly difficult to achieve a balance between different economic operators, as differences of view between Member States over the language arrangements have frustrated all previous unitary patent projects.

Findings of the Court

31 In accordance with the Court's case-law, references in the Treaties to the use of languages within the European Union cannot be regarded as evidencing a general principle of EU law to the effect that anything that might affect the interests of a European Union citizen should be drawn up in his language in all

circumstances (the judgments in *Kik v OHIM*, C-361/01 P, EU:C:2003:434, paragraph 82, and *Polska Telefonia Cyfrowa*, C-410/09, EU:C:2011:294, paragraph 38).

32 In this case, it is undeniable that the contested regulation differentiates between the official languages of the European Union. Article 3(1) of that regulation, which outlines the translation arrangements for the EPUE, refers to the publication of the specifications of the EPUE in accordance with Article 14(6) of the EPC. Pursuant to that provision and Article 14(1) of the EPC, the specifications of the European patent are to be published in the language of the proceedings, which must be one of the official languages of the EPO, namely English, French or German, and are to include a translation of the claims in the other two official languages of the EPO. Provided that those requirements as laid down by those provisions of the EPC are satisfied, no further translation is to be required for the purposes of recognition of the unitary effect of the European patent concerned.

33 In so far as a legitimate objective of general interest may be relied upon and be shown to be genuine, it should be noted that a difference in treatment on the grounds of language must also observe the principle of proportionality, that is to say, it must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see the judgment in *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 93).

34 As regards, first, the objective pursued by the Council, it is stated in recital 16 in the preamble of the contested regulation that its objective is the creation of a uniform and simple translation regime for the EPUE established by Regulation No 1257/2012. Recitals 4 and 5 of the contested regulation add that, in accordance with the decision on enhanced cooperation, the translation arrangements for European patents with unitary effect should be simple and cost-effective. They should moreover ensure legal certainty, stimulate innovation and benefit, in particular, small and medium-sized enterprises, so as to make access to the EPUE and to the patent system as a whole easier, less costly and legally secure. It follows from the above that the aim of the contested regulation is to facilitate access to patent protection, particularly for small and medium-sized enterprises.

35 The legitimacy of such an objective cannot be denied. One of the choices facing an inventor when planning to obtain protection for his invention by the grant of a patent concerns the territorial scope of the desired protection, which will be decided after an overall assessment of the advantages and drawbacks of each option, which includes complex economic evaluations of the commercial interest of having protection in the various States compared with the sum of the costs entailed in obtaining the grant of a patent in those States, including translation costs (see, to that effect, *BASF*, C-44/98, EU:C:1999:440, paragraph 18).

36 Yet the European patent protection system created by the EPC can be described as complex and

particularly costly for an applicant who seeks to obtain protection for his invention through the issue of a patent covering the territory of all the Member States. Such complexity and costs, which are due to, inter alia, the requirement that the holder of a European patent issued by the EPO must, in order to validate that patent on the territory of a Member State, submit a translation of that patent in the official language of that Member State, constitute an obstacle to patent protection within the European Union.

37 Further, there can be no doubt that the rules under the current patent protection system created by the EPC affect adversely the capacity to innovate and compete of European businesses, particularly small and medium-sized enterprises, which are unable to develop new technologies protected by patents covering the whole of the European Union unless they pursue complex and costly procedures, whereas the language arrangements established by the contested regulation are capable of making access to the EPUE and the patent system as a whole easier, less costly and legally more secure.

38 Second, the Court must determine whether the arrangements established by the contested regulation are appropriate to achieve the legitimate objective of facilitating access to patent protection.

39 In that regard, it must be recalled that the aim of the contested regulation is to determine the translation arrangements for European patents to which unitary effect is granted under Regulation No 1257/2012. Since the EPO is responsible for the issue of European patents, the contested regulation is based on the translation arrangements in force at the EPO, which provide for the use of English, French and German, there being no requirement for a translation of the specification of the European patent, or at least its claims, in the official language of each State in which [the EPUE] is to be effective, as is the case for the European patent. Consequently, the arrangement established by the contested regulation does indeed make it possible to facilitate access to patent protection by reducing the costs associated with translation requirements.

40 Third, it must be determined whether the arrangement established by the contested regulation does not go beyond what is necessary to achieve the legitimate objective pursued.

41 In that regard, the Court emphasised, in paragraph 92 of the judgment in *Kik v OHIM* (C-361/01 P, EU:C:2003:434), that the necessary balance must be maintained between the interests of economic operators and the public interest in terms of the cost of proceedings, and also between the interests of applicants for intellectual property rights and those of other economic operators in regard to access to translations of texts which confer rights, or proceedings involving more than one economic operator.

42 As regards, first, maintaining the balance between the interests of economic operators and the public interest as regards the cost of the procedure for recognition of the unitary effect of the European patent,

it must be observed that while the Union is committed to the preservation of multilingualism, the importance of which is stated in the fourth subparagraph of Article 3(3) TEU and in Article 22 of the Charter of Fundamental Rights of the European Union, it has been stated, in paragraph 36 of this judgment, that the high costs attached to the issue of a European patent covering the territory of all Member States constitute an obstacle to patent protection within the European Union, and consequently it was essential that the translation arrangements for the EPUE should be demonstrably cost-effective.

43 Second, it must be stated that the Council has provided for the introduction of a number of mechanisms designed to secure the necessary balance between the interests of applicants for the EPUE and the interests of other economic operators in regard to access to translations of texts which confer rights, or proceedings involving more than one economic operator.

44 Accordingly, first, in order to facilitate access to the EPUE, and in particular to enable applicants to file at the EPO their applications in any language of the European Union, Article 5 of the contested regulation provides for a compensation scheme for the reimbursement up to a ceiling of translation costs for some applicants, in particular small and medium-sized enterprises, who file their patent application at the EPO in an official language of the European Union other than one of the official languages of the EPO.

45 Further, in order to limit the disadvantages for economic operators who do not have the means of understanding, to a certain level of competence, texts written in English, French or German, the Council provided, in Article 6 of the contested regulation, for a transitional period, of a maximum duration of 12 years, until a high quality machine translation system is available for all the official languages of the European Union. During that transitional period, any request for unitary effect must be accompanied either by a full translation in English of the specification, where the language of the proceedings is French or German, or by a full translation of the specification into any other official language of the European Union, where the language of the proceedings is English.

46 Last, in order to protect economic operators who do not have the means of understanding, to a certain level of competence, one of the official languages of the EPO, the Council set out, in Article 4 of the contested regulation, a number of provisions applicable in the event of a dispute, which are designed, first, to enable such operators, where they are suspected of infringement of a patent, to obtain, on the conditions set out in that article, a full translation of the EPUE and, second, in the event of a dispute concerning a claim for damages, to ensure that the court hearing the dispute assesses and takes into consideration whether an alleged infringer was acting in good faith.

47 In the light of the foregoing, it must be concluded that the contested regulation maintains the necessary balance between the various interests and, therefore,

does not go beyond what is necessary to achieve the legitimate objective pursued. Consequently, as the Advocate General stated in essence in points 61 to 74 of his Opinion, the Council's decision, with respect to the establishment of the translation arrangements for the EPUE, to differentiate between the official languages of the European Union, and to choose only English, French and German, is appropriate and proportionate to the legitimate objective pursued by that regulation.

48 The first plea in law must therefore be rejected.

The second plea in law: infringement of the principles set out in the judgment in Meroni v High Authority (9/56, EU:C:1958:7)

Arguments of the parties

49 The Kingdom of Spain claims that the Council, by delegating to the EPO, in Articles 5 and 6(2) of the contested regulation, the administration of the compensation scheme for the reimbursement of translation costs and the task of publication of translations under the transitional rules, infringed the principles set out in the judgment in Meroni v High Authority (9/56, EU:C:1958:7), confirmed by the judgments in Romano (98/80, EU:C:1981:104) and Tralli v ECB (C-301/02 P, EU:C:2005:306).

50 According to the Kingdom of Spain, first, neither the recitals in the preamble of Regulation No 1257/2012 nor the recitals in the preamble of the contested regulation contain any objective justification of that delegation of powers.

51 Secondly, it is clear from the judgment in Meroni v High Authority (9/56, EU:C:1958:7) that there can only be delegation of clearly defined implementing powers with respect to which there is no discretion and the exercise of which is, accordingly, subject to strict review in the light of objective criteria determined by the delegating authority. However, that is not the case here.

52 In the first place, Article 5 of the contested regulation confers the administration of the compensation scheme on the EPO, which has the discretion to be able to decide on the application of the right to reimbursement of translation costs provided for by that scheme. Further, while, according to the Kingdom of Spain, Article 9(3) of Regulation No 1257/2012 imposes on Member States the obligation to ensure effective legal protection against decisions made by the EPO in carrying out the tasks listed in Article 9(1) thereof, and while that jurisdiction was exclusively conferred on the Unified Patent Court in Article 32(1)(i) of the UPC Agreement, the EPO has the privilege of immunity from legal proceedings or enforcement and, consequently, its acts are not capable of being subject any judicial review.

53 In the second place, the task of publishing translations, laid down in Article 6(2) of the contested regulation, is an activity with respect to which there is no discretion. It is not however subject to any judicial review.

54 The Council states, first, that the Kingdom of Spain does not dispute that it is the responsibility of the

participating Member States, through the intermediary of the EPO, to administer the compensation scheme and carry out the task of publishing the translations. Yet the implementation of EU law is primarily the responsibility of the Member States and, with respect to the tasks relating to the compensation scheme and the publication of translations, it is not necessary to have uniform implementation conditions within the meaning of Article 291(2) TFEU. The principles stated in the judgments Meroni v High Authority (9/56, EU:C:1958:7), Romano (98/80, EU:C:1981:104) and Tralli v ECB (C-301/02 P, EU:C:2005:306) are not relevant. In any event, there has been no breach of those principles.

55 The interveners support the Council's arguments.

Findings of the Court

56 It must be observed, first, that it is clear from its written pleadings that the Kingdom of Spain claims that the conditions governing the purported delegation of powers effected by the Council in Articles 5 and 6(2) of the contested regulation are not satisfied, which constitutes an infringement of the principles stated in the judgment in Meroni v High Authority (9/56, EU:C:1958:7).

57 In that regard, it must be observed that Articles 5 and 6(2) of the contested regulation invite the participating Member States, in accordance with Article 9 of Regulation No 1257/2012, to confer the tasks specified in those articles on the EPO, within the meaning of Article 143 of the EPC.

58 As is stated in Article 1(2) of Regulation No 1257/2012, that regulation constitutes a special agreement within the meaning of Article 142 of the EPC, and consequently such an agreement is subject to the provisions of Part IX of the EPC, relating to special agreements, comprising Articles 142 to 149 thereof.

59 Under Articles 143 and 145 of the EPC, a group of Contracting States using the provisions in Part IX of the EPC may give tasks to the EPO.

60 In order to implement those provisions, Article 9(1)(d) and (f) of Regulation No 1257/2012 provide that participating Member States are to give to the EPO the tasks, first, to publish the translations referred to in Article 6 of the contested regulation during the transitional period referred to in that article and, second, to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of the contested regulation.

61 Yet those tasks are intrinsically linked to the implementation of the unitary patent protection created by Regulation No 1257/2012, the translation arrangements for which are fixed by the contested regulation.

62 The Court must therefore hold that the fact that the EPO is given additional tasks is a consequence of the fact that the participating Member States, as contracting parties to the EPC, entered into a special agreement within the meaning of Article 142 of the EPC.

63 Since the Council did not, contrary to what is asserted by the Kingdom of Spain, delegate to the participating Member States or to the EPO

implementing powers which are uniquely its own under EU law, the principles set out by the Court in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) cannot apply.

64 It follows that the second plea in law must be rejected.

The third plea in law: lack of a legal basis for Article 4 of the contested regulation

Arguments of the parties

65 The Kingdom of Spain claims that the legal basis used in order to introduce Article 4 into the contested regulation is incorrect, since that provision does not concern the 'language arrangement' for European intellectual property rights, in accordance with the second paragraph of Article 118 TFEU, but incorporates some procedural safeguards in the context of legal proceedings, which cannot be based on that provision in the FEU Treaty.

66 The Council contends that the contested regulation does in fact establish a language arrangement, since it determines the translations that are required after the issue and registration of an EPUE. Thus Article 3(1) of that regulation establishes the language arrangement for the EPUE by stating, with respect to the situation after registration of the unitary effect, that where the specification of a European patent has been published in accordance with the EPC, no further translations are required. Article 4 of that regulation fills a legal lacuna, given that the language arrangement laid down by the EPC does not govern language requirements in the event of a dispute. Further, given that the procedural rules of the Member States have not been approximated by EU law, it is necessary to ensure that an alleged infringer always has the right to obtain a full translation of the EPUE concerned.

67 The interveners support the Council's arguments.

Findings of the Court

68 According to settled case-law, the choice of the legal basis for a European Union measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure (the judgments in *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 34 and case-law cited, and *United Kingdom v Council*, C-81/13, EU:C:2014:2449, paragraph 35).

69 In this case, as regards the aim of the contested regulation, it must be observed that, according to the title of that regulation and Article 1 thereof, the regulation implements enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements. As is stated in recital 16 of the contested regulation, its objective is the creation of a uniform and simple translation regime for EPUEs.

70 As regards the content of the contested regulation, it must be observed that Article 3(1) of the contested regulation provides that, without prejudice to provisions relating to translations in the event of a dispute and transitional provisions, where the specification of a European patent which benefits from unitary effect has been published in accordance with

Article 14(6) of the EPC, no further translations are required. Under Article 14(6) of the EPC, the specifications of a European patent are to be published in the language of the proceedings and are to contain translations of the claims in the other two official languages of the EPO.

71 It follows from the foregoing that the contested regulation establishes, in accordance with the second paragraph of Article 118 TFEU, the language arrangements for the EPUE, defined by reference to Article 14(6) of the EPC.

72 In that regard, it must be observed that the second paragraph of Article 118 TFEU does not preclude, when the language arrangements for European intellectual property rights are being determined, reference being made to the language arrangements of the organisation of which the body responsible for issuing the intellectual property right to which unitary effect will be attributed forms part. It is moreover of no relevance that the contested regulation does not establish an exhaustive body of rules for the language arrangements applicable to the EPUE. The second paragraph of Article 118 TFEU imposes no requirement on the Council to approximate all aspects of the language arrangements for intellectual property rights established on the basis of the first paragraph of Article 118 TFEU.

73 As regard Article 4 of the contested regulation, it is clear that this provision is directly part of the language arrangements for the EPUE, since it sets out the special rules governing the translation of the EPUE in the specific context of a dispute. Since the language arrangements for the EPUE are defined by all the provisions of the contested regulation and more specifically Articles 3, 4 and 6, which are intended to apply to different situations, Article 4 of the regulation cannot be detached, with respect to the legal basis, from the remainder of the provisions of the regulation.

74 In the light of the foregoing, the Kingdom of Spain's argument that the second paragraph of Article 118 TFEU cannot serve as a legal basis for Article 4 of the contested regulation must, therefore, be rejected.

75 The third plea in law must therefore be rejected.

The fourth plea in law: infringement of the principle of legal certainty

Arguments of the parties

76 The Kingdom of Spain claims that the Council infringed the principle of legal certainty. First, the contested regulation limits access to information for economic operators, since the specification of the EPUE is published only in the language of the proceedings, to the exclusion of other official languages of the EPO. Next, the contested regulation does not specify the arrangements, pertaining to language or otherwise, for the grant of the EPUE. Further, the contested regulation does not indicate, in the context of administration of the compensation scheme, either the costs ceiling or how compensation is to be determined. Moreover, the provisions of Article 4 of that regulation are not sufficient to offset the lack of information relating to the EPUE. A translation of the

EPUE provided in the event of a dispute has no legal value and Article 4 does not set out the specific consequences of the possibility that an infringer of a patent has acted in good faith. Last, a machine translation system did not exist when the contested regulation was adopted and there is no guarantee that such a system can function in an area where accurate translation is of fundamental importance.

77 The Council considers that the Kingdom of Spain's claims disregard the principles of indirect administration and subsidiarity on which EU law is founded. The contested regulation leaves it to the Member States to adopt specific rules on such matters as the compensation scheme or machine translations. The principle of legal certainty does not require all rules to be laid down in minute detail in the base regulation, as some rules can be determined by the Member States or defined in delegated acts or implementing acts. Further, Article 4(4) of the contested regulation established the main elements and the criteria for their application by national courts.

78 The interveners support the Council's arguments.

Findings of the Court

79 In accordance with settled case-law, the principle of legal certainty requires that rules of law be clear and precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law (see the judgments in *France Télécom v Commission*, C-81/10 P, EU:C:2011:811, paragraph 100 and case-law cited, and *LVK — 56*, C-643/11, EU:C:2013:55, paragraph 51).

80 First, the Kingdom of Spain's argument that the contested regulation limits access to information for economic operators is in effect a challenge to the language arrangements established by that regulation on the ground that there is no provision for the translation of the EPUE into all the official languages of the European Union. Yet such an argument has already been rejected in the context of the first plea in law.

81 Second, as regards the argument that the contested regulation does not specify the arrangements, pertaining to language or otherwise, for the grant of unitary effect, a reading of the relevant provisions of that regulation together with those of Regulation No 1257/2012 precludes any infringement of the principle of legal certainty.

82 Article 3(2) of the contested regulation provides that any request for unitary effect as referred to in Article 9 of Regulation No 1257/2012 is to be submitted in the language of the proceedings. In that regard, the language of the proceedings is defined in Article 2(b) of the contested regulation as being the language used in the proceedings before the EPO, as defined in Article 14(3) of the EPC.

83 Under Article 3(1) of Regulation No 1257/2012, the unitary effect must be registered in the Register for unitary patent protection, such a register constituting, under Article 2(e) of that regulation, part of the European Patent Register, which is kept by the EPO.

Yet entries in the European Patent Register are to be made in the three official languages of the EPO, in accordance with Article 14(8) of the EPC.

84 Third, as regards the alleged absence of a costs ceiling or method of establishing the compensation scheme, suffice it to find, as stated by the Advocate General, in essence, in points 110 and 111 of his Opinion, that, under Article 9(2) of Regulation No 1257/2012, the participating Member States, as Contracting States to the EPC, are to ensure the governance and monitoring of the activities related to the tasks referred to in Article 9(1) of that regulation and, to that end, are to set up a select committee of the Administration Council of the European Patent Organisation, within the meaning of Article 145 of the EPC, and consequently a decision on the costs ceiling or the method of establishing the compensation scheme are matters which fall to the participating Member States through such a select committee. It accordingly cannot be held that there has been an infringement of the principle of legal certainty in the present case.

85 Fourth, the fact that it is only the patent in the language in which it has been issued which produces legal effects and not the translation which, under Article 4 of the contested regulation, is to be provided in the event of a dispute, does not create any legal uncertainty, since it enables the operators involved to know with certainty which language is authentic in order to assess the extent of the protection conferred by the EPUE.

86 Fifth, nor does the omission to indicate the specific consequences of the possibility that an alleged patent infringer acted in good faith infringe the principle of legal certainty. On the contrary, as is stated in recital 9 in the preamble of the contested regulation, that circumstance enables the court with jurisdiction to undertake a case-by-case basis analysis by examining, *inter alia*, whether the alleged patent infringer is a small or medium-sized enterprise operating only at local level and taking into account the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.

87 Sixth, as regards the Kingdom of Spain's claims concerning the lack of a guarantee that the machine translation system, which was not operational when the contested regulation was adopted, will function properly, it must be observed that what is, in fact, called into question is the choice of the EU legislature to have provided for a transitional period of 12 years for the introduction of the component of the language arrangements which involves machine translation of patent applications and specifications into all the official languages of the European Union. While it is true that there is no guarantee that that system, which is to be operational at the end of a transitional period, will function properly, that is not sufficient ground for the annulment of the contested regulation because it infringes the principle of legal certainty, since no such guarantee could be given. Consequently, the Kingdom

of Spain's argument must be rejected as being ineffective.

88 Thus, no breach of the principle of legal certainty can be identified.

89 The fourth plea in law must therefore be rejected.

The fifth plea in law: infringement of the principle of the autonomy of EU law

Arguments of the parties

90 The Kingdom of Spain claims that Article 7 of the contested regulation is contrary to the principle of the autonomy of EU law, since it distinguishes between, on the one hand, the entry into force of that regulation and, on the other, its application, by fixing that date at 1 January 2014 while stating that that date will be postponed if the UPC Agreement has not entered into force in accordance with Article 89(1) of that agreement. In this case, the contracting parties to the UPC Agreement were given the power to determine the date when provisions of EU law would become applicable, and consequently when the powers of the European Union are exercised. The Kingdom of Spain adds that the examples provided by the Council drawn from legislative practice are of no relevance.

91 The Council states that it is clear from a combined reading of recitals 9, 24 and 25 in the preamble of Regulation No 1257/2012 that the policy choice made by the legislature of the European Union, in order to ensure the proper functioning of the EPUE, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors, was to link the EPUE to the operation of a distinct judicial body, which would have to be established before the first EPUE could be issued. In that regard there is no legal obstacle to the establishment of a link between the EPUE and the Unified Patent Court, the reasons for which are sufficiently stated in recitals 24 and 25 of Regulation No 1257/2012. Moreover, there are, in legislative practice, a number of examples of the applicability of an act of the European Union being linked to an event unrelated to that act.

92 The interveners support the Council's arguments.

Findings of the Court

93 It must be observed that Article 7(2) of the contested regulation provides that it 'shall apply from 1 January 2014 or the date of entry into force of [the UPC Agreement], whichever is the latter.'

94 In accordance with the Court's case-law, the direct application of a regulation, laid down in the second paragraph of Article 288 TFEU, means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law, unless the regulation in question leaves it to the Member States themselves to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation (see the judgments in *Bussone*, 31/78, EU:C:1978:217, paragraph 32, and *ANAFE*, C-606/10, EU:C:2012:348, paragraph 72 and case-law cited).

95 Such is the case here, where the EU legislature has left it to the Member States, in order that the provisions

of the contested regulation can be applied, first, to adopt a number of measures within the legal framework established by the EPC and, secondly, to undertake the establishment of the Unified Patent Court, which, as is stated in recitals 24 and 25 of Regulation No 1257/2012, is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors.

96 It follows from the foregoing that the fifth plea in law must be rejected.

97 In the light of the foregoing, the action, including the Kingdom of Spain's claim in the alternative for the partial annulment of the contested regulation, must be dismissed in its entirety.

Costs

98 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Council.

99 Under the first subparagraph of Article 140(1) of the Rules of Procedure, the Member States and institutions which intervene in proceedings must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby

1. Dismisses the action;
2. Orders the Kingdom of Spain to bear its own costs and to pay the costs incurred by the Council of the European Union;
3. Orders the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the European Parliament and the European Commission to bear their own costs.

[Signatures]

OPINION OF ADVOCATE GENERAL

Y. BOT

delivered on 18 November 2014 (1)

Case C-147/13

Kingdom of Spain

v

Council of the European Union

(Action for annulment — Implementation of enhanced cooperation — Creation of unitary patent protection — Regulation (EU) No 1260/2012 — Applicable translation arrangements — Principle of non-discrimination — Delegation of powers to organs outside the Union — Choice of legal basis — Misuse of powers — Principle of the autonomy of EU law)

1. By its action the Kingdom of Spain is seeking the annulment of 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. (2)

2. The contested regulation was adopted pursuant to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection. (3)

3. It forms part of the ‘unitary patent package’ together with 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 (4) and the Agreement on a Unified Patent Court, signed on 19 February 2013. (5)

I – Legal framework

4. I refer to my Opinion in Case C-146/13 Spain v Parliament and Council, currently pending before the Court, for the relevant provisions which have already been set out there.

A – International law

5. Article 14 of the Convention on the Grant of European Patents (European Patent Convention), which was signed in Munich on 5 October 1973 and entered into force on 7 October 1977, (6) entitled ‘Languages of the European Patent Office, European patent applications and other documents’, provides:

‘(1) *The official languages of the European Patent Office (7) shall be English, French and German.*

(2) *A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before the [EPO], such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.*

(3) *The official language of the [EPO] in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the [EPO], unless the Implementing Regulations provide otherwise.*

(4) *Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time-limit in an official language of that State. They shall, however, file a translation in an official language of the [EPO] in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.*

(5) *European patent applications shall be published in the language of the proceedings.*

(6) *Specifications [(8)] of European patents shall be published in the language of the proceedings and shall*

include a translation of the claims [(9)] in the other two official languages of the [EPO].

...

(8) *Entries in the European Patent Register shall be made in the three official languages of the [EPO]. In cases of doubt, the entry in the language of the proceedings shall be authentic.’*

B – EU law

6. Recitals 5 and 6 in the preamble to the contested regulation read as follows:

‘(5) *[The] translation arrangements [for European patents with unitary effect (10)] should ensure legal certainty and stimulate innovation and should, in particular, benefit small and medium-sized enterprises (SMEs). They should make access to the [EPUE] 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 [EPUE] 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. Recital 15 in the preamble to this regulation provides:

‘*This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 ... TFEU and to Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community. [(11)] 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.’*

8. Articles 3 to 7 of the contested regulation provide:

‘Article 3

Translation arrangements for the [EPUE]

1. *Without prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations shall be required.*

2. *A request for unitary effect as referred to in Article 9 of Regulation ... No 1257/2012 shall be submitted in the language of the proceedings.*

Article 4

Translation in the event of a dispute

1. *In the event of a dispute relating to an alleged infringement of [an EPUE], the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the [EPUE] into an official language of either the ... Member State [participating in enhanced cooperation (12)] in which the alleged infringement took place or the Member State in which the alleged infringer is domiciled.*

2. *In the event of a dispute relating to [an EPUE], the patent proprietor shall provide in the course of legal*

proceedings, at the request of a court competent in the participating Member States for disputes concerning [EPUEs], a full translation of the patent into the language used in the proceedings of that court.

3. The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.

4. In the event of a dispute concerning a claim for damages, the court hearing the dispute shall assess and take into consideration, in particular where the alleged infringer is an SME, a natural person or a non-profit organisation, a university or a public research organisation, whether the alleged infringer acted without knowing or without reasonable grounds for knowing, that he was infringing the [EPUE] before having been provided with the translation referred to in paragraph 1.

Article 5

Administration of a compensation scheme

1. Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, the participating Member States shall in accordance with Article 9 of Regulation ... No 1257/2012, give, within the meaning of Article 143 of the EPC, the EPO the task of administering a compensation scheme for the reimbursement of all translation costs up to a ceiling, for applicants filing patent applications at the EPO in one of the official languages of the Union that is not an official language of the EPO.

2. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 11 of Regulation ... No 1257/2012 and shall be available only for SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within a Member State.

Article 6

Transitional measures

1. During a transitional period starting on the date of application of this Regulation a request for unitary effect as referred to in Article 9 of Regulation ... No 1257/2012 shall be submitted together with the following:

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

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the Union.

2. In accordance with Article 9 of Regulation ... No 1257/2012, the participating Member States shall give, within the meaning of Article 143 of the EPC, the EPO the task of publishing the translations referred to in paragraph 1 of this Article as soon as possible after the date of the submission of a request for unitary effect as referred to in Article 9 of Regulation ... No 1257/2012. The text of such translations shall have no legal effect and shall be for information purposes only.

3. Six years after the date of application of this Regulation and every two years thereafter, an independent expert committee shall carry out an

objective evaluation of the availability of high quality machine translations of patent applications and specifications into all the official languages of the Union as developed by the EPO. 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 EPO 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.

4. On the basis of the first of the evaluations referred to in paragraph 3 of this Article and every two years thereafter on the basis of the subsequent evaluations, the Commission shall present a report to the Council and, if appropriate, make proposals for terminating the transitional period.

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.

Article 7

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from 1 January 2014 or the date of entry into force of the [UPC] Agreement ..., whichever is the later.'

II – Procedure before the Court and forms of order sought

9. By application lodged at the Court Registry on 22 March 2013, the Kingdom of Spain brought the present action.

10. By orders of the President of the Court of 12 September 2013, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the European Parliament and the Commission were granted leave to intervene in support of the forms of order sought by the Council in accordance with Article 131(2) of the Rules of Procedure of the Court of Justice.

11. Written observations were submitted by all these interveners except for the Grand Duchy of Luxembourg.

12. The Kingdom of Spain claims that the Court should:

- annul the contested regulation;
- alternatively, annul Articles 4, 5, 6(2) and 7(2) of that regulation, and
- order the Council to pay the costs.

13. The Council contends that the Court should:

- dismiss the action, and
- order the Kingdom of Spain to pay the costs.

III – The action

14. In support of its action, the Kingdom of Spain relies, principally, on five pleas in law.

15. The first plea in law alleges infringement of the principle of non-discrimination on grounds of language. The second plea in law concerns a breach of the principles set out in *Meroni v High Authority* (13) by delegating administrative tasks relating to the EPUE to the EPO. The third plea in law alleges a lack of legal basis. The fourth plea in law concerns infringement of the principle of legal certainty. Lastly, the fifth plea in law alleges infringement of the principle of the autonomy of EU law.

16. In the alternative, the Kingdom of Spain is seeking the partial annulment of the contested regulation, as explained in point 12 of this Opinion.

A – The first plea in law, alleging infringement of the principle of non-discrimination on grounds of language

1. Arguments of the parties

17. The Kingdom of Spain claims, in essence, that, in adopting the contested regulation, the Council breached the principle of non-discrimination established in Article 2 TEU by creating a linguistic regime for the EPUE which is detrimental to persons whose language is not one of the official languages of the EPO, namely English, French and German. That regime creates an inequality between, on the one hand, EU citizens and undertakings that have the capacity to understand, with a certain level of expertise, documents drafted in those languages and, on the other, those without that capacity who will have to have translations made at their own expense. Any limitation imposed on the use of the official languages of the Union should be properly justified having regard to the principle of proportionality.

18. First, access to translations of documents which confer rights on the public is not guaranteed, as the specification of an EPUE will be published in the language of the proceedings and will include the translation of the claims in the other two official languages of the EPO, without the possibility of further translations, which is discriminatory and breaches the principle of legal certainty. The contested regulation does not even specify the language in which the EPUE will be granted or whether this element will be published. The fact that the EU legislature based the linguistic regime for the EPUE on the EPO regime does not guarantee its compatibility with EU law. Unlike the regime for the Community trade mark, the contested regulation does not achieve a balance between the interests of undertakings and those of the public. (14)

19. Second, the rules at issue are disproportionate and cannot be justified by reasons in the public interest. One, the lack of a translation of the patent specification and in particular its claims gives rise to considerable legal uncertainty and may have detrimental effects on competition. This situation makes market access more difficult and it has a negative impact on undertakings, which have to bear translation costs. Two, the EPUE is an industrial property right that is essential to the internal market. Lastly, the rules at issue do not provide for a transitional regime guaranteeing sufficient knowledge of the patent. Neither the development of machine translations nor the obligation to submit a full

translation in the event of a dispute is an adequate measure in this regard.

20. Accordingly, the introduction of an exception to the principle of equality between the official languages of the Union should have been justified by criteria other than the purely economic criteria mentioned in recitals 5 and 6 in the preamble to the contested regulation.

21. The Council contends, first, that it is not possible to infer from the Treaties a principle that all the official languages of the Union must be treated on an equal footing in all circumstances, which is confirmed, moreover, by the second paragraph of Article 118 TFEU, which would have no meaning if only one linguistic regime, including all the official languages of the Union, were possible.

22. Second, in the current system, any natural or legal person may apply for a European patent in any language, provided they produce, within two months, a translation into one of the three official languages of the EPO, which becomes the language of the proceedings, the claims then being published in the other two official languages of the EPO. Thus, an application is translated into and published in Spanish only if the validation of the patent is requested for Spain.

23. Third, non-publication in Spanish has only limited effect as the contested regulation provides for a compensation scheme for costs; patents are generally administered by industrial property agents who know other languages of the Union; the impact on access to scientific information in Spanish is limited; only a small proportion of European patent applications are translated into Spanish at present; the contested regulation provides for the introduction of a system of high quality machine translation into all the official languages of the Union, and Article 4 of the contested regulation places a limit on any liability of SMEs, natural persons, non-profit organisations, universities and public research organisations.

24. Fourth, the limitation of the number of languages used in connection with the EPUE pursues a legitimate aim relating to the reasonable cost of the EPUE.

25. The interveners concur with the Council's arguments. They stress that it has been particularly difficult to achieve a balance between different economic operators, as differences of view between Member States over the linguistic regime have frustrated all previous unitary patent projects.

26. The French Republic, the Kingdom of Sweden and the United Kingdom add that the creation of a linguistic regime under which it was necessary to make provision for the translation of the specification, or at least of its claims, into all the official languages of the Union would be so expensive that it would be out of the question. First, the linguistic regime for the EPUE was chosen because English, French and German, are the official languages of the EPO. Second, at present nearly 90% of applicants for European patents lodge their patent applications in those languages, before the translation of the specification and of the claims.

2. My assessment

27. The Kingdom of Spain disputes that its argument effectively claims that a translation of the patent into all the EU official languages is necessary. This is doubtful, however, in so far as it claims, in paragraph 25 of its reply, that the EPUE is a property right such that all persons, and not only those who know English, French or German, must be able to have sufficient knowledge of the relevant information and in so far as it states that the system created does not offer any intermediate solutions which, at the same time as reducing financial costs, guarantee that all persons against whom a patent may be invoked are duly aware of it, like the arrangements adopted for Community trade marks.

28. As a preliminary point, reference should be made to the context of this case.

(a) The context of the present case

29. The present case falls within the framework of the implementation of enhanced cooperation in the area of the creation of unitary patent protection.

30. Since the Treaty of Lisbon, the second paragraph of Article 118 TFEU has given the Council an appropriate legal basis for establishing 'language arrangements for the European intellectual property rights'.

31. As the Council and certain interveners stated in their written pleadings, that provision shows, by its wording, that under the FEU Treaty different linguistic regimes may be introduced in some cases and confirms that it is possible to limit the number of languages that may be used. (15)

32. In the light of that provision, the EU legislature opted for a linguistic regime for the EPUE based on the system of the EPO, an international body whose official languages are English, French and German.

33. The Court recognised in *Kik v OHIM* (16) that EU law does not include a principle of equality of languages. All the references to the use of languages in the Union contained in the Treaties cannot be regarded as evidencing a general principle of EU law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language 'in all circumstances'. (17)

34. However, the sovereign power of the EU legislature has limits, as the Court has stated that individuals may not be discriminated against by reason of their language. (18)

35. It should be noted that in the contested regulation the EU legislature defined the applicable translation arrangements. Some of these arrangements are applicable only during a transitional period, until a system of high quality machine translations of patent applications and specifications is in operation. (19)

36. In its first plea in law, the Kingdom of Spain does not challenge the EU legislature's choice to take the EPO system as the basis, but it does claim that that system is discriminatory in so far as it creates a difference in treatment, as economic operators whose language is not English, French or German, are treated less favourably than those who know those languages because the former have no access to translations in their own language.

37. According to the Kingdom of Spain, the linguistic regime for the EPUE is restrictive and is not justified.

38. Article 3(1) of the contested regulation provides that '[w]ithout prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, [(20)] no further translations shall be required'.

39. There is no doubt here that persons who do not know the official languages of the EPO are discriminated against and that a difference in treatment has thus been introduced by the EU legislature.

40. It is therefore now necessary to examine the legitimacy of the objective pursued by the EU legislature in introducing discriminatory legislation and, if appropriate, to consider whether that difference in treatment is appropriate and proportionate. (21)

(b) The objective pursued by the EU legislature

41. At present, the European patent protection system involves very high costs. (22) Once a European patent is granted by the EPO, it must be validated in each Member State where protection is sought. For the patent to be validated in the territory of a Member State, national law may require that the patent proprietor file a translation of the European patent into the official language of that Member State. (23)

42. Stakeholders, including businesses in all sectors of the economy, industry associations, SME associations, patent practitioners, public authorities and academics, identified the high costs of the European patent as an obstacle to patent protection in the Union. (24)

43. In the light of this statement and as the Union's objectives include promoting the proper functioning of the internal market, innovative capacity, (25) growth and competitiveness for European undertakings, it is essential and necessary for the EU legislature to take appropriate action in the area of patents. The system introduced must thus provide unitary patent protection in all participating Member States whilst avoiding excessively high costs through the linguistic regime.

44. The translation arrangements for EPUEs must therefore be simple and cost-effective, (26) ensure legal certainty and stimulate innovation and should, in particular, benefit SMEs. (27)

45. With regard to the comparison made by the Kingdom of Spain with the Community trade mark, I consider that it reaches its limits here.

46. It is true that the Community trade mark and the European patent are two forms of intellectual property right which were created for the benefit not of all citizens, but of economic operators, and economic operators are not under any obligation to make use of them. (28)

47. Through the unitary protection which they confer, they obviate the need for such operators to file multiple requests for national validation with the associated translation costs.

48. On the other hand, the Community trade mark and the EPUE differ significantly with regard to translation costs, as the Kingdom of Belgium, the French Republic, the Kingdom of Sweden, the United

Kingdom and the Parliament point out. The same thing is not translated in the two cases. For the trade mark a standardised model is translated, whereas for the patent a highly technical description is required. (29)

49. There is thus an intrinsic difference in technicality between the two intellectual property rights. Such technicality inevitably has an impact on translation costs, as it entails longer documents which are more complicated to translate. The claims (30) generally require the attention of a specialised translator and are generally about 20 pages, (31) but may reach 200 pages. (32)

50. It must therefore be stated that the EU legislature adopted the contested regulation with the legitimate aim of finding a linguistic solution consistent with the Union's objectives mentioned in point 43 of this Opinion. In other words, the chosen linguistic regime does entail a restriction on the use of languages, but it pursues a legitimate objective of reducing translation costs.

51. If the difference in treatment of the official languages of the Union pursues such an objective, it is now necessary to assess the appropriateness and proportionality of that choice. (33)

(c) The appropriateness and proportionality of the difference in treatment

52. To reduce translation costs whilst allowing unitary protection of the European patent in the participating Member States, there are only a few areas in which the EU legislature can take action.

53. It would seem impossible to limit the number of pages of a patent. It is the specification, particularly the claims, that will define the matter for which protection is sought. In addition, the average cost of translation (34) can hardly be lower in view of the technicality of patents.

54. On the other hand, the greater the number of languages into which a translation must be made, the higher the translation costs.

55. Consequently, in order to limit those costs, the EU legislature had no other choice but to restrict the number of languages into which the EPUE must be translated.

56. It is thus appropriate to limit the number of languages of the EPUE as this ensures unitary patent protection whilst allowing a significant reduction in translation costs.

57. Furthermore, the EU legislature made the choice to take the EPO system as the basis, which is a consistent choice, as that system had already proven itself, (35) so that the use of English, French and German, in connection with the EPUE is not insignificant, these being the official languages of the EPO. This choice ensures a degree of stability for economic operators and practitioners in the patent sector who are already used to working in these three languages.

58. In addition, it would appear that the choice of these languages is commensurate with the linguistic realities in the patent sector. As the Council states, the majority of scientific works are published in English, French or German. There is therefore no doubt that European

researchers can understand patents published in those languages. Similarly, it is clear from the abovementioned Commission impact assessment and from the arguments put forward by the Kingdom of Sweden that English, French and German, are the languages spoken in the Member States from which the most patent applications in the Union originate. (36)

59. Consequently, I consider that the limitation to the three official languages of the EPO is appropriate having regard to the legitimate objectives pursued by the EU legislature.

60. Furthermore, this choice respects the principle of proportionality.

61. In this regard, it is apparent from *Kik v OHIM* (37) that a difference in treatment by the EU legislature is possible provided there is a necessary balance between the different interests at stake. (38)

62. In the contested regulation the EU legislature has, rightly, framed the applicable translation arrangements so as to temper the difference in treatment in the choice of languages and the impact that this could have on economic operators and stakeholders.

63. Even though the Kingdom of Spain merely underlines the less favourable treatment accorded to those who cannot understand information because they do not have access to translations of European patent applications into their own language (Articles 4 and 6 of the contested regulation), in assessing the proportionality of the choice made by the EU legislature, consideration must nevertheless also be given to the difference in treatment of those who file their European patent application (Article 5 of the contested regulation). (39)

64. Thus, first, the EU legislature was careful to state, in Article 3(1) of the contested regulation, that the introduced system is '*[w]ithout prejudice to Articles 4 and 6 [of that] regulation*'. (40)

65. On the one hand, the legislature lays down rules on translations in the event of a dispute.

66. In the event of a dispute relating to an alleged infringement, it provides for access to information in the language chosen by the alleged infringer. Thus, under Article 4(1) of the contested regulation, where a person has allegedly infringed an EPUE, the patent proprietor must, at his own expense, provide that person, at his request, with a translation of the EPUE into an official language of either the participating Member State in which the alleged infringement took place or that in which that person is domiciled, at the choice of an alleged infringer. (41)

67. In the event of a dispute relating to an EPUE, Article 4(2) of the contested regulation provides that the patent proprietor must provide, at his own expense, a full translation of the patent into the language used in the proceedings of the court competent in the participating Member States, at the request of that court. (42)

68. In the event of a dispute concerning a claim for damages, the court hearing the dispute must take into consideration the good faith of the alleged infringer who acted, before having been provided with the

translation referred to in Article 4(1) of the contested regulation, without knowing or without reasonable grounds for knowing that he was infringing the EPUE, 'in particular' where the alleged infringer is an SME, a natural person or a non-profit organisation, a university or a public research organisation. (43)

69. On the other hand, the EU legislature provides for transitional measures from the date of application of the contested regulation until the EPO has a system of high quality machine translations of patent applications and specifications. (44)

70. Thus, during the transitional period, Article 6(1) of the contested regulation provides that an application for an EPUE must be submitted together with a full translation of the specification into English where the language of the proceedings is German or French, or a full translation of the specification into any official language of the Union where the language of the proceedings is English. Accordingly, this guarantees that during that period all EPUEs are available in English. In addition, the translations into the official languages of the Union will be manual and will be able to be used to improve the machine translation system.

71. Second, in Article 5 of the contested regulation, the EU legislature provides for a compensation scheme for the reimbursement of translation costs for persons who have not filed their European patent application in one of the official languages of the EPO.

72. Under that provision, as European patent applications may be filed in any official language of the Union, such persons will be able to be reimbursed all translation costs up to a ceiling. These beneficiaries are expressly mentioned as being SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within a Member State. (45)

73. The EU legislature thus wished to protect the most vulnerable persons or entities in comparison with more powerful structures, which have greater resources and whose staff include members with the ability to draft European patent applications directly in one of the official languages of the EPO.

74. Accordingly, the linguistic choice made by the EU legislature pursues a legitimate objective and is appropriate and proportionate having regard to the guarantees and the factors that temper the discriminatory effect resulting from that choice.

75. In the light of the foregoing, I therefore propose that the Court reject the Kingdom of Spain's first plea in law as being unfounded.

B – The second plea in law, alleging a breach of the principles set out in Meroni v High Authority

1. Arguments of the parties

76. The Kingdom of Spain claims that, by delegating to the EPO, in Articles 5 and 6(2) of the contested regulation, the administration of the compensation scheme for the reimbursement of translation costs and the publication of the translations under the transitional regime, the Council breached the principles set out in Meroni v High Authority, (46) as confirmed by subsequent case-law.

77. The Council, which questions the admissibility of this plea in law in the light of the reference to certain arguments put forward in Spain v Parliament and Council (C-146/13), currently pending before the Court, makes the preliminary point that the Kingdom of Spain does not dispute that the participating Member States, through the EPO, are responsible for the administration of the compensation scheme and the task of publishing the translations. However, the implementation of EU law falls first and foremost to the Member States and, for tasks relating to the compensation scheme and the publication of the translations, it is not necessary to have uniform implementing conditions for the purposes of Article 291(2) TFEU. The principles set out in Meroni v High Authority, (47) as confirmed by subsequent case-law, are not relevant. In any event, those principles are respected.

78. The interveners concur with the observations of the Council, which considers that the principles set out in that judgment are not applicable and that they are, in any event, respected.

2. My assessment

79. In the light of the answers given in the assessment of the fourth and fifth pleas in law in my Opinion in Spain v Parliament and Council (C-146/13), currently pending before the Court, I propose that the Court reject the Kingdom of Spain's second plea in law as being unfounded.

C – The third plea in law, alleging a lack of legal basis for Article 4 of the contested regulation

1. Arguments of the parties

80. The Kingdom of Spain claims that the legal basis used to introduce Article 4, which governs 'translation in the event of a dispute', into the contested regulation is incorrect, as that provision does not relate to 'language arrangements' for a European intellectual property right in accordance with the second paragraph of Article 118 TFEU, but incorporates certain procedural safeguards in the context of legal proceedings.

81. The Council claims that Article 4 of the contested regulation is not a procedural rule, but lays down a rule relating to the linguistic regime and that that rule forms an integral, important part of the general linguistic regime for the EPUE created by that regulation. The Council states that this provision plays an important role as it fills a legal vacuum, given that the linguistic regime under the EPC does not regulate linguistic requirements in the event of a dispute. In addition, in its view, since the Member States' procedural rules have not been harmonised by EU law, it must be ensured that the alleged infringer always has the right to obtain a full translation of the EPUE concerned. The conditions for the application of the second paragraph of Article 118 TFEU laying down the language arrangements applicable to the entire 'life' of the patent are therefore met.

82. The interveners concur with the Council's arguments.

83. The French Republic, the Kingdom of the Netherlands and the Kingdom of Sweden state that the second paragraph of Article 118 TFEU does not require the EU legislature to harmonise fully every aspect of the linguistic regime or the translation regime for the intellectual property right in question. In the view of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, Hungary, the Kingdom of Sweden, the United Kingdom, the Parliament and the Commission, Article 4 of the contested regulation could certainly be introduced into a regulation adopted on the basis of the second paragraph of Article 118 TFEU, as that provision forms an essential part of the translation regime provided for by that regulation. Even supposing that Article 4 does not form an intrinsic part of the translation regime established by that regulation, its introduction into the contested regulation did not require recourse to any legal basis other than the second paragraph of Article 118 TFEU. According to case-law, (48) if examination of an EU act reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis. That is the case here.

2. My assessment

84. The Kingdom of Spain considers that Article 4 of the contested regulation is not a provision relating to language arrangements within the meaning of the second paragraph of Article 118 TFEU and that the second paragraph of Article 118 TFEU cannot therefore be used as a legal basis to incorporate certain procedural safeguards in the context of legal proceedings.

85. I cannot concur with this view for the following reasons.

86. It should be borne in mind that, according to settled case-law, *'the choice of the legal basis for an act of the European Union must rest on objective factors amenable to judicial review, which include the aim and content of that measure'*. (49)

87. It should be noted at the outset that the Kingdom of Spain stated in paragraph 48 of its application — in connection with its first plea in law — that the contested regulation does establish a very specific regime on the use and limitation of the official languages of the Union which requires, in the literal sense, a genuine 'linguistic regime' or 'language arrangements' as established by the legal basis, namely the second paragraph of Article 118 TFEU, and the decision on enhanced cooperation itself.

88. Having regard to recital 16 in the preamble to the contested regulation, which states that the objective of the regulation is the creation of a uniform and simple translation regime for the EPUE, and to my assessment of the first plea in law and to the assessments to be made in connection with the fourth plea in law (50) and the application for partial annulment of the contested regulation, (51) to which I refer, I take the view, by contrast, that Article 4 of the contested regulation is intrinsically linked to the linguistic regime in so far as

its aim is to temper the choice made by the EU legislature concerning the linguistic regime for the EPUE.

89. I would add that, although Article 4(4) of the contested regulation is different from Article 4(1) and (2) of that regulation in so far as it does not lay down rules on translation, per se, in the event of a dispute, Article 4(4) is nevertheless linked to Article 4(1) of the contested regulation. It allows the EU legislature to take into account the period during which the interested parties may not know about the patent in the absence of a translation (52) and which is detrimental in particular to SMEs, natural persons or non-profit organisations, universities or public research organisations. Thus, Article 4(4) of the contested regulation tempers this absence of a translation by taking into consideration the good faith of those persons or entities in particular.

90. In this regard, recital 9 in the preamble to the contested regulation states that the court which is competent to assess this good faith in the individual case must take into account the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.

91. In the light of the foregoing, I propose that the Court reject the Kingdom of Spain's third plea in law as being unfounded.

D – The fourth plea in law, alleging infringement of the principle of legal certainty

1. Arguments of the parties

92. The Kingdom of Spain claims, in essence, that the contested regulation infringes the principle of legal certainty in so far as, first, it limits access to information for economic operators. Second, it does not specify the arrangements relating to publication of the grant of unitary effect and entry in the register for unitary patent protection. (53) In addition, it does not indicate, in connection with the administration of the compensation scheme, the ceiling for costs or its method of calculation. Furthermore, it does not lay down the specific consequences in cases where an infringer has acted in good faith. Lastly, the system of machine translation did not exist when the contested regulation was adopted.

93. According to the Council, the Kingdom of Spain's claims misconstrue the principles of indirect administration and subsidiarity on which EU law is founded. The contested regulation leaves it to the Member States to adopt rules governing specific aspects such as the compensation scheme or machine translations. The principle of legal certainty does not require all rules to be laid down in the contested regulation down to the last detail and certain rules can be determined by the Member States or defined in delegated acts or implementing acts.

94. Furthermore, Article 4(4) of the contested regulation establishes the main elements and the criteria for their application by the national court. That provision does not prevent the national court from imposing a penalty on the infringer and fully permits it to exercise its judicial authority.

95. The interveners concur with the Council's arguments.

96. First, the Kingdom of Belgium, the French Republic, the Kingdom of the Netherlands and the Commission claim that the contested regulation, read in conjunction with Regulation No 1257/2012, clearly and precisely defines the linguistic regime and the arrangements for publication and registration of the EPUE.

97. Second, the Kingdom of Belgium, the French Republic, the Kingdom of Sweden, the United Kingdom and the Commission argue that the contested regulation does not prevent interested parties from accessing the information essential for exercising their activity, because all EPUEs will be included in the Register for unitary patent protection, pursuant to Article 9(1)(b) and (h) of Regulation No 1257/2012, which will be available online. It is true that the specification for the EPUE will be published in just one language. However, this limitation will not give rise to legal uncertainty among the interested parties in view of the EPO's systems of machine translation.

98. Third, the Kingdom of Denmark, the French Republic, Hungary, the Kingdom of Sweden, the United Kingdom and the Commission take the view that the provisions of Article 4(1) and (3) of the contested regulation increase legal certainty in the event of a dispute relating to an alleged infringement of an EPUE. The fact that the envisaged translation has no legal effect does not breach the principle of legal certainty, as that principle is better guaranteed where a single language is authentic. Article 4(4) of the contested regulation specifically protects certain persons involved in disputes concerning a claim for damages.

99. Fourth and last, the French Republic, the Kingdom of Sweden, the United Kingdom and the Commission state that the contested regulation does not give rise to any legal uncertainty as regards regulation of the compensation scheme provided for in Article 5 thereof, as it is not necessary for that regulation to fix the ceiling above which certain applicants may claim reimbursement of all their translation costs, since this can be defined by a subsequent implementing act.

2. My assessment

100. As a preliminary point, it should be stated that the principle of legal certainty, which is one of the general principles of EU law, requires that rules of law be 'clear and precise and predictable in their effect', so that interested parties can ascertain their position in situations and legal relationships governed by EU law. (54)

101. It must therefore be examined whether the arguments raised by the Kingdom of Spain show that this principle has been breached.

102. With regard to the Kingdom of Spain's argument that the contested regulation infringes the principle of legal certainty in so far as the EPUE is not translated into all the languages and access to information for economic operators is thus limited, I refer to my assessment in connection with the first plea in law,

from which it is evident that that argument must be rejected.

103. As regards the Kingdom of Spain's claim that the contested regulation does not provide for the publication of the grant of unitary effect or the arrangements for entry in the register for unitary patent protection or whether it should be in three languages in accordance with Article 14 of the EPC, I think that it should be rejected for the reasons put forward by certain interveners, which stem from a combined reading of the provisions of the contested regulation, Regulation No 1257/2012 and the EPC.

104. Under Article 3(2) of the contested regulation, a request for unitary effect as referred to in Article 9 of Regulation No 1257/2012 must be submitted in the language of the proceedings, (55) as defined in Article 2(b) of the contested regulation. (56)

105. Article 9(1)(h) of Regulation No 1257/2012 provides that the EPO must ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed.

106. In addition, under the first subparagraph of Article 3(1) of that regulation, '[a] European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection'. (57)

107. Furthermore, Article 14(8) of the EPC states that entries in the European Patent Register must be made in the three official languages of the EPO and that, in cases of doubt, the entry in the language of the proceedings is authentic.

108. In my view, it is clear from this latter provision and from Article 2(e) of Regulation No 1257/2012 that entry in the Register for unitary patent protection must be made in the three official languages of the EPO.

109. With regard to the Kingdom of Spain's argument concerning regulation of the compensation scheme provided for in Article 5 of the contested regulation, claiming that neither the ceiling for reimbursement nor its method of calculation are specified, the following elements should be taken into consideration in rejecting that argument.

110. Article 9(2) of Regulation No 1257/2012 provides that, in their capacity as Contracting States to the EPC, the participating Member States must ensure the governance and supervision of the activities related to the tasks referred to in Article 9(1) of that regulation (58) and that to that end they shall set up a select committee of the Administrative Council of the European Patent Organisation (59) within the meaning of Article 145 of the EPC. (60)

111. The select committee must therefore adopt a decision regarding the compensation scheme referred to in Article 5 of the contested regulation, for the administration of which the EPO is responsible.

112. In this regard, I would point out that at the seventh meeting of the select committee held in Munich on 26 March 2014, it adopted the rules relating to the

compensation scheme for costs of translations of applications filed in an EU official language which is not one of the official languages of the EPO. However, the financial aspects of the compensation scheme, including the amount to be compensated, will be discussed at a later stage. (61)

113. Economic operators and all interested parties will therefore be able to find out the arrangements for the compensation scheme, once the Contracting Member States, via the select committee, have introduced these arrangements.

114. Those arrangements will, in any event, have to take account of recital 10 in the preamble to the contested regulation, under which additional reimbursements of the costs of translating from the language of the patent application into the language of the proceedings of the EPO will have to go beyond what is currently in place at the EPO.

115. With regard to the claim that the translation provided in the event of a dispute by the patent proprietor has no legal effect, I concur with the arguments put forward by certain interveners which state that the principle of legal certainty is undeniably better guaranteed where a single language is authentic. It is hard to see how that principle could be respected where there are multiple alleged infringers in several Member States. If all translations were authentic, this would create a risk of divergences between the different language versions and thus legal uncertainty. This claim must therefore be rejected.

116. With regard to the argument that, unlike the regime for the Community trade mark, there is no provision preventing bona fide third parties that have infringed a patent being ordered to compensate damages, as Article 4(4) of the contested regulation makes no provision for the specific consequences of the infringement of a patent by a bona fide third party, I would counter that there is nothing to require the EU legislature to establish the same legal regime for the Community trade mark and the EPUE. Moreover, the EU legislature took care to restore some balance in the assessment by the national court of the circumstances of the individual case by providing that the court must take into consideration the good faith of the alleged infringer. (62) The specific consequences for the alleged infringer will follow from this factual and legal assessment. That court will be able to order damages or exclude such an order entirely independently. Thus, it is clear from a reading of Article 4(4) of the contested regulation that the competent court must take account of the good faith of the alleged infringer.

117. Lastly, as regards the claims by the Kingdom of Spain relating to the system of machine translation and the transitional arrangements, I would point out that the length of the transitional period is based on the time that is likely to be needed to develop the system of machine translations so that translations of patent applications and specifications into all the official languages of the Union are effective and of high quality.

118. I note in this regard that the introduction of this system was launched in 2004 with a limited number of languages. The system was then extended with a view to making available, by 2014, machine translations into the languages of all the States parties to the EPC, and hence into the official languages of the Union, from and to English. (63)

119. In addition, it should be borne in mind that the contested regulation will be applicable on the date of entry into force of the UPC Agreement and that the EU legislature states that, if the transitional period is not terminated on the basis of a proposal of the Commission, (64) it will lapse 12 years from that date. (65) In my view, this allows the EPO sufficient time to establish a system of high quality machine translations, especially since that system will be improved by the manual translations carried out in that period, ensuring the reliability of the information. (66)

120. In the light of all the above considerations, I propose that the Court reject the Kingdom of Spain's fourth plea in law in so far as the examination of the arguments relied on by that Member State has not revealed any infringement of the principle of legal certainty, since the provisions of the contested regulation, Regulation No 1257/2012 and the EPC are sufficiently clear and precise and predictable in their effect.

E – The fifth plea in law, alleging infringement of the principle of the autonomy of EU law

1. Arguments of the parties

121. The Kingdom of Spain claims that Article 7 of the contested regulation is contrary to the principle of the autonomy of EU law because it distinguishes between, on the one hand, the entry into force of that regulation and, on the other, its application on 1 January 2014, whilst stating that that date will be put back if the UPC Agreement has not entered into force. In these circumstances the contracting parties to the UPC Agreement were given the power to determine the date of entry into force (67) of an EU measure and, consequently, the exercise of its competence.

122. The Council states that a combined reading of recitals 9, 24 and 25 in the preamble to Regulation No 1257/2012 shows that the political choice made by the EU legislature to ensure the proper functioning of the EPUE, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors was to link the EPUE to the operation of a distinct judicial body, which was to be established even before the first EPUE is granted. There is no legal obstacle to the establishment of a link between the EPUE and the Unified Patent Court, in respect of which a sufficient statement of reasons is given in recitals 24 and 25 in the preamble to Regulation No 1257/2012. Moreover, there are several examples in legislative practice of a link between the applicability of an EU act and an event bearing no relation to that act.

123. The interveners concur with the Council's observations.

2. My assessment

124. For the assessment of this fifth plea in law, I refer to my Opinion in *Spain v Parliament and Council* (C-146/13), currently pending before the Court, and more specifically to the examination of the last part of the sixth plea in law and the seventh plea in law and propose that the Court reject that fifth plea in law as being unfounded.

F – The application for partial annulment of the contested regulation, made in the alternative

1. Arguments of the parties

125. Without formally objecting to the application made by the Kingdom of Spain in the alternative, the Council questions the relevance of the pleas in law raised in support of that application and adds that a partial annulment in respect of Article 7(2) of the contested regulation is, in any event, impossible, as that provision cannot be severed from the other provisions of that regulation. The Federal Republic of Germany adds that the action is inadmissible in so far as it seeks the annulment of Articles 4, 5, 6(2) and 7(2) of that regulation because Articles 4 to 6 of the contested regulation form an integral part of the linguistic regime for the EPUE, and the annulment of Article 7(2) of that regulation would alter the nature of the EPUE and thus of the said regulation.

126. The Kingdom of Spain states that it has made the application for partial annulment only in the alternative. In addition, the arguments put forward by the Federal Republic of Germany preclude any application for partial annulment.

2. My assessment

127. According to settled case-law of the Court, partial annulment of an EU act is possible only if the elements the annulment of which is sought may be severed from the remainder of the act. The Court has repeatedly ruled that that requirement of severability is not satisfied where the partial annulment of an act would have the effect of altering its substance. (68)

128. It is clear from my assessment of the first, third and fourth pleas in law that the aim of Articles 4 and 5 of the contested regulation is to temper the choice made by the EU legislature concerning the linguistic regime for the EPUE. In this respect, it is inconceivable to sever those provisions from the contested regulation without altering its substance.

129. With regard to Article 6(2) — which refers to Article 9(1)(d) of Regulation No 1257/2012 — and Article 7(2) of the contested regulation, I refer, respectively, to points 189 to 195 and point 198 of my Opinion in *Case C-146/13 Spain v Parliament and Council*, currently pending before the Court, and conclude that those provisions cannot be severed from the remainder of the contested regulation.

130. Consequently, I take the view that the application for partial annulment of the contested regulation made in the alternative by the Kingdom of Spain is inadmissible.

131. Since none of the pleas in law raised by the Kingdom of Spain in support of its action can be accepted, they must be rejected.

IV – Conclusion

132. In the light of the foregoing considerations, I propose that the Court should:

- dismiss the action and
- order the Kingdom of Spain to bear its own costs and the Council of the European Union and the interveners to bear their own costs.

1 – Original language: French.

2 – OJ 2012 L 361, p. 89, ‘the contested regulation’.

3 – OJ 2011 L 76, p. 53, ‘the decision on enhanced cooperation’. That decision was the subject of two actions for annulment brought by the Kingdom of Spain and the Italian Republic which were dismissed by the Court the judgment in *Spain and Italy v Council* (C-274/11 and C-295/11, EU:C:2013:240).

4 – OJ 2012 L 361, p. 1.

5 – OJ 2013 C 175, p. 1, ‘the UPC Agreement’.

6 – EPC.

7 – EPO.

8 – According to the definition in the EPO glossary, the specification is the ‘document that describes the invention and sets out the scope of protection. [It] [i]ncludes the description, claims and any drawings’.

9 – According to the definition in the same glossary, the claim is ‘[p]art of a patent application or specification. [It] [d]efines the matter for which protection is sought in terms of technical features’.

10 – ‘EPUE’.

11 – OJ English Special Edition 1958(I), p. 59.

12 – ‘The participating Member State’.

13 – 9/56, EU:C:1958:7.

14 – The term ‘public’ was used in judgment in *Kik v OHIM* (C-361/01 P, EU:C:2003:434).

15 – See recital 15 in the preamble to the contested regulation, which provides that the regulation 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 – EU:C:2003:434. That case concerned the language rules established by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and the use of languages by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

17 – Paragraph 82. See also the second classification assumption made by Advocate General Poiares Maduro in his Opinion in *Spain v Eurojust* (C-160/03, EU:C:2004:817, point 42 et seq.) which gave rise to the judgment in *Spain v Eurojust* (C-160/03, EU:C:2005:168), which is similar to the present case, although the specific context here is enhanced cooperation and the EPO system.

18 – See Vanhamme, J., ‘L’équivalence des langues dans le marché intérieur: l’apport de la Cour de justice’, *Cahiers de droits européens*, No 3-4, 2007, p. 359, who states that although the ‘existence [of the] principle [of equality of languages] is, in any case, difficult to imagine, the right to equal treatment being a

prerogative attaching to persons, and not to their characteristics or their modes of speech[, on] the other hand, the principle of equal treatment is fully recognised as applying to citizens of the Union ... and to undertakings established there' (pp. 378 and 379).

19 – See Article 6(3) of the contested regulation.

20 – It should be recalled that under that provision specifications of European patents are to be published in the language of the proceedings and to include a translation of the claims in the other two official languages of the EPO.

21 – Judgment in *Kik v OHIM* (EU:C:2003:434, paragraph 94).

22 – See p. 2 of the Proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (COM(2011) 216 final).

23 – Except for Member States which are parties to the Agreement on the application of Article 65 of the EPC, concluded in London on 17 October 2000, under which the parties undertake to dispense, entirely or largely, with the submission of translations of European patents in their national language if their official language is one of the languages of the EPO.

24 – See pp. 4 and 5 of the Proposal for a Council Regulation (EU) on the translation arrangements for the European Union patent (COM(2010) 350 final). See also section 2 of the Commission impact assessment entitled 'Impact assessment: Accompanying document to the Proposal for a Regulation of the European Parliament and the Council implementing enhanced cooperation in the area of the creation of unitary patent protection and Proposal for a Council Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements' (SEC(2011) 482 final), available in English.

25 – See p. 14 of the Communication from the Commission entitled 'Europe 2020 — A strategy for smart, sustainable and inclusive growth' (COM(2010) 2020 final), box on the Flagship Initiative: 'Innovation Union'.

26 – See recital 4 in the preamble to the contested regulation.

27 – See recital 5 in the preamble to that regulation.

28 – See judgment in *Kik v OHIM* (EU:C:2003:434, paragraph 88).

29 – See the Notes on the Application Form for a Community Trade Mark, available at the OHIM website, and the Notes on the request for grant of a European patent, available on the EPO website.

30 – See the definition in footnote 9.

31 – See point 4.1, p. 14, of the Commission Impact Assessment mentioned in footnote 24.

32 – See point 5.2.2.2., pp. 18 and 19, of the Proposal for a Council Decision authorising enhanced cooperation in the area of the creation of unitary patent protection (COM(2010) 790 final).

33 – See judgment in *Kik v OHIM* (T-120/99, EU:T:2001:189, paragraph 63).

34 – The cost of such a translation is EUR 85 per page (see point 4.1, p. 14, of the Commission Impact Assessment mentioned in footnote 24).

35 – See point 45 of my Opinion in *Spain v Parliament and Council* (C-146/13), currently pending before the Court.

36 – See Annex 2, p. 43, of the Commission Impact Assessment mentioned in footnote 24.

37 – EU:C:2003:434.

38 – Paragraph 92.

39 – See, to this effect, judgment in *Kik v OHIM* (EU:C:2003:434, paragraph 92).

40 – Emphasis added.

41 – See also recital 8 in the preamble to the contested regulation.

42 – *Idem*.

43 – See also recital 9 in the preamble to the contested regulation.

44 – The Commission must make proposals for terminating this transitional period in the light of objective evaluations carried out by an independent expert committee. In any event, that period will lapse 12 years from the date of application of the contested regulation (see Article 6(3) to (5) of the contested regulation).

45 – See also recital 10 in the preamble to the contested regulation.

46 – EU:C:1958:7.

47 – *Idem*.

48 – See judgment in *Parliament v Council* (C-130/10, EU:C:2012:472, paragraph 43 and cited case-law).

49 – See judgment in *United Kingdom v Council* (C-431/11, EU:C:2013:589, paragraph 44 and cited case-law).

50 – See, more specifically, points 113 and 114 of this Opinion.

51 – See, more specifically, points 127 and 128 of this Opinion.

52 – The period immediately before receipt of the translation provided for in Article 4(1) of the contested regulation.

53 – The Register for unitary patent protection is defined in Article 2(e) of Regulation No 1257/2012 as the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of an EPUE are registered. That Register is available online (see the website at <http://www.epo.org/searching/free/register.html>).

54 – See judgment in *LVK — 56* (C-643/11, EU:C:2013:55, paragraph 51 and cited case-law).

55 – It should be noted that Article 9(1)(g) of Regulation No 1257/2012 provides that the EPO must 'ensure that a request for unitary effect by a proprietor of a European patent is submitted in the language of the proceedings as defined in Article 14(3) of the EPC', no later than one month after the mention of the grant is published in the European Patent Bulletin.

56 – The language of the proceedings is the language of the proceedings used in proceedings before the EPO under Article 14(3) of the EPC.

57 – Emphasis added.

58 – See points 128 to 131 of my Opinion in Spain v Parliament and Council (C-146/13), currently pending before the Court.

59 – ‘The select committee’.

60 – Under that provision, the group of Contracting States may set up a select committee for the purpose of supervising the activities of the special departments set up under Article 143(2) of the EPC. The composition, powers and functions of the select committee are to be determined by the group of Contracting States.

61 – See the website at <http://www.epo.org/news-issues/news/2014/20140328a.html>.

62 – As has already been explained, this provision tempers the consequences of the translation of EPUEs into a limited number of languages.

63 – See section 7.3.2, p. 34, of the Commission Impact Assessment mentioned in footnote 24.

64 – Under Article 6(3) and (4) of that regulation, the Commission may terminate the transitional period from six years after the date of application of that regulation in the light of the first evaluation by an independent expert committee, and every two years thereafter on the basis of the subsequent evaluations by that committee.

65 – See Article 6(5) of the contested regulation.

66 – See recital 12 in the preamble to that regulation.

67 – I understand this to mean the date of application.

68 – See judgment in *Commission v Parliament and Council* (C-427/12, EU:C:2014:170, paragraph 16 and cited case-law).