

**COMMISSION STAFF WORKING PAPER
SEC (2001) 1307
—
CONSULTATIONS ON THE IMPACT OF THE COMMUNITY UTILITY MODEL IN ORDER
TO UPDATE THE GREEN PAPER ON THE PROTECTION OF UTILITY MODELS IN THE SINGLE MARKET
(COM(95) 370 FINAL)**

UNICE RESPONSE

UNICE has taken note of the Commission consultation on the impact of the Community utility model in order to update the Green Paper on the Protection of Utility Models (SEC (2001) 1307).

As rightly underlined in the Commission staff working paper, the 1995 consultation on the creation of a Community system of utility model protection prompted rejection by the large majority of interested parties consulted.

UNICE would like to take the opportunity of this second sounding on creation of an EU-wide utility model to reiterate the opposition of the very large majority of its members to such a proposal. The reasons of this opposition have remained unchanged since 1996 when UNICE expressed its views on the Commission Green Paper (COM (95) 370 final)¹, and since 1998 regarding the proposal for a Directive approximating the legal arrangements for the protection of inventions by utility models (COM (97) 691 final)².

Before addressing its replies on selected questions of the Consultation paper, UNICE would like to state once again why it considers that the creation of an EU-wide utility model protection system is not desirable at this stage.

A Community action to protect utility models is **premature**, as it does not correspond to the priority economic needs of European companies. The main reason for that is the lack of a coherent and integrated intellectual/industrial property policy in the Union. The second factor is that, with respect to the importance of having a Community Patent Regulation benefiting European industry and the remaining related stumbling blocks in discussions on it, first priority should be given to the establishment of a Community patent and efforts should be focused on it without confusing it with the idea of having a Community utility model system³.

In addition, since utility model rights would be granted without prior examination, legal certainty would require increased investment in validity evaluations and/or litigation which would place **SMEs** in particular **at a competitive disadvantage**.

A Community utility model as proposed would **not provide the necessary balance between contribution of the inventor and scope of the protection** due to the lower inventive step suggested for a valid utility model.

¹See UNICE position paper on the protection of utility models in the internal market (12 February 1996).

²See UNICE position paper on the proposal for a Directive approximating the legal arrangements for the protection of inventions by utility models (27 April 1998).

³See UNICE message on the creation of a Community patent (25 October 2001).

Regarding the questionnaire set out in the consultation document, UNICE would like to give the following replies:

QUESTION 1

What, in your opinion, would be the impact, in your sector of activity or more generally, of the introduction of a Community utility model as described in point 4 on:

- ***Search and development activities and innovation,***
- ***Competition within the European Union,***
- ***The European Union's competitiveness at world level?***

Where necessary, make a distinction according to the size of company (large companies or SMEs) and the sectors concerned.

Regarding the impact of a Community utility model on innovation and competitiveness within the Internal Market, UNICE fears that the establishment of unexamined Community industrial property right for low-level inventions could destroy the balance between justified protection of an invention and the freedom of third parties to act. Such an instrument would have a stifling effect on research and innovation as well as on the development of improved products and processes in Europe. If certain companies use protection of utility models aggressively, it may discourage potential competitors from investing in particular markets – **SMEs** would be the first victims of such a system.

Regarding its impact on European competitiveness at international level, great caution should be exercised when examining the way this question is tackled by the main competitors of European companies; namely, USA and Japan. A brief comparative study on the way these rights are enjoyed in the three regions would provide the opportunity to assess the usefulness of Community action and whether this action could have any influence of European companies at international level in the field. Nonetheless, UNICE has already drawn the European institutions' attention to the fact that such a brief study would highlight the following situation⁴:

- Interested parties in the **United States** have time and again opposed introduction of minor rights, mainly on the ground of the legal uncertainty they engender and because they regard them as superfluous, even dangerous for maintenance of a high level of patent protection. They also believe it would be difficult to define a lower inventive step than that required for a patent, and yet more so to apply such a definition in practice;
- Utility models have been in use in **Japan** for many years and interested parties believe they have contributed to the development of Japanese industry. However, with the revision of the legislation in 1994, Japan now offers an unexamined right valid for six years and industry has lost interest because this type of instrument no longer corresponds to the level of development reached by Japan.

European industry trusts that the above experiences will provide complementary reasons for the European legislator to seek to improve the European corporate competitiveness by looking forward, and not developing second-tier protection which runs counter to a pro-active innovation policy in the Union.

QUESTION 2

What, in your opinion, would be the effect of a Community utility model on legal certainty for your company and for the European Union in general?

UNICE believes that a Community utility model would create a climate of legal uncertainty because of the features inherent to it and set out in point 4 of the consultation paper; in particular, the term of protection, scope and compulsory search aspects. For these reasons, an EU-wide utility model would increase the risk of costly and lengthy litigation actions.

⁴ See footnote 2.

QUESTION 3

If the system described in point 4 was set up, how many applications for utility models would you be likely to file per year?

In your opinion, what would be the total number of applications filed each year in the European Union?

UNICE would like to draw attention to the fact that the establishment of such a tool may have negative repercussions on another intellectual property right; namely, the patent. A utility model with a low level of inventive step which is readily available at a reduced cost may be used intensively by large corporations, which register most patents at the present time. These companies may use utility model protection for a whole range of inventions whose contribution to development of technology, value and economic attraction or service life are uncertain, inundating the market and leaving no room to SMEs to develop their own innovation strategy.

QUESTION 5

On the basis for your replies to the previous questions, would you be in favour of the introduction in the European Union of a Community utility model as described in point 4?

No. Please see reply to Question 7.

QUESTION 6

If your reply to the previous question was negative because of the features described in point 4, what changes would you suggest to make the system acceptable to you?

UNICE remains firmly opposed to the creation of a Community utility model. UNICE's view is that the Community patent is crucial and should have priority. Creating a Community utility model might well hamper the process of changing the patent system and lowering the cost of a fully examined patent, harming both European companies' interests and the chance of increasing their competitiveness and innovation.

QUESTION 7

Have any new developments occurred since the Green Paper of 1995, which have led you to change your opinion on the Community utility model? Please explain as appropriate.

UNICE's position remains unchanged since the Green Paper of 1995.

QUESTION 8

Do you have any further comments regarding the Community utility model? If so, please give details.

Please see reply to Question 6.