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**Proposal for a Regulation of the European Parliament and of the Council  
implementing enhanced cooperation in the area of the creation of unitary patent  
protection**

COM(2011)0215 – C7-0099/2011 – 2011/0093(COD)

**Compromise Amendments**

These amendments have been tabled by Greens/EFA group.

**06/12/2012**



## Amc. 76 - Article 3 - paragraph 2a (new)

Text proposed by the Commission	Amendment
	<p><b><i>A European patent with unitary effect shall have an autonomous character. It shall be subject only to the provisions of this Regulation, to the Treaties and Union Law, and, to the extent that this Regulation does not provide for specific rules, to those provisions of the European Patent Convention which are binding upon every European patent and which shall consequently be deemed to be provisions of this Regulation.</i></b></p>

### Justification

The autonomous character of the unitary patent is included in the measures implementing enhanced cooperation outlined by the Commission in its explanatory memorandum of the proposal for a Council decision authorising enhanced cooperation in the area of the creation of unitary patent protection ([COM\(2010\) 790](#)). This measure is important to be implemented in order to guarantee the legal certainty of this regulation implementing enhanced cooperation.

Moreover, since some powers have been delegated to the European Patent Office, which is an organisation that is outside the EU, in order to grant unitary patents, it is important to clarify that the provisions of the EPC which carry out such a delegation of powers, shall be contemplated as included in EU law, and, as such, are subject to the same rules as if unitary patents were granted by an EU agency (Judgment of the Court of 13 June 1958. - *Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community* – [Case 9-56](#)).

This amendment uses the wording of the general approach adopted by the Council (Competitiveness) on 4 December 2009 ([16113/09 ADD 1](#)), and the wording of the Convention for the European patent for the common market (Community Patent Convention) – [76/76/EEC](#).



## Amc. 74 - Article 3a (new)

Text proposed by the Commission	Amendment
	<p><b>1. A set of instructions for solving a problem by means of an automated system consisting only of generic data processing hardware (universal computer), also called “program for computers” or “computer-implemented solution”, is not an invention in the sense of applicable substantive patent law to a European patent with unitary effect, regardless of the form under which it is claimed.</b></p> <p><b>2. A claimed object can be an invention in the sense of applicable substantive patent law to the European patent with unitary effect only if it contributes knowledge to the state of the art in a field of applied natural science; an invention is a teaching about cause-effect relations in the use of controllable forces of nature.</b></p>

### Justification

This amendment defines some rules of patentability in the same way as voted by the European Parliament on September 24th 2003 on its first reading of the Directive on the patentability of computer-implemented inventions (2002/0047 (COD)). The wordings of the amendment is perfectly compliant with the EPC, and moreover is enhancing the EPC own wordings, by clarifying some difficulties that have resulted in divergent interpretations by various national courts. Hence, this amendment contributes to the goal of having a unified enforcement of European patents with unitary effect.

Rights conferred by patents could conflict with other areas of EU policy, and could harm important freedom interests, as it has been acknowledged by the Advocates General of the Court of Justice of the European Union, in [Opinion 1/09](#) on the Creation of a unified patent litigation system, underlining that “[written rules of derived law and primary law, written or not, of the Union Law] bear a certain importance in disputes between individuals concerning patents”, and mentioning “articles 13 [Freedom of the arts and sciences], 15 [Freedom to choose an occupation and right to engage in work], 16 [Freedom to conduct a business] and 17 [Right to property] of the Charter of Fundamental Rights of the European Union, which now has the same legal value as the treaties”. Rights conferred by patents could also hamper productivity and growth in some fast moving fields (See for example, “[Sequential Innovation, Patents and Imitation](#)”, by James Bessen and Eric S. Maskin, Institute for Advanced Study, arguing that if innovation is both “sequential” (each invention builds on its predecessor) and “complementary” (a diversity of innovators raises the chances of discovery), a firm's profit may actually be enhanced by competition, and a patent system may interfere with such competition and with innovation).

Therefore, the validation of European patents with unitary effect cannot be left to the European Patent Office or courts, but need a regular oversight by the EU legislator. This oversight, more than anything else, needs to be rationalised in the interest of the innovation policy of Europe 2020 Strategy. The involvement of the EU legislator for the substantive patent law of the unitary patent, as proposed by this amendment, would be a response to the [severe criticisms](#) of the governance of the current European patent system, in particular as stated in the European Parliament resolution on future patent policy in Europe (P6\_TA(2006)0416), on October 12th 2006.

Moreover this is a formal request from the EPO's Enlarged Board of Appeal, in its opinion [G 3/08](#) published on May 12nd, 2010: “When judiciary-driven legal development meets its limits, it is time for the legislator to take over”.