



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	Presidency
to:	Permanent Representatives Committee (Part 1) / Council
No. prev. doc.:	18239/11 PI 181 COUR 78
Subject:	Draft Agreement on the creation of a Unified Patent Court - Suggested way forward for a political agreement

1. The creation of unitary patent protection and the Unified Patent Court are key drivers for strengthening economic growth and job-creation in the European Union and cornerstones in building a strong science base in Europe.
2. On 5 December 2011, the Competitiveness Council had an exchange of views on the last outstanding issues regarding the creation of a Unified Patent Court based on 18239/11. At the end of those discussions, and while keeping in mind that nothing is agreed until everything is agreed, delegations had reached a general agreement on all but one outstanding issue, namely the place where the seat of the Central Division of the Court of First Instance will be situated.
3. At the informal meeting of the members of the European Council on 30 January 2012 the participating Member States stated their commitment towards reaching a final agreement on the European patent reform at the latest in June 2012. This commitment was confirmed by the European Council on 1/2 March 2012 and by the members of the European Council on 23 May 2012.

4. Based on the common understanding that the texts of the draft Agreement on a Unified Patent Court and of the draft Statute of that Court have been thoroughly discussed under the Polish Presidency, the Danish Presidency has undertaken intensive consultations, aimed at reaching a compromise on the last outstanding issue mentioned above. As a follow up on these consultations, the Presidency is hereby inviting delegations to discuss the location of the seat of the Central Division of the Court of First Instance with a view to reaching a political agreement.
5. At the Competitiveness Council on 5 December 2011, the participating Member States reached general agreement on a draft declaration of the contracting Member States concerning the preparation for the coming into operation of the Unified Patent Court, as contained in 17580/11. In response to several Member States having expressed the need for further clarification on the process following a political agreement on the patent package, the Presidency is hereby circulating a draft statement from the Danish Presidency and the incoming Cypriot Presidency on the process following such a political agreement, as set out in the Annex to this Note.
6. **At the meeting of the Competitiveness Council on 30 May 2012, the participating Member States are invited to:**
 - a) **reach a political agreement on the last outstanding issue of the patent package, and**
 - b) **take note of the joint Danish and (incoming) Cypriot Presidencies' statement contained in the Annex.**

Joint Statement from the Danish Presidency and the (incoming) Cypriot Presidency

Following a final agreement on the Unified Patent Court at the Competitiveness Council on the 30th of May 2012, the Presidency will immediately contact the European Parliament with the aim of having a vote on the three reports regarding the European Patent reform as soon as possible (the report on the 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, report on 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 and the report on the jurisdictional system for patent disputes).

Once the voting in the European Parliament has been completed, the Regulations on the Unitary Patent Protection (UPP) and the applicable translation arrangements should be adopted by the Council, preferably in July 2012. In parallel, the Presidency will work with the Commission on incorporating the agreed changes to the Agreement on the Unified Patent Court, facilitate a finalisation of the text with the Member States in the Council and the Commission and work with the Commission on carrying through lawyer-linguist review.

Following a final agreement on the Unified Patent Court, the Presidency will immediately contact the Commission with the aim of having a draft of the Rules of Procedure on the Unified Patent Court submitted to a broad public consultation already in the beginning of June 2012. A draft, as consolidated by the Commission following the public consultation, should be presented to the participating Member States and initially discussed by the Member States in the Council before the signature of the agreement.

Before the end of October 2012, a Diplomatic Conference should be held with the purpose of enabling the participating Member States to sign the Agreement on a Unified Patent Court.

Immediately after the signing of the Agreement, the ratification process by national parliaments should start and the Preparatory Committee should be constituted. By the end of 2012, the Pre-Select Committee of the Administrative Council of the European Patent Organisation should be constituted (UPP Regulation).

The Preparatory Committee should, among other things, draw up a complete and detailed set of Rules of Procedure, based on the draft from the Commission and the work done by the Member States in the Council. The Rules of Procedure should be discussed thoroughly in the Committee, to secure that all stakeholders has been heard and that the rules are broadly anchored in the participating Member States. The uniform application of the Rules of Procedure are vital to guarantee that the decisions of the Court are of the highest quality and to ensure legal certainty and that proceedings are organised in the most efficient and cost effective manner. The Preparatory Committee should have a final draft of the Rules of Procedure ready before the end of the ratification period, with the aim of having the Rules of Procedure adopted by the Administrative Committee shortly after its establishment.

By November 2013, at least 13 participating Member States should have ratified the Agreement on a Unitary Patent Court in order for the Agreement to enter into force on the 1st of February 2014, subject to the necessary amendments to the Brussels I Regulation being in place.

The Regulation on Unitary Patent Protection and the Regulation on the applicable translation arrangements should apply on the date of entry into force of the Agreement on a Unified Patent.

During the period from February to April 2014, all necessary decisions should be adopted regarding the Administrative Committee, Budget Committee, budget, appointment of judges and president, recruitment of staff, and host countries should provide facilities.

On the 1st of April 2014 the system should be ready for the first registration of a European patent with unitary effect.