



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from: General Secretariat of the Council  
to: Working Party on Intellectual Property (Patents)

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No. prev. doc.: 12234/09 PI 74  
No. Cion prop. 10786/00 PI 49

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Subject: Revised proposal for a Council Regulation on the Community Patent  
- Proposals by the Polish delegation

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Delegations will find in Annex, for information, proposals submitted by the Polish delegation on the latest proposal for a Council Regulation on the Community Patent as contained in 11417/09.

The delegation of the Republic of Poland proposes the following amendments to the provisions governing the grant of Compulsory licenses, namely to Article 21 para 4 and Article 22:

**“Article 21 Grant of compulsory licenses**

(1...3)

4. In times of national emergency or in other situations of extreme urgency, including those relating to a public interest of extreme importance, the Court may authorize at the request of a Member State or any interested party the exploitation of a Community patent”.

The proposed amendment corresponds with the explanation by the Commission at the Group’s meeting on 8 July 2009 and is intended to make it clear that the provision of Article 24 para 1 involves situations of a commercial nature; consequently not only a Member State but also any interested party may be authorized by the Court to exploit a Community patent.

In respect of Article 22, Poland proposes to number the existing provision in Presidency’s document No 11417/09 as paragraph 1 and to add a new paragraph 2 which would read as follows:

**“Article 22 Conditions applicable to compulsory licenses**

1. When granting the compulsory license under Article 21, the Court shall specify the type of use covered and the conditions to be met. The following conditions shall apply:

(a) – (g).

2. When reasonable in specific circumstances, a decision on the grant of a compulsory license may, two years after it has been taken and at the request of an interested party, be changed by the Court in part relating to the scope and duration of the license or to the amount of the royalty.”

It seems reasonable that in case when market conditions change, any interested party (the patent holder, a licensee or the holder of the compulsory license) should have the right to request that the conditions on which the compulsory license has been granted be changed.

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