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From:	Belgian, Dutch, Luxembourg and Swedish delegations
To:	Permanent Representatives Committee/Council
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Subject:	Finalisation of the implementation and entry into operation of the Unitary Patent and the Unified Patent Court - Exchange of views

The Belgian, Dutch, Luxembourg and Swedish delegations invite the Signatory States of the Agreement on a Unified Patent Court to have an exchange of views and to endorse the proposed way forward for the finalisation of the implementation and entry into operation of the Unitary Patent and the Unified Patent Court.

The timely entry into operation of the Unitary Patent package is vital for innovation, competitiveness and economic growth in Europe. For this reason European companies and user associations, including associations representing thousands of SMEs from across Europe, have urged for every possible effort to bring this major reform into operation as quickly as possible.

The entry into operation of this reform is dependent on the prerequisite ratifications of the UPC Agreement being completed. As concerns the implementation of both the Unitary Patent and the Unified Patent Court, everything is ready. All necessary legal and practical arrangements are in place, save those which can only be made once the required ratifications are completed.

Important investments have been and continue to be made by Member States and users. Member States' investments include: adoption of a secondary legal framework at European level and of accompanying legislation at national level, renting of court premises including procurement of equipment, building of IT systems for both the Patent and the Court, and preparation for selection of judges and training of judges. Users' investments include preparation for operationalisation and development of business strategies.

At the last Competitiveness Council meeting on 29 September 2016 a number of Signatory States as well as the European Commission stressed the need for a rapid operationalisation and called in particular for the outstanding ratifications of the UPC Agreement to be completed as soon as possible.

It is not clear whether the UK prerequisite ratification can be achieved in a timely manner. Therefore and given the importance and urgency of this reform, it is necessary that different scenarios for the finalisation of the implementation and entry into operation of it are presented and discussed.

1. The preferable first scenario is that the prerequisite ratification can be achieved early 2017 at the latest. This would be the fastest way to reach operationalisation and allow for the broadest possible geographical coverage, which would clearly be welcomed by the users and would certainly contribute to the system's attractiveness.
2. However, a second possible scenario has to be addressed, namely that the prerequisite UK ratification cannot be achieved in a timely manner. If so any considerable delay in operationalisation must be avoided. This can be achieved by an Agreement between Signatory States allowing for the entry into force of the UPC Agreement amongst them without the aforementioned prerequisite ratification. Such an Agreement would not preempt later ratification of the UPC Agreement. The relevant Agreement could be reached at a diplomatic conference convened in the margins of a meeting of the Council in January or February 2017.

We do believe that we must demonstrate to the user community that we understand, and take very seriously, the users' clear plea to put this major reform in place as quickly as possible. The new patent system is a unique opportunity to show that Europe has lots to offer our businesses.

- Consequently, we ask the Signatory States of the Agreement on a Unified Patent Court to express support for a rapid entry into operation of the reform on the basis of the solution proposed in the second scenario, should the first scenario not materialise.
