



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 November 2009

16113/09

**Interinstitutional File:
2000/0177 (CNS)**

PI 122

NOTE

from : General Secretariat of the Council
to : Council (Competitiveness)

No. prev. doc. : 16313/09 PI 131 COUR 82
No. Cion prop. : 10786/00 PI 49

Subject : Proposal for a Council Regulation on the Community patent
- General approach

1. The Commission presented the proposal for a Council Regulation on the Community patent¹ in August 2000.
2. The aim of this proposal is to create a unitary patent title offering protection to the patent holder throughout the European Union. The new patent tile will co-exist with current national patent rights granted under the European Patent Convention or under national laws in Member States.

¹ doc. 10786/00.

3. Despite a common political approach agreed upon in 2003, the Council failed on a number of occasions to reach the required unanimous agreement on all the aspects of the draft Regulation, in particular as regards the envisaged translation arrangements. In the absence of such agreement, the Brussels European Council (17 and 18 June 2004) suggested that a period of reflection be used to see how to take this file forward.
4. During this period of reflection, the Commission carried out a broad public consultation, which was followed in April 2007 by the Commission Communication entitled "Enhancing the patent system in Europe"². In this Communication, the Commission concluded that action was necessary in order to improve the patent system in Europe and that such action should consist of the creation of both a Community patent and a unified patent litigation system.
5. Work in the Council's preparatory bodies has been focusing since then on the legal instruments needed for the attainment of these objectives.
6. In the meantime, the Lisbon Treaty has provided a new, specific legal basis³ for the creation of unitary intellectual property titles within the European Union. While, according to the new legal basis, unanimity is still required for deciding on the language arrangements of such titles, all the other aspects thereof shall now be decided upon by qualified majority under the ordinary legislative procedure.⁴
7. In the light of the above, the Presidency considers that the forthcoming Council (Competitiveness) on 4 December 2009 should, as a first step towards the establishment of an enhanced patent system in Europe, adopt a general approach on the draft Regulation on the European Union patent, as contained in the addendum to this Note, while leaving the decision on the translation arrangements to be taken at a later stage.

² 8302/07.

³ Art. 118 TFUE.

⁴ According to the Lisbon Treaty, the European Community is replaced by the European Union; therefore, the term "Community patent" is replaced as of 1 December 2009 by "European Union patent."

8. At the same time, the Council is invited to agree on a set of conclusions on the features of the envisaged unified patent litigation system, as well as on the arrangements related to the renewal fees and their distribution for the EU patent and the Enhanced Partnership between the European Patent Office and central industrial property offices. A few delegations maintain a general scrutiny reservation on the draft Regulation pending an agreement on the draft Council conclusions.

9. **The Council is invited to agree on a general approach regarding the proposed Regulation for a European Union patent as contained in the Addendum to this Note.**
