



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 December 2007

16246/07

LIMITE

PE-QE 932

PUBLIC

**PRELIMINARY DRAFT REPLY TO WRITTEN QUESTION
E-5968/07 put by Zuzana Roithová (PPE-DE)**

from : General Secretariat of the Council
to : Permanent Representations of the Member States
Subject : **" European patent system "**

1. Delegations will find attached:
 - the text of the above Written Question;
 - a preliminary draft reply prepared by the General Secretariat.

2. If no comments have been received from delegations **by 12.00 on 11 January 2008**, this preliminary draft reply will be submitted to the Permanent Representatives Committee (Part 1) and to the Council for approval.

Any comments received will be examined by the Working Party on General Affairs.

WRITTEN QUESTION E-5968/07
by Zuzana Roithová (PPE-DE)
to the Council

Subject: European patent system

An objective of the European Union is to be a competitive knowledge-based economy, yet owing to the lack of harmonisation in the European patent system innovative European firms have to invest far greater sums in protecting their inventions than their American or Asian competitors. The European Patent Organisation and European Patent Office (EPO) are outside the EU structure and adoption of a standard Community patent has been blocked in the Council for years. In 2005 Parliament rejected harmonising rules for so-called software patents, but that did not bring about any change in the interpretation of Article 52 of the European Patent Convention on the part of the EPO. The Commission has not yet published the stakeholder contributions to the 2006 consultation on future patent policy in Europe, which makes it impossible for the academic community to analyse the findings. The Council is now discussing proposals aimed at centralising patent dispute resolution in Europe by establishing specialised patent law courts.

1. Which article of the Treaty would form the legal basis for such a court, Article 225a? Under what conditions will the parties to a dispute be able to appeal to the European Court of Justice? How does the Council intend to ensure that the decisions of such a court are binding even on the independent EPO? Does the Council have an independent analysis of the litigation costs for small and medium-sized enterprises after the creation of the court?
2. What will the selection requirements be, in terms of qualifications, experience and independence, for the judges in such a court?
3. When and how will the European Parliament be asked for its opinion?
4. What essential conditions does the Council consider must be met in order for the EU to be able to accept the standard Community patent?
5. Is the Council making diplomatic efforts with regard to the European Patent Office to ensure that in the interpretation of Article 52 of the European Patent Convention the EPO reflects the position of the EU institutions on so-called software patents expressed in 2005?
6. Is the Council taking the results of the consultation on future patent policy in Europe as the basis for the current debate?

REPLY

to Written Question E-5968/07

put by Zuzana Roithová (PPE-DE)

The Council refers the Honourable Member to the latest Presidency progress report relating to work in the field of patents, as presented to the Council on 22-23 November 2007 and contained in document 15162/07. As deduced from this report, at this stage of discussions within the Council the questions posed by the Honourable Member under point 1 have not yet been sufficiently studied, work having focused so far rather on drawing the broad outline of a politically desirable single Europe-wide patent litigation system.

The European Parliament will be formally associated with this project once the Commission has submitted a legislative proposal for the setting up of the new litigation system, in accordance with the applicable legal basis. In the meantime, a parallel reflection in the European Parliament and its opinion on the ideas currently on the Council's table, as set out in document 14492/07, would be welcome.

The Council reminds the Honourable Member that it has regrettably not been able so far to reach unanimous agreement on all features of the Community patent. Therefore, the Council is not in a position to reply to the Honourable Member's question under point 4.

The Council recalls that following the rejection of the Council's common position by the European Parliament in July 2005, there is no "position of the EU institutions" on the patentability of computer-implemented inventions. Therefore, the Council does not intend to undertake any action vis-à-vis the European Patent Office to that effect.

The Council ensures the Honourable Member that the results of the public consultation carried out by the Commission regarding future patent policy in Europe have been duly taken into account throughout the discussions.