

Brussels, 7 December 2010

Commissioner Michel Barnier
European Commission

Dear Commissioner,

Ten years have passed since the Commission presented its proposal for a Community patent. The aim was then, and still is, the creation of a unitary patent protection to the benefit of our industry and wider economies. The discussions in Council took an important step forward with the adoption of conclusions on an "Enhanced patent system for Europe" and a general approach on the proposal for a Regulation on the EU Patent in December 2009.

The Belgian Presidency has tried its utmost to find a compromise on the proposed Council Regulation on the translation arrangements for the EU Patent. However, given that the adoption of this Regulation has been blocked in Council it is clear that the objective of the creation of a unitary patent protection in the territory of the EU cannot be attained within a reasonable period of time by the Union as a whole. In such case of last resort the Treaty provides the possibility to move European integration forward, including the further development of the internal market, through enhanced cooperation. In view of the discussions in the Council which have shown a strong support amongst Member States we expect that a large majority of Member States is prepared to successfully conclude on the unitary patent protection. Our ten governments, therefore, requests, pursuant to Article 329 TFEU, the Commission to submit a proposal to the Council on the establishment of enhanced cooperation with regard to the creation of a unitary patent protection covering the territories of the Member States who would participate in the enhanced cooperation.

The scope and objectives of the enhanced cooperation on unitary patent protection should be based on the Commission's proposal, COM(2000) 412, for a Council Regulation on the Community patent and on the Commission's proposal on the Translation Arrangements for the EU Patent, COM (2010) 350, for a Council Regulation. As far as translation arrangements are concerned, the enhanced cooperation would rely on the existing framework of the EPO and could not be considered, to that extent, as creating a specific EU linguistic regime.

7 December 2010

Legislative proposals within the enhanced cooperation should be based on the Council negotiations up to date in order to ensure participation by as many Member States as possible, as prescribed by Article 328(1) TFEU. The enhanced cooperation should therefore, be in line with and structured around relevant parts of the Council's conclusions on an "Enhanced patent system for Europe", and the general approach on the proposal for a Regulation on the EU Patent adopted by unanimity on 4 December 2009 combined with certain additional elements developed and proposed by the Belgian Presidency relating to the translation arrangements for the EU Patent that have found a large support in Council.

Yours sincerely,

Brian Mikkelsen
Minister for Economic and Business Affairs of Denmark

Juhan Parts,
Minister of Economic Affairs and Communications of Estonia

Anni Sinnemäki
Minister of Labour of Finland

Christine Lagarde
Ministre de l'Economie, de Finance et de l'Industrie de la France

Sabine Leutheusser-Schnarrenberger
Bundesministerin der Justiz

Dainius Kreivys
Minister of Economy of Lithuania

Jeannot Krecké
Minister of the Economy and Foreign Trade of Luxembourg

Maxime Verhagen
Vice Prime Minister and Minister of Economic Affairs, Agriculture and Innovation of the Netherlands

Darja Radić

7 December 2010

Minister of the Economy of Slovenia

Ewa Björling
Minister for Trade of Sweden

Cc: Secretary-General Catherine Day, European Commission