

Baroness Wilcox

Parliamentary Secretary for Business,
Innovation & Skills

Commissaire Barnier
Commissaire Européen pour le Marché Intérieur et les
Services
Commission Européenne -BERL 10/034
B-1049
Bruxelles - Belgique

8th December 2010

Dear Commissaire Barnier

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. The United Kingdom, 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.

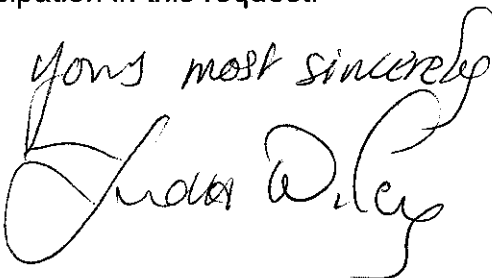
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The scope and objectives of the enhanced cooperation on unitary patent protection should be based on the Commission's proposal, COM(2000) 412, for a Council Regulation on the Community patent and on the Commission's proposal on the Translation Arrangements for the EU Patent, COM (2010) 350, for a Council Regulation.

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 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.

This request for enhanced cooperation is made ahead of the European Court of Justice handing down its Opinion (Opinion 1/09), which has been requested in relation to the compatibility of the EU Patent Agreement and role of the Court in the arrangements. The Opinion is expected to be handed down within the next two months.

We have expressed reservations about our continued participation in this request in the event that the Court concludes that it requires additional jurisdiction not currently available under the Treaties. We therefore wish it to be noted that the conclusion of the Court, in particular in relation to its role and jurisdiction, may have a material impact on our continued participation in this request.

Yours most sincerely


BARONESS WILCOX