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The European Patent Reform – The "sub-sub-suboptimal compromise" of the EU Parliament

Rechtsanwalt Dr. Ingve Björn Stjerna, LL.M., Certified Specialist for Intellectual Property Law, Düsseldorf

Office translation of the original German language document, the article reflects the personal opinion of the author.

As is well known, in its meeting on 11/12/2012, the European Parliament adopted the so-called "patent package", consisting of the Regulations on the "unitary patent" and the translation regime while agreeing to the conclusion of an intergovernmental Agreement for the creation of a "Unified Patent Court System". The "unitary patent" Regulation is based on a compromise proposal of the (former) Cyprus Council Presidency which was discussed by Legal Affairs Committee of the European Parliament in a special meeting on 19/11/2012 from which the public was excluded. An audio recording of the meeting, which recently became available, shows the motives for the acceptance of this "compromise" which one of the rapporteurs called "*sub-sub-suboptimal*" and "*a bad solution*" there. The course of this meeting shall afterwards be described and assessed in more detail.

I. The Status Quo

In the middle of 2012, the project of the "unitary patent" slid into trouble, after on 28 and 29/06/2012, on the summit of the European Council, consisting of the Heads of State and Government of the EU member states, the British Prime Minister *Cameron* achieved the demand to delete Art. 6 to 8 of the initial draft Regulation on the "unitary patent", in order to exclude the rights of the patent owner and its limitations defined therein from the jurisdiction of the European Court of Justice (CJEU).[1] Since neither the EU Parliament was willing to accept the deletion of these articles from the Regulation, nor seemed their unaltered retention against the will of the Heads of State and Government to be an alternative, and as a complete new negotiation of the whole "package" was always rejected, it would be interesting to see how the failure of the whole project should be averted.

Finally, in a special meeting of the Legal Affairs Committee ("JURI") on 19/11/2012, a "compromise proposal" of the former Cyprus Council Presidency was presented, according to which Art. 6 to 8 should be deleted and replaced by the inclusion of a new "Article 5a" (Art. 5 in the final version of the "unitary patent" Regulation No 1257/2012 of 17/12/2012). This article grants the owner of a "unitary patent" a cease and desist claim, while making reference to external legal sources – namely the national law of the member states, especially the "Unified Patent Court Agreement" – to define the contents and limitations of the owner's rights from the patent.[2] In December 2012, this "compromise" was hastily approved and the "unitary patent" package adopted by the European Parliament. Directly thereafter, it was tried to get back to business as usual as quickly as possible and to lead the attention of the specialist public to questions on the content of the "patent package", e. g. the Rules of Procedure for the "unitary patent" court, and away from the doubtful circumstances of its adoption. Since the adoption of the "package", hardly a month goes by without a conference at which high-ranking members of the EU administration praise the alleged advantages of the "unitary patent".

II. The Legal Affairs Committee's special meeting on 19/11/2012

Nonetheless, it is worth taking a closer look at the "compromise proposal" underlying the "unitary patent" Regulation and its discussion in the special meeting of the Legal Affairs Committee on 19/11/2012 as well as its evaluation by the Legal Service in the meeting on 26/11/2012.

1. No participation of the public

So far, the exact contents of this special meeting were unknown to the public. There are no publicly accessible verbatim minutes for the meetings of the Legal Affairs Committee. The "minutes" available on the website of the EU Parliament only show the agenda and the names of speakers, but no contents of the speeches. Instead, the Committee meetings are usually broadcasted live on the internet, the respective video recordings are afterwards archived and can be accessed on the website of the Parliament. For the meeting on 19/11/2012, however, there was no broadcast at all – as it had been the case for other meetings relating to the "unitary patent" in the past at critical points of the legislative process.[3] In its answer to a written request about the reasons for the omitted broadcast of the meeting, the EU Parliament stated:

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[1] Cf. *Stjerna*, The European Patent Reform – Failed for now, accessible at www.stjerna.de/failed-for-now/?lang=en, and No "Light on the Horizon", accessible at www.stjerna.de/horizon/?lang=en.

[2] Cf. *Stjerna* (f. 1), No "Light on the Horizon", p. 2 f.

[3] Cf. the report on the IPKat blog on a similar incident in the Legal Affairs Committee meeting on 05/12/2011, accessible at bit.ly/3jhC48m.

> *"We checked our schedule of that day and the specific event was not planned to be webstreamed at all. This means that there is no recording available."*

Maybe this avoidance of documentation was exactly the reason why no broadcast took place. Apparently, the specialist public was once again left outside deliberately.

As to the contents of the meeting, there were afterwards the common, disproportionately positive political press statements in which critical voices have no place. Accordingly, the press statement[4] of the Cyprus Council Presidency of 20/11/2012 states that in the meeting, the "compromise proposal" had received "*overwhelming support*". However, the real course of the meeting was somewhat different, some members being rather critical about the proposal and also clearly voicing this.

This is shown by an audio recording which became available recently and which was prepared for the interpreting services, containing the speeches in their respective original language.[5] A recording of the English simultaneous translations of all speeches was publicized at an earlier time already, however, it reproduced the statements only in an incomplete form.

Due to the exclusion of the public, some members of the Legal Affairs Committee apparently felt to be "among themselves" in the meeting. With an unusual openness, they admitted the inappropriate motives why they considered the "compromise proposal" of the Cyprus Presidency acceptable. It became obvious that what was sold to the specialist public as a reliable "compromise" is in fact nothing more than a legally doubtful workaround to avoid a further failure of the plans in the legislative process at any cost and to be able to present, after long years of negotiations, a "unitary patent".

2. The "compromise proposal" on Articles 6 to 8 of the "unitary patent" Regulation

While the specialist public was left in the dark, the Cyprus Presidency's representative, *George Zodiates*, presented the contents of the "compromise proposal" in the meeting in detail. Different from the sequence of speeches in the meeting, this part shall be presented here first, before the focus is shifted to the debate.

Mr *Zodiates* described the "compromise proposal" as follows:[6]

> *"Mr Chairman, honorable rapporteurs and members of the Committee, Commissioner, the Cyprus Presidency is grateful for this extraordinary meeting of the JURI committee and for the opportunity to discuss that compromise proposal, adopted this morning in COREPER for the patent package. The Cyprus Presidency has taken over this complex file at a critical moment. On the one hand, after months of stand-still, the Heads of Government, in June, finally agreed on the seat of the Central Division which normally should have paved the way for a rapid adoption of the whole package. On the other hand, by suggesting to delete three articles from the Regulation on the unitary patent, their conclusions gave rise to a new problem, since it was clear from the beginning that the European Parliament would and could not go along with this suggestion."*

He continued:[7]

> *"We have tabled a proposal for a new article, Art. 5, in the Regulation of the unitary patent which should replace the existing Art. 6 to 8, while at the same time the corresponding articles in the Agreement on a Unified Patent Court will be rendered applicable to the European patent with unitary effect. From our consultations with you, we have understood that members of the European Parliament feel very strongly that the Regulation on the unitary patent itself needs to contain a substantive provision which ensures the uniformity of protection and that this cannot be left entirely to the Agreement on a Unified Patent Court.*
>
> *This is why in Art. 5(1) we have proposed to define the right of the patent holder to pre-vent third parties from acts against which the patent provides protection. We also proposed to stipulate in paragraph 2 the uniformity of the protection which means that in their national law, member states cannot provide for any provision which would undermine the uniformity of this protection. However, we think that it is not necessary to have in the Regulation itself all the details concerning the scope of the right of the patent proprietor and its limitations. This can be left to the Agreement on a Unified Patent Court. This is why we propose to render the corresponding articles of the UPC Agreement applicable to the European patent with unitary effect. At the same time, we propose to refer to Art. 5(3) of the Regulation to the national law applicable to European patents with unitary effect which in practice means a referral to the provisions of the Agreement on a Unified Patent Court. This cross-reference between the Regulation on the unitary patent and the Agreement on the Unified Patent Court further strengthens the link between these two instruments which has been created at the request of the European Parliament.*

[4] Accessible at archive.md/XigCd.
[5] The recording can be downloaded as an mp3 file at www.stjerna.de/suboptimal-compromise/?lang=en, also available for download is a verbatim protocol of all speeches in their original language as well as a German and English translation thereof.
[6] English verbatim protocol (afterwards referred to as "verbatim protocol EN"), marginal number (mn.) 30.
[7] Verbatim protocol EN, mn. 32 ff.

I would like to recall that Parliament wanted to make sure that the unitary patent cannot come into operation without the Agreement on the Unified Patent Court being in force. The European Parliament wanted both instruments to form a package. This has been accepted by the Council. Given this clear link, we would hope it is now also acceptable that part of the detailed provisions concerning the right of the patent proprietor and its limitations are contained in the UPC Agreement."

3. The "argument" of duration of the negotiations about the creation of a Community patent

Already prior to this presentation of the "compromise proposal", the rapporteurs for the three parts of the "patent package", Mr *Rapkay*, Mr *Baldassarre* and Mr *Lehne*, had, in their introductory remarks, expressed their support for its acceptance. Also in the debate, an approval was supported by a majority of the Committee members. However, in most cases the reasons given therefor were widely inappropriate, being based on the reasoning that the creation of a community patent was now tried for more than 30 years, making it necessary to present a result.

Bernhard Rapkay (S&D group), rapporteur for the "unitary patent" Regulation, explained:[8]

"A solution has been found and, I will say it positively, it is acceptable bearing in mind that the issue European patent is an issue which is meanwhile under discussion for 30 years not only in the European Union, but also in its predecessor organization, the European Communities, and the current proposal is also discussed for more than 10 years already. The Commission submitted a proposal in the year 2000. Parliament very quickly held its first reading on this and then, this was sitting in the Council for more than a whole decade. I do not want to go into the details, I just want to recall this since I believe that this is also a reason why one should now say "Yes" to this compromise. The long proceedings and the waiting to get a European unitary patent."

Luigi Berlinguer (S&D group) argued accordingly, comparing the adoption of the "unitary patent" to a birth process:[9]

"But our most important objective which we should always bear in mind is to advance the process of European integration. The patent is an essential instrument for the internal market, because, as it has been pointed out correctly, our economy is based on knowledge and thus innovation, and, accordingly, the patent is an essential instrument for an economy of knowledge and innovation. Every delay costs, and if we now postpone birth, we cause even greater damage as the process of giving birth is taking a very long time already."

Because an agreement on a community patent was not achieved in decades of negotiations, it is now inevitable to adopt one, contents seem to be of secondary importance.

How does the Legal Affairs Committee rate the suitability of the proposed system for practical application? Again *Bernhard Rapkay*:[10]

"Again, this is justifiable under these circumstances. I do not know whether I would argue likewise if we did not have this incredibly long timeframe, but in this case I say, I meanwhile know – or, in fact, I knew from the beginning – that either we are getting such suboptimal – or I should rather say sub-sub-suboptimal, suboptimal would still be a too positive description – compromise or there will be nothing at all, while the question is whether this could be justified. To put it in negative terms, this is a bad solution. It clearly is a bad solution. The good and appropriate solution would have been the one we had decided on here in this Committee one year ago, on which we had received an explicit Letter of Approval from the Council Presidency, the former Polish Council Presidency."

Being introduced with the possibilities of either adopting such "sub-sub-suboptimal compromise" or to go on working on it and present a practice-applicable alternative, the suboptimal solution is preferred.

At the end of the meeting, Mr *Rapkay* defended this approach against the criticism voiced by the members *Lichtenberger* (Group of the Greens/European Free Alliance), *Castex* (S&D group) or *López-Istúriz* (EPP group):[11]

"We have only one single issue where we have said that it needs to be resolved differently. We could have said "No, we stick with 6 to 8 remaining in the Regulation." Then we would have postponed the whole matter to the tomorrow that never comes. Then, a whole lot of persons would be really glad. A whole lot. Especially those who wanted, the patent attorneys, who wanted to delete 6 to 8. They would be especially glad. But we have said, we want – in the sense mentioned by Raffaele Baldassarre – to make a contribution. We want to make a contribution for making this real. So we said "Good, the optimum solution cannot be achieved, we cannot push that through alone. Then let us take one step back, or two steps back, as to take a real running start, like for long jump, and then we jump." And one should take a look at all this. Then

[8] Verbatim protocol EN, mn. 8, translation from German.
[9] Verbatim protocol EN, mn. 82, translation from Italian.
[10] Verbatim protocol EN, mn. 9, translation from German.
[11] Verbatim protocol EN, mn. 109, translation from German.

> *one will see that we have jumped quite well. That we have jumped quite well. Once again, I would have preferred to have the other solution, but such is life in political discussions."*

4. Compatibility of the "compromise proposal" with the chosen legal basis

In case of a removal of Art. 6 to 8 from the "unitary patent" Regulation, it was feared that this could cause the chosen legal basis of Art. 118(1) TFEU to be no longer applicable. The Legal Service of the European Parliament, represented by *Ulrich Rösslein*, had warned against this consequence in the Legal Affairs Committee meeting on 11/10/2012:[12]

> "*From our view, a deletion of Art. 6 to 8 would mean the omission of an essential element of the Regulation, namely a substantive regulation of the unitary protection of the patent in the Union. We are still of the opinion that this aspect should be regulated by the Union legislator itself within the Union law, i. e. in the Regulation. Otherwise, from our position, the danger exists that the Regulation would not be compatible with the primary law, especially with the proposed legal base of Art. 118 TFEU as chosen by the Commission, so that there is a risk that the Regulation could be nullified by the Court of Justice.*"

These concerns were shared in the professional sphere.[13]

In said meeting on 11/10/2012, rapporteur *Rapkay* had specified the compatibility with Art. 118(1) TFEU as one of three "red lines" – apart from the preservation of the CJEU's competences and those of the European Parliament – which every compromise proposal would have to accept in order to get the approval of the Legal Affairs Committee.[14] In the meeting on 19/11/2012, however, these "red lines" did not pose too much of a problem.

Again *Bernhard Rapkay*:[15]

> *"And if I understand this correctly, it means that we do a turn which, by the way, was discussed already in the trialogue, the informal trialogue, a year ago and which was rejected there by the Parliament and the Council. Namely, whether one can replace Art. 6 to 8 by a reference to the intergovernmental Agreement. And one can do it, this is the proposal which is also on the table, but which we have rejected one year ago. One can do it, since under special circumstances, as far as I see it, Art. 118 of the Treaty as the basis for all this, is not violated by that, as it has been formulated now."*

What these "special circumstances" are, remained unexplained. It is remarkable, however, that a proposal which was apparently discussed in the past already and rejected as insufficient is suddenly considered a way out of the impasse. Already this fact gives all reason to legitimately doubt that this is indeed the case.

Bernhard Rapkay continued:[16]

> *"The first line was that it has to be compatible with European law, Art. 118 of the Treaty which forms the basis, the legal basis, must not be violated. To me, it looks as if this is fulfilled, although I know that this has a great lot of room for interpretation. But, using a positive approach, I would construe the room for interpretation such that one says 118 is fulfilled."*

Accordingly, the chosen legal basis of Art. 118(1) TFEU is applicable when following a "positive approach", simply declaring that this is the case.

Likewise, according to the opinion of *Raffaele Baldassarre* (EPP group), rapporteur for the Regulation on the translation regime, the question of the legal basis needed no attention any longer:[17]

> *"Furthermore, dear Bernhard, I think – confirmed by the position of the Chairman being a brilliant lawyer – this is no longer the time for sharp-witted legal discussions. Finally, these discussions come to an end and then, a political will is needed. A decision has to be made."*

A similar statement was given by *Luigi Berlinguer*: [18]

> *"I recognize that the found solution causes astonishment, because it is truly very imaginative as it adds to Community law, through the intergovernmental Agreement, a component of private international law which we could hardly understand if it was found in a university paper. This is true. But if we in Europe always only followed academic guidelines, we would accomplish nothing. In the past, Europe acted with legal boldness, boldness and Salti mortali, which subsequently legally solidified since our Court of Justice helps us to solidify these boldnesses."*

Hence, it is apparently hoped that the CJEU will, in the interest of fostering European integration, give its blessings to the legal workaround suggested as a "compromise" irrespective of its legal doubtfulness. Thorough legislative work is replaced by the principle of hope. An indication that these hopes may in the end be thwarted can be found in the sheer number of expert statements

[12] See video stream accessible at bit.ly/31w3sJB.
[13] Cf. e. g. *Tilmann*, "The Battle about Articles 6–8 of the Union-Patent-Regulation", mn. 21 to 29, accessible at bit.ly/3jhpndJ; *id.*, "Moving towards completing the European Patent System", p. 3/4.
[14] Cf. *Stjerna* (fn. 1), No "Light on the Horizon", p. 2, l. col.
[15] Verbatim protocol EN, mn. 12, translation from German.
[16] Verbatim protocol EN, mn. 13, translation from German.
[17] Verbatim protocol EN, mn. 22, translation from Italian.
[18] Verbatim protocol EN, mn. 83, translation from Italian.

considering the compatibility with Art. 118(1) TFEU as doubtful.[19]

5. The involvement of the CJEU

The reason for the discussions around Art. 6 to 8 and the respective request for deletion by the European Council was the question whether and to what extent the "unitary patent" shall be subject to the jurisdiction of the CJEU, especially in relation to the rights from the patent and its limitations initially set out in these three articles. Preserving the CJEU's respective competences was defined by Mr *Rapkay* as the second "red line" for an approval by the Legal Affairs Committee.

In the meeting on 19/11/2012, *Bernhard Rapkay* commented on this issue as follows:[20]

> *"Now one can say, we should have sticked with our former position. But here I would like to say to Eva Lichtenberger, if one wants to attack the whole thing, one cannot refer to the patent attorneys as they did not want anything different from what the Council has actually adopted. Thus, one cannot refer to this. Because they have done exactly this. They wanted 6 to 8 to be deleted and to be deleted without a substitution. This is exactly what the Council wanted as well. But we have thwarted their plans! Significantly! I will say it very carefully, we should not take it too far, but those who wanted to strike out 6 to 8 will be very surprised. Because, under the new solution, the European Court of Justice will enter into the game earlier as it would have been the case with 6 to 8. It will enter the game earlier!"*

Thus, the Legal Affairs Committee considered the competences of the CJEU under the "compromise proposal" not only as present, but, in comparison to a Regulation with the Art. 6 to 8, even as extended. Although this statement was not explained further, it is nonetheless remarkable, bearing in mind that even the initial position of the CJEU was rejected by the European Council, especially Prime Minister *Cameron*, in the form of the known request for deletion of the mentioned articles from the Regulation. This would have to apply all the more for the alleged extended competences.

Like this second "red line", also the third "red line" of a preservation of the rights of Parliament was considered fulfilled by the "compromise proposal".

III. The evaluation of the "compromise proposal" by the European Parliament Legal Service

In the next meeting[21] of the Legal Affairs Committee on 26/11/2012, the Legal Service of the European Parliament, represented by *Ulrich Rösslein*, was asked to comment. In the debate on 19/11/2012, the absence of a written confirmation of the "compromise proposal's" legality was criticized repeatedly and a respective statement was urged for especially in relation to the legal basis and the position of the CJEU.[22] The Legal Service held that, compared to a complete deletion of Art. 6 to 8, the compatibility of the "compromise proposal" with Art. 118(1) TFEU was improved, but remained doubtful.

Mr *Rösslein* commented:[23]

> *"However, it also has to be said that the compromise text does by no means allay all legal concerns. Especially the aspect that, in terms of the contents and limitations of patent protection, reference is made to an international Agreement, the Agreement for the Patent Court, to us still appears to be problematic. The original compromise proposal and the result initially achieved in the trilogue, namely to govern this aspect in the Regulation itself, in its Art. 6 to 8, is, in our view, the legally more reliable solution."*

When asked about the exact involvement of the CJEU in the "unitary patent" system under the "compromise proposal", Mr *Rösslein* had to admit that this was not conceivable:[24]

> *"In principle, the Patent Court has a reference obligation and in the intergovernmental Agreement, the aspects of a preservation of Union law by the Patent Court have again been emphasized in the latest version. Thus, they must refer for a preliminary ruling questions on the interpretation of European law to the CJEU. The decisive question in this context, which is related to the first, is to what extent the European Court of Justice will now comment on questions of material patent law in such reference proceedings for a preliminary ruling. I have to say, from our perspective, this question is open to a certain extent. If the Regulation is put before the CJEU, in proceedings, it is conceivable that it would comment to be only competent for the interpretation of European law, thus only for what is written down in the Regulation itself. But it is also imaginable that the CJEU could take the position to interpret the Regulation, in a manner conforming with the Union, that it, when judging about the Regulation, it can also comment on the details of this patent protection which would*

[19] Cf. *Hilty/Jaeger/Lamping/Ullrich*, "The Unitary Patent Package: Twelve Reasons for Concern", accessible at bit.ly/2YEs1SY; *Ulrich*, "Select from Within the System: The European Patent with Unitary Effect", S. 40 ff., accessible at bit.ly/3b0sHXI; *de Visscher*, GRURInt 2012, 214 (220); *Jaeger*, EuZW 2013, 15 (17).
[20] Verbatim protocol EN, mn. 107 f., translation from German.
[21] See video stream accessible bit.ly/3lqWwW7.
[22] Cf. the speeches of Ms *Lichtenberger* and Mr *López-Istúriz*, verbatim protocol EN, mn. 61 f., 98.
[23] Ibid., translation from German.
[24] Ibid., translation from German.

> *then, in the individual case, be governed by national law, implicitly through the intergovernmental Agreement."*

The political protagonists did not care too much about this very cautious evaluation by the Legal Service, especially in terms of the legal basis' applicability. For *Klaus-Heiner Lehne* (EPP group), the chairman of the Legal Affairs Committee and rapporteur on the intergovernmental Agreement for the "Unified Patent Court System", the matter was clear. He summarized the comments of the Legal Service as follows:[25]

> *"If it is European law, it has to be referred. If it is not European law, rooting outside EU law, it will not be referred. The question how we deal with this further will also be dealt with by the coordinators. I think, first of all, we thank the Legal Service for the detailed answers to all the questions. For me, the conclusion is the same as last week, if I may say this as a rapporteur. The best is always the enemy of the good. This is a compromise. For me, decisive is the statement that thereby, we have fulfilled the requirements of* [Art.] *118. This is decisive. And therefore, despite these comments of the Legal Service, I am still of the same opinion as last week."*

Surprisingly, "*the statement that thereby, we have fulfilled the requirements of 118*" is nowhere to be found in the comment of the Legal Service.

IV. The adoption of the "unitary patent" package by the EU Parliament

As is known, the "compromise proposal" of the Cyprus Presidency was finally endorsed by a majority of the Legal Affairs Committee. As mentioned, the whole "package" of the Regulations on the "unitary patent" and the translation regime as well as the intergovernmental Agreement for the creation of a "Unified Patent Court System" was put to the vote in the EU Parliament on 11/12/2012 and was adopted with a large majority.

V. The intergovernmental Agreement for the creation of a "Unified Patent Court System"

The intergovernmental Agreement for the creation of a "Unified Patent Court System" was signed on 19/02/2013. Its entry into force requires the ratification of at least 13 member states, ratification by Germany, Great Britain and France being mandatory (Art. 89 (1) of the Agreement). As is known, the entry into force of the intergovernmental Agreement on the court system is, at the same time, the condition for the two Regulations on the "unitary patent" and translation regime to enter into force (cf. Art. 18(2) Regulation No 1257/12, Art. 7(2) Regulation No 1260/12) and therefore for the "unitary patent" system in its entirety.

VI. Outlook

For the potential users, this outcome of the legislative process is highly unsatisfactory. Politics have ignored any competent advice as well as the needs of the users and have decided to press ahead with the project despite all legal doubts and content-related shortcomings in order to be able to finally present an "EU patent", after all the fruitless efforts in the past.

Apparently of no further interest was the fact that the fundamental requirement for the use of the new system is the users' trust in its legal solidity. Nobody can and will entrust the protection of his valuable inventions to a system which, as the one endorsed, is legally doubtful from the beginning and which will also disappoint any expectations as to its substance, above all the effusively promised cost reductions.

The hastily enacted "compromise" may in the end, in the best case, mean a further loss of time for the creation of a "community patent", but it may also, in the worst case, cause a frustration of the whole project for the foreseeable future. Should the arguments against the legality of the adopted "package" finally prevail and the package be brought down by a court, it will not be possible to just return to the Status Quo and start new negotiations.

Such failure is in fact a real possibility. On 22/03/2013, Spain has filed with the CJEU two new nullity actions against the "unitary patent" Regulation (docket no C-146/13) and the Regulation on the respective translation regime (C-147/13), objecting, amongst others, an inappropriate legal basis. Different from the earlier proceedings C-274/11 and C-295/11 against the procedure of enhanced cooperation which the CJEU rejected in his judgment of 16/04/2013, these proceedings should have significantly better prospects, already due to the widely held view that the compatibility of the "compromise" with the chosen legal basis of Art. 118(1) TFEU is doubtful.

Furthermore, in the national ratification proceedings of the member states for the Court Agreement, there are a number of further obstacles. The ratification process is, as such, directed to the "Unified Patent Court System". However, since its entry into force is – as described – also a requirement for the entry into force of the two Regulations, these are put to test in the ratification process as well. It will be interesting to see whether the remarkable course of the European legislative process and the pieces of legislation resulting from it will be readily accepted in the national ratification processes of the member states.

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For possibilities to support my work on the European patent reform please visit www.stjerna.de/contact/?lang=en. Many thanks!

[25] Ibid., translation from German.