

**Verbatim protocol for Legal Affairs Committee Special Meeting on 19 November 2012 –  
On the compromise proposal of the Cyprus Council Presidency of 19 November 2012<sup>1</sup>**

**– Non-English speeches were translated into English –**

**1 Klaus-Heiner Lehne (EPP group, rapporteur for the „Unitary patent“ Court System):<sup>2</sup>**

2 „I would suggest that, in view of the advanced time, and as we do not want to punish those who are here already, we start our meeting. I have been notified that also Commissioner Barnier is supposed to be here at a quarter past. But, in view of the fact that, presumably, all of us have further plans tonight – the Monday evenings in this house are always a little agglomerated as you know –, I would nonetheless like to start and I would like to welcome you to our special meeting of the Legal Affairs Committee on this Strasbourg Monday evening.

3 May I ask whether there are any proposals relating to the agenda? Obviously, this is not the case. Then the agenda is accepted as it stands. Item 2, Chair’s Announcements. You know, this is always there. I have nothing to announce. Or do I have something...no. Ok, so there is nothing to be announced from my side. Then we come to item 3 which I want to tie to items 4 and 5, since we have always treated this as a package. Thus, all three legislative proposals or non-legislative proposals – in case of the intergovernmental Agreement it is a non-legislative proposal with which we are dealing here in our report – are now called.

4 I would suggest that, first, we should hear the rapporteur for the Regulation, Bernhard Rapkay, and then the other two rapporteurs, and afterwards the Cyprus Presidency and, of course, the Commissioner. Bernhard, please go ahead.”

**5 Bernhard Rapkay (S&D group, rapporteur for the “Unitary patent” Regulation):<sup>3</sup>**

6 „Thank you, Klaus-Heiner. In the last week, I have requested to have this special meeting as a matter of information, we cannot do more, as I cannot attend the JURI session next week.

7 It has been announced to me by the Cyprus Council Presidency that they want to render a decision in COREPER today, on a proposal which they have worked out and on which I want to say, and have to say, that this has – I think I can forestall that – always been coordinated with me and, of course, Klaus-Heiner Lehne as the Committee chair. I found it appropriate to provide that information, presently we cannot decide anything anyhow. We will have to see anyhow how to deal with this procedurally, since my report – and in the end, it is this what we are talking about, the dispute was about the Regulation – has been coordinated in the Committee almost exactly one year ago and we will need to see how to handle this procedurally.

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

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<sup>1</sup> Speeches given in English language are reproduced in transcribed form, speeches in other languages were transcribed in their original language and then translated into English.

<sup>2</sup> Translation of the German original speech, from 0:00:00 [hh:mm:ss] of the meeting audio recording, accessible under [http://www.stjerna.de/unitary\\_patent.htm](http://www.stjerna.de/unitary_patent.htm).

<sup>3</sup> Translation of the German original speech, from 00:01:40.

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.

- 9 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.
- 10 And, Mr Chairman, I want to say this again, and I will also say this in debate in the Plenary, what the European Council of the Heads of State and Government has done here is more than doubtful. It has exceeded its competences. It has exceeded its competences, because, according to the Treaty, it is explicitly not allowed to interfere with an ongoing legislative process. Now they have said, I can read it in their conclusions, they prompt the legislator or they ask the legislator to delete these three articles. They cannot tell US what to do, but, of course, I know how this has been received in the Council: “The bosses have decided and now we cannot do anything different.” When someone from the Council told me “The bosses have decided”, I have answered with a very gross term which I would not say here, because it is very unparliamentary, but they are not our bosses. But, of course, I know what a political pressure this means for the Council itself.
- 11 Therefore, it was clear that at some point, when we find a solution, this solution can only be worse than that which actually was the optimum. If I understand this correctly – and the Council Presidency should clarify this again –, but I think I understand it correctly, since they have always coordinated this with us. And at this point, I again want to emphasize that those with the least responsibility for the whole story are the Cyprus Presidency. The Cyprus Presidency was given a hot potato by their colleagues and somehow had to deal with it. I found the cooperation with the Cyprus Presidency very pleasant. And I want to say thank you for this. Thank you very much, but, of course, this does not change anything in the overall assessment of the incident.
- 12 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 articles 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, article 118 of the Treaty as the basis for all this, is not violated by that, as it has been formulated now. In the last meeting of the Committee, I had mentioned three red lines. This means, from my position, two red lines are accepted, the third needs further review from our side.
- 13 The first line was that it has to be compatible with European law, article 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.
- 14 I have made a second, no a third, red line relating to the rights of Parliament. And it was this point which we had to discuss in the end. Where I said, no matter what the solution is, the rights of Parliament must not be violated. And so it was achieved in the informal talks to have in the Regulation text, apart from article 5a new – which is now meant to replace articles 6 to 8 by referring to the intergovernmental Agreement –, to once more emphasize in the Regulation that in case of an amendment of the intergovernmental Agreement, the rights of the institutions of the European Union must not be violated. This means that also the rights of Parliament must not be violated as the point is that the intergovernmental Agreement is exactly what it is, as it is named. It is not EU

law, but law which the sovereign member states have created among themselves. This is the point which probably the Chairman can elaborate on a little more as this relates to his report on the court system. But by this and through our...and here I am coming to the second red line, so I have skipped one, getting to the second red line. Through the Agreement and the reference to this Agreement in the Regulation and as we reserve the right to look into this and then say “Yes, this is a reasonable solution” or “It is no reasonable solution.”, also here the rights of Parliament...they could be better, but they are given. Thereby, we would preserve the rights of Parliament.

- 15 And now I am coming to the second red line, which is that the preliminary reference proceedings to the European Court of Justice must not be questioned. This is what the European Court of Justice made the basis for its opinion from 2009/2010, where it said that the initial proposal of the Commission would violate Union law in several aspects, amongst others, also in respect of the monopoly of the European Court of Justice for the interpretation of European law. This means the preliminary reference proceedings. And therefore, this solution of an intergovernmental Agreement has been chosen. Here, I say that the Regulation is one thing, I have given my comments just now, my assessment on this. But whether all of this is acceptable can only be said if we have looked into the Agreement and this has just today been sent to us by the Presidency in the agreed version.
- 16 And my second red line was, the rights of the European Court of Justice must not be encroached upon. In the preliminary phases of the intergovernmental agreements, in the drafts, from what one knew informally, also this third red line – or in my numbering the second red line – would be respected. And I assume that also in the final version it has not been changed what was agreed in COREPER today. However, I want to reserve this assessment. And this assessment should be reserved by us and this assessment should be reserved also by the Committee chair in his function as a rapporteur for the Court Agreement. Because, as mentioned, we sort of introduced the articles 6 to 8 into the intergovernmental Agreement through article 14, having then referenced it and now we have to look whether this is indeed the case there. We have to review this in the next days, together with the people who can do the legal assessment for us, and then we can, I think, further decide on this. My working hypothesis is, it has been met. However, I want this proven to me point for point, comma for comma. If this were the case, we could agree to the whole thing. As I said, I assume that this is the case, but a final verification needs to be done first.
- 17 I further want to add, this was also important for the third aspect, the rights of Parliament, that these have to be guaranteed also in case the intergovernmental Agreement is changed. I would not see this as too big a danger as, if the intergovernmental Agreement is altered, afterwards the whole ratification process would have to be initiated again and the persons in charge would reflect for quite some time, before taking such path. But, of course, one also needs to be aware of the options left and right of the whole story. We have done so, even the theoretical case has been addressed through our inclusion of the institution’s rights in the Regulation. So far my first assessment of what is now on the table, we can now further discuss this.”

18 **Klaus-Heiner Lehne:**

„Thank you. Raffaele Baldassarre as the rapporteur for the second report.“

19 **Raffaele Baldassarre (EPP group, rapporteur for the Regulation on the Translation regime):**<sup>4</sup>

20 “Thank you very much, Mr Chairman. I do not think that much needs to be added after the long report of Bernhard Rapkay, just perhaps some thoughts about the system of relations between the institutions. The Regulation of patents is a litmus test and thus a classical example about how persisting difficulties between the European institutions delay the solution of problems which companies and citizens are awaiting for a long time. Thirty years had to pass for discussing this unfortunate problem and then, after long and hard work, now we finally get the approval in the Legal Affairs Committee.

21 This is followed by a rather surrealist waiting time of 6 months in which the seat of the Central Division is decided. This time honestly rather resembled a “do ut des” in which the interests and demands of companies were not central. This led to a further complication, this time in order to accommodate the interests of another state which suddenly remembers that three articles have to be changed.

22 The only reason it is worthwhile trying to find a solution is that the uniformity in the application of the three rules contained in the Regulation is not affected in any way, meaning that articles 6, 7 and 8 must be applied uniformly across all the member states. This was of fundamental importance to me. 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.

23 If the red lines that you have explained to us so clearly and lucidly, are not crossed, if thus the role of Parliament is respected, the competence of the court is respected and – I repeat myself – uniform application of the provisions across all member states is given, then I do think that it is really worthwhile making this exertion and bring the matter to its end and, upon the condition that all given guarantees are met – to do this still in 2012, if possible. Probably, it is then possible to give the European enterprises, which are presently not having good times, an answer finally. Thank you.”

24 **Klaus-Heiner Lehne:**<sup>5</sup>

25 “Thank you very much, Raffaele Baldassarre. As the third rapporteur, I want to make it short, I share the position of the two earlier speakers. We as the rapporteurs have negotiated the package in closest cooperation, for the whole time since we are responsible for it, and even now, in this difficult phase since the decision of the European Council in the middle of the year, in close collaboration, we have mutually informed us and exchanged views on everything that was going on, especially about the informal talks taking place. I think, colleague Rapkay has spoken for all rapporteurs here.

26 I just want to point out two things. The first is, it is a package. This means, when we have to decide about this question in the Plenary in the near future and have to adopt the package in the Plenary, we need to know all components of the package. This is not only composed of the two Regulations, but also of the Agreement. I have been advised that the technical finality of the Agreement will only be given in the middle of next year, simply because the Legal Services and Linguistic Services in the member states as well as in the Council, and who knows where else, will still be polishing this thing in detail. However, the political result, the contents, will be fixed at the latest when the Council will have to decide about this question in its meeting on 10 December. I understand, from what I have heard today – the Cyprus Presidency will surely also comment on this in a moment –, that for what has been agreed in COREPER today, this is already de

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<sup>4</sup> Translation of the Italian original speech, from 0:14:31.

<sup>5</sup> Translation of the German original speech, from 0:17:22.

facto the end of political dealing and that there will be no further changes as to contents. If we can be sure that the text presented to us will not be altered in substance anymore, but is as it is, then Parliament is also in a position to decide about the package.

27 In terms of the proceedings, the situation is such that we here in this Committee will not have to deal with concrete motions anymore. The reason is very simple: This has not been referred back to this Committee, but we have caused an adjournment back then in the Plenary. This means, the Plenary simply has to put this back on the agenda. In view of the further processing, my procedural proposal would thus be that the parliamentary groups willing to support the compromise in the end, also do support this compromise respectively, insofar as they are prepared to, in form of mutual amendment requests to the Plenary, so that the Plenary can render the respective decisions on the basis of these amendment request as soon as all requirements are fulfilled. I think this would be the usual procedure as required by the standing orders in such case, where there was no referral, but only an adjournment.

28 These are my additional statements. Beyond this, I think everything else has been said by the two other rapporteurs. I now propose that, first of all, we hear the Cyprus Presidency, then the Commissioner and that we afterwards resume the discussion. And in case additional remarks should be necessary then, I would ask the Presidency that questions which may be posed then, are answered at a later time in a second round. Now Mr Zodiates, please.”

29 **George Zodiates (Representative of the Cyprus Council Presidency):**<sup>6</sup>

30 “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.

31 In this very difficult situation, the Cyprus Presidency, from the beginning, tried to find a solution for a compromise. We took our time. In informal consultations with your rapporteurs and other members of the Committee as well as with member states, we tried to better understand the respective concerns with a view of addressing them in the best possible way. We now feel that we have found a solution which we hope will bridge the gap between the European Parliament and the Council and will pave the way for a final adoption of the patent package.

32 We have tabled a proposal for a new article, article 5, in the Regulation of the unitary patent which should replace the existing articles 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.

33 This is why in article 5 (1) we have proposed to define the right of the patent holder to prevent 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.

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<sup>6</sup> Transcript of the English original speech, from 0:21:10.

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 article 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.

34 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. As a natural consequence of this link, we also propose to include those changes which the European Parliament wanted to include in articles 6 to 8 of the Regulation now into the corresponding articles of the Agreement on the Unified Patent Court. This concerns in particular an additional limitation of the right of the patent proprietor, the so-called “breeder’s privilege”, which the Parliament has recently proposed.

35 This brings me to a last point which I wanted to stress. From my consultations with members of the Parliament, the Cyprus Presidency is aware of some concern in the European Parliament that by leaving the detailed provisions concerning the scope of protection and its limitations to the UPC Agreement, the European legislator could be deprived from future legislation in this field. This is not the case. The European legislator can at any moment introduce new limitations to the right of the patent holder. If the European Union adopts such instruments and introduces new limitations, member states will have to properly reflect this in the Agreement on the Unified Patent Court.

36 In order to make this crystal clear, we propose in article 5 (4) to call on the Commission to regularly evaluate the functioning of the limitations and to make appropriate proposals for EU instruments, where appropriate. We also propose to further specify this in a new recital 10 with recourse that the Agreement of the Unified Patent Court does not preclude the European Union’s powers to adopt legislation in this field.

37 Honorable members of this Committee, the Cyprus Presidency has the hope that this compromise package is acceptable to all. Like every compromise, it may not seem perfect to everybody, but we have tried very hard to meet the concerns of both the European Parliament and the member states and to bridge the gap between them. If this compromise package is acceptable to you, it should pave the way for a rapid final adoption of the patent package in the interest of our European SMEs and of competitiveness and innovation in the European Union. I conclude by simply reassuring you that the UPS [sic] Agreement was today adopted together with the proposal on article 5. it is already done and there is no possibility of reopening the Agreement anymore. Thank you very much.”

38 **Klaus-Heiner Lehne:**

„Thank you very much, Mr Ambassador and President of the Council. Commissioner Barnier, please.“

39 **Michel Barnier (European Commission):**<sup>7</sup>

40 “Thank you, Mr Chairman. A good evening to all of you. Thank you for inviting me to speak in this extraordinary meeting which I deem to be of extraordinary importance.

41 When I had the honor to speak in the Parliament, prior to my appointment as an EU Commissioner, I made the wish of being allowed to be the Commissioner to finally present a project on patent law after 25 or 30 years. This is not a personal interest, it is rather about the common interest and European interest to promote the economy and its competitiveness. Accordingly, at the beginning of my mandate, together with my working groups, I made this draft on patent law one of my priorities.

42 Let me express my thanks and refer very briefly to what Bernhard Rapkay calls “red lines” and furthermore confirm some of the political guarantees, in order to summarize the proposals of Raffaele Baldassarre. But first of all, once again, I would like to thank you, Chairman Lehne, as well as the rapporteurs, Mr Rapkay and Mr Baldassarre, for your stamina, your personal competence and your commitment in this long procedure. I think that we really would not be here today if you had not shown these – I mean you three and the other members and the members of staff in the background in relation to your stamina. At the same time, I thank the Cyprus Presidency which after some other Presidencies – especially after the last report, the last problem which we had to tackle last June – the European Council which, in the middle of the night, disappointed all of us, they provoked a real disappointment –, the Presidency which, after the things had been presented as they are, started working on this. We reach compromises on a daily basis. Compromises should be dynamic and I personally would have preferred to stick with the original text as it had been approved – as Bernhard Rapkay and Mr Baldassarre and you, Mr Chairman, said. But the Council decided otherwise. If we really want to reach our aim to support businesses, SMEs above all, we need to find a solution. Very good work has been done under the Cyprus Presidency.

43 At this point, I would like to remark that according to the analysis we prepare – subject to the legal assessment especially of the role of the Court of Justice...according to the latest version, only the Court of Justice will decide about the Regulation for the creation of a unitary patent in final instance, from the first to the last article. This likewise applies to the translation regime and other achievements of the European Union. The new patent court will be a court common to the member states. It will have the same obligations as any other national court, especially, it would be obliged to refer questions on the interpretation of the mentioned provisions to the European Court of Justice. This is the first point, and our analysis concludes that the text is acceptable.

44 Bernhard Rapkay threw up a further question: Does the new article 5 respect the legal basis of article 118 of the Treaty? Again: We would have wanted the original articles 6, 7 and 8 with a clear description of the scope of protection and the limitations of the new unitary patent. The new article 5, as it has been drafted, contributes to describing the uniform basis of this patent protection in the Regulation itself, in a little shorter form, and thus, based on the analysis we have prepared on this, facilitates the manageability of the unitary patents.

45 The third point which you, Mr Chairman Lehne, have mentioned is that finally coming at the end of the long development process – and we have not yet come to an end –, the schedule for adoption, the Competitiveness Council and the requirements for the amendments on the role of Parliament, from coming spring. You are guaranteed, Mr Chairman, that – as you said yourself – in the end there will be a package of measures, in which everything is connected to everything else. So far, these are the contents of our analysis which we will develop to a last draft, not without expressing our disappointment about this, as I have said already. The reservations on our side and that of the European Council, after which we constructively worked together with you and the Cyprus Presidency.

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<sup>7</sup> Translation of the French original speech, from 0:28:58.

- 46 One question remains: Will the draft make a difference? Is it a progress? Will it allow European enterprises to protect their inventions at competitive costs? And for me, who has worked on this with you for one and a half years, the answer is “yes”.
- 47 “Yes”, because the applicant will have an additional option if there is a European patent granted by the European Patent Office. He can apply for this patent to have unitary effect in 25 member states. And from the deepest personal conviction, I hope that the 25 member states will complete this joint project, it is a powerful and positive tool which is a real progress for companies.
- 48 “Yes”, because the translation regime will be facilitated strongly. The patent application is filed in the language chosen by the inventor and the assessment by the European Patent Office will be conducted in the three official languages. The patent grant does not imply a further translation, automatic translations will be supplied which are freely accessible for everyone and cover all the languages of the Union.
- 49 Finally, “yes” as the costs for a unitary patent in the 25 member states will be reduced to 2380 Euro during a transitional period and finally to 680 Euro at the end of the transitional period. For enterprises, this is an important cost issue which is reduced which is the result of a great effort and an advance towards better competitiveness.
- 50 And „yes“, as the unitary patent is protected in the 25 member states by a unified and specialized court system, the Unified Patent Court
- 51 So far, Mr Chairman my statements in a very objective and honest manner, without being self-congratulatory, without excitement. Again, I would have preferred to stick with the original draft. What I can say today, the wish that I have, after your assessment will be completed, the final legal guarantees which will have to be reported to you without going into too much detail here. I wish that we can find a compromise based on the draft of the Cyprus Presidency and can advance, according to the draft of the Council, towards the core of the project which will finally put an end to the waiting of the European economy which now suffers from a reduced competitiveness over the competitors in the US and other world regions for 35 years. Thank you.”

52 **Klaus-Heiner Lehne:**

“Thank you vcery much, Commissioner. Now, we are starting the discussion. First, Ms Wikström, then Ms Lichtenberger. Then Mr Karim.“

53 **Cecilia Wikström (ALDE group):**<sup>8</sup>

- 54 “Thank you very much, chair. And first of all, thank you to all you three rapporteurs first, that have worked so hard on this package. It has been a long and complicated procedure, even taking into account only the past two years and leaving the almost 35 years before to the side. I would also like to thank the Cyprus Presidency for the stamina not to give up, but to work hard on the patent package finally finding a compromise that everyone seems to be happy with and can live with. And of course I congratulate you, Commissioner Barnier, for being the Commissioner finishing this after so many, many years.

- 55 So today, we are to discuss the issue of the now famous articles 6, 7 and 8 and the new proposal for article 5 to replace them. I think this seems like a very good solution. Frankly, for myself, this does not change a whole lot. As I have, as colleagues will recall, asked for deletion of articles 6, 7 and 8 all along and continue to be convinced that it is still possible to have a Regulation under ar-

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<sup>8</sup> Transcript of the English original speech, from 0:36:48.

ticle 118. I would like to remind you that this position was also supported by a large number of academics, judges and lawyers from the beginning. I fully respect that the majority among us have not shared this conviction and have wanted a clarification to further strengthen the legal basis. I am happy that through hard work, we seem to have a proposal tonight that everyone can live with and that fulfills the demand. I think the initial proposal is now even better, thanks to this. And I believe that we should now move forward in the interest of citizens, researchers and entrepreneurs to finally adopt this proposal already in December in the Plenary.

56 As a final remark, I would like to once again underline that the door is still open for the participation of Spain and Italy and that I sincerely hope that both these countries shall join the European patent project rather sooner than later. And finally, colleagues, we should, in my view, be happy that we have made a difference for European citizens. They have waited for so long and finally, we are almost there and I think it is not that often that we have a reason to be proud, but tonight is really one of those nights. Thank you very much.”

57 **Klaus-Heiner Lehne:**

“Thank you. Ms Lichtenberger, please.”

58 **Eva Lichtenberger (Group of the Greens/European Free Alliance):**<sup>9</sup>

59 „Thank you. I cannot sing from the same hymn sheet, for me still many, many questions remain unanswered. First, there is the question that after the vote in the Plenary, we had a mandate in the end. Included in this mandate were three articles which are now replaced by a reference to an Agreement, the text of which is unknown to us. I find this an odd Carte Blanche tactic. The final text. We have spoken about this, we will have all this in our hands in the middle of next year. This is a problem for me.

60 I tell you honestly, since this also has follow-on consequences. What does the Council learn from this procedure? It learns that the European Parliament comes with a mandate, then they strike out three core provisions and in the end, Parliament says: “Yes, of course, we accept this. You are so much more intelligent, we do everything you want.” What do you think, this will be in the future? Do you think, the Council will take anything seriously we submit in a mandate? They will say „Geht’s Euch brausen, dear Parliamentarians. Forget the whole thing. We do what we want.” Not all of you will probably understand „Geht’s Euch brausen”, I have to explain this. This means “We don’t care about this” translated from Austrian to German. The consequence is that whenever we have to deal with intergovernmental agreements, the Council will completely ignore our position. Crystal clear, they have already done it this time. In the future, we will probably have core provisions put into a recital 27.

61 But what is this all about? It’s about legal certainty. And legal certainty is important especially for small companies or small inventors, because they do not have the money for three years of legal proceedings, this is my concern. This has consequences, especially in corporate law, where a lot of money is at stake – there are possibly high values in dispute – precision and legal certainty are needed. This is not given here. If all that are here today have their doubts, I have doubts, too. I have not a single legal opinion in my hand saying that this whole stuff will work. We are delegating all of our possibilities to the European Patent Office. Of course, [inaudible] a former high-ranking civil servant from the Commission is working there. But to me, this is not yet a legal guarantee for all times. Let me add in brackets “revolving doors”, for all of you who were dealing with this in terms of the Staff Regulation. But my problem is, I do not have a written statement. Why? Because everybody has doubts. If one of the rapporteurs describes the whole thing as „sub-

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<sup>9</sup> Translation of the German original speech, from 0:39:44.

sub-suboptimal“, I can only agree to this. If in the end, we have a European patent, but which does not provide what we need, because it does not ensure legal certainty then I think we have made a mistake.

62 For instance, one of the question for me is where is the guarantee that the possibility to invoke the European Court of Justice will continue to exist? We do not have this up to now. We have some further significant weaknesses. So, I really have a problem with granting a Carte Blanche for something of which we do not even have the exact wording. And where the effect has occurred which is the great danger in endless negotiations. It is the same as with overlong pregnancies. There are also detriments to the child if a pregnancy takes more than 9 months, but maybe 10 or 15 instead. And sometimes I have the feeling that this child, as we say in German, is subject to a significantly overlong pregnancy. And I think, would it not be worth it to negotiate something for this important topic which is more than just a compromise? Where all of us have to trust that the whole thing is watertight, without having any written proof for this.

63 We have statements from lawyers, we have statements from legal experts telling us that this European Parliament [sic] will not bring about an improvement of the situation. But we want to reach an improvement. Ladies and gentlemen, I really have significant doubts if we merely rubberstamp this by way of a Carte Blanche. First, with regard to the follow-up consequences for future dossiers in the Council, secondly with regard to the substance itself. And thirdly, because I think that the topic would be worth to have a really good, well-founded and procedurally strong European patent. Therefore, where are our legal experts confirming to us that everything is all right? But in writing. Having this only in a sub phrase is not enough for me for this important subject.”

64 **Klaus-Heiner Lehne:**

“Thank you. Mr Karim, please.”

65 **Sajjad Karim (ECR group):**<sup>10</sup>

66 “Chairman, thank you. The point has already been made. Quite clearly, this issue is something that has been a very long time coming. In fact, if I am calculating this correctly, it has been 35 years which means it is actually older than many of the people in this room. That speaks volumes in itself.

67 With negotiations, you always reach a point where there is a need for pragmatism, if you want to deliver a result. If one’s view in negotiations is simply to have negotiations for negotiations sake, then I can tell you, three generations from now, we can continue having negotiations. But we have to deal with the issue that is in front of us. All of us Parliamentarians, those of us who are active in our own areas and wider than that, know the conditions that people are having to operate in at this moment in time. The overall framework, that we as a Union have been preaching to our citizens about, is that we want you to innovate , we want you to grow, we want to be a knowledge-based economy. And yet, despite the fact, that we have it available to us at this very moment in time to grasp, there are still voices, albeit a minority of voices in this Parliament, saying “Let this opportunity go”. Well, I refuse to let that opportunity go. I am not going to. And the reason is this: When one looks at the United States of America, what is the big difference between them and us, where is their growth coming from today? It is their innovative sectors. Then go and look what China is doing today, look at what India is doing today. And look at the overall uniform protections they are providing people within their own borders. And we cannot do that? It is just absolutely incredible, it is beyond belief.

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<sup>10</sup> Transcript of the English original speech, from 0:46:20.

68 And you know, the one thing our companies are crying out for is certainty. When you have the sort of environment that we have got at the moment, and you are able to provide any level of certainty to those people who are, at the end of the day, building us, one cannot place a value on that delivery for them. So that is, what we are actually doing here today, colleagues. We have got to keep this in mind. Our rapporteurs have done an absolutely A-rate job of delivering this. There are two paths we could take. One is a very technical one. We can navelgaze, we can say, right, we are going to go away and start up routing around at this all over again. Or we can be absolutely pragmatic.

69 What has happened? We had a very open discussion and argument regarding articles 6 and 8, people's positions were absolutely clear, including mine. And we have now, within the framework ambit that we as a Parliament, we as a Committee, have, a solution to those arguments and other things as well. I know Commissioner Barnier said we did not want to sound self-congratulatory and enthusiastic, but Commissioner, let me sound self-congratulatory and enthusiastic on your behalf. Because I genuinely do recognize the huge strides that we are making here.

70 For me, without wanting to lower the importance that is attached to this issue, quite simply, I think that any colleagues, who fail to support what is being put forward here, are really being negligent in their duties to Europe as a whole. The only one question I have left for the Commissioner is this: Where is the champagne?"

71 **Klaus-Heiner Lehne:**<sup>11</sup>

„Thank you. In this dossier, it would be wise to open the champagne only once everything has happened. In the past years, I have experienced so many surprises here that one should indeed do so only once everything is finished. I think, the Commissioner does not have a different position here. Colleague Masip, please.”

72 **Antonio Masip Hidalgo (S&D group):**<sup>12</sup>

73 “Thank you, Chairman, dear friends: Commissioner Barnier said that he admires the determination of the three rapporteurs, my friend Bernhard, Chairman Lehne and Raffaele Baldassarre, sure, the determination. However, likewise the determination of those should be considered not agreeing to this result, this “result of giving birth” as Ms Lichtenberger called it. A birth can...if there are more than 9 months, it raises concerns from a gynaecological viewpoint.

74 As someone who deals a little with the French Classics, I remind you about how Montaigne has erred in relation to births. Montaigne, it was known already in the 16<sup>th</sup> century – of course, the duration of a pregnancy was known in the 16<sup>th</sup> century already – ...and nonetheless, the great Michel de Montaigne has erred in his experiments on an empirical vision of this situation. Here, we are concerned with a birth process of 35 years. Montaigne would not have made this mistake, but, experiencing this painful 35-year birth, we think that [inaudible] of determination and a little flexibility, as well as conciliation, are missing, so that there are not, as Commissioner Barnier has rightly said, 25 member states, but all of the member states, of which I always believe that mine would be quite prepared to offer this flexibility, determination and flexibility.

75 As a lawyer, there is a simple issue to be mentioned, as Chairman Lehne as reminded us: The agenda and the route of this last voyage. Nonetheless, I also remind you that we are in a mere negotiation meeting and I remind that this agenda necessarily has to comprise a hearing and requests for amendments. Because when the article is amended materially and if there is an agreement in

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<sup>11</sup> Translation of the German original speech, from 0:50:40.

<sup>12</sup> Translation of the Spanish original speech, from 0:51:00.

the Plenary meeting, then we as the Parliamentarians also have the right to submit a request for amendment of this decision and this should be absolutely clear. I like to point your attention to this. These proceedings would be flawed, if we would be left [inaudible]. [Inaudible], thank you.”

76 **Klaus-Heiner Lehne:**

„This is clear. All of us have this right, of course.“ Colleague Voss, Axel Voss, please.“

77 **Axel Voss (EPP group):**<sup>13</sup>

78 „Thank you. First of all, I would like to say, the long period of preparation until we have come up to where we are now, many developments have happened by the EU. We have obtained an internal market, we have the Euro, we have an eastward enlargement, we have the Lisbon Treaty with a European Charta of Human rights and we have an existential crisis, but we do not have a European patent. Therefore, it is as such really to be valued that we have such unitary European patent within grasp.

79 I can understand it, Ms Lichtenberger, that one feels uncomfortable if voting on topics with which one is not familiar to the last detail. But I think, rapporteur Rapkay has clearly defined certain red lines which provide orientation. I think the European patent, the unitary European patent as such, and its respective effects in the member states, are an asset as such, by which we support the internal market and furthermore, in this crisis which we have, by introducing a limited breeder’s privilege, we also maintain the diversity and innovative capacity of European plant breeders. For me, this is, as such, already a positive move out of the present situation.”

80 **Luigi Berlinguer (S&D group):**<sup>14</sup>

81 “Dear Chairman, my group agrees to this. In this context, however, I would like to draw your attention to a small credit, attributable not to my group, but to the two Italian representatives belonging to this commission who have, from the beginning, communicated their approval. We have the language of Dante Alighieri, which we consider to be of great value, but not for patents, not for patents. We did not place any obstacles in the way of this.

82 But here, the matter is getting difficult again. I agree with those, seeing the major problem in the fact that we in Europe do not have a European patent, for which we now pay the price, for the reasons mentioned already which I do not want to repeat. 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. If this would relate to, as the expression goes, a “child of seven months”, it would still be ok, but in our case, the birth is long overdue. For this reason, I would hesitate by no means.

83 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

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<sup>13</sup> Translation of the German original speech, from 0:54:20.

<sup>14</sup> Translation of the Italian original speech, from 0:56:12.

solidified since our Court of Justice helps us to solidify these boldnesses. Thereby, we also have the possibility of a later intervention, if politics and economy so require.

84 Therefore, I am really not of the opinion that we have created a legal mess. But quite surely, in our case, it is a solution which – as I said already – needs to be solidified afterwards. If we furthermore take into account that the text of the Agreement which the COREPER has adopted this morning, contains three articles – namely article 14 f „Right to prevent the direct use of the invention“, article 14 g „Right to prevent the indirect use of the invention“ und article 14 h „Limitation of the effects of the patent“ –, which have been taken directly from the text of the European Parliament, this means that we can use an instrument of private international law, implementing a Parliamentary legal base and thus a European legal base.

85 And then there is the red line about which Bernhard spoke and which could lead Eva Lichtenberger to have a little more confidence. Should this text be amended in the meeting of the Competitiveness Council or in the linguistic phase, as communicated already, we will not accept anything like this. We do not accept amendments in blank. No, because we have made a suspensive condition. The agreed text has our approval, so that we want to feel a little for comfortable. The use of [article] 118 and the fact that the court to be created will be subject to the jurisdiction of the European Court of Justice – which we wanted, in order to re-establish harmony in the community order. From this point of view, I would be less pessimistic.

86 I would like to come to an end. Attention, I agree with Klaus Lehne. The champagne is drunken in the end, because in our case, we always experience a surprise. Who had thought that our top bosses, this means the European Council, would negotiate first whether this has to be made in London or Paris or in Germany or Austria? Ok, Raffaele is right, either the quality of administration of the Council is continuously decreasing or they interfere with a matter for which they do not have competence. All of this is possible, but not because it is the Council, but because of the fact that, in the patent question, we continuously face new surprises, originating from different centuries. Therefore, I am of the opinion that we have to make a decision now.

87 It was right to appoint an extraordinary meeting. Eva and I are mostly of the same opinion, but in this case, I have to oppose her. I am very happy – since I like you a lot –, that you are in the minority (laughs). I am really very sorry, but we cannot change this. I would like to congratulate all who have worked on this, also I. The Cyprus Presidency surprised us favorably, we have to admit it. We did not expect this today. Commissioner Barnier has devised this text which, in the beginning, has confused us all a little, since it created three languages of the Community which is not true...a further fantasy...but it worked! Und thus, we agree and also consent to this type of courage, thanks to which we have now likely entered into a safe harbor. Thank you.”

88 **Klaus-Heiner Lehne:**

„Thank you, Luigi Berlinguer. Colleague Castex, please.”

89 **Francoise Castex (S&D group):**<sup>15</sup>

90 “Well, I will not be as enthusiastic as my colleague Luigi Berlinguer. And I think I do not share his position either, because I am not of the opinion that the Council are our top bosses. For me, it is an ongoing Parliamentary procedure and I do have questions on the progress of the procedure. As long as one has not agreed on everything, one has agreed on nothing in negotiations.

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<sup>15</sup> Translation of the French original speech, from 1:02:31.

91 My question is: After the vote in the Committee, we have tried to gain time by switching to the trialogue. This accelerated procedure requires trust, it is based on trust. For me and for us respectively, the Council has breached that trust, by striking out three articles from the agreement. This morning, the Council offers us a new written version of these three deleted articles. Furthermore, you say that this agreement of this morning in COREPER is no longer negotiable, that this is the last meeting. I think that this is a serious problem of Parliamentary procedure, insofar as we did not get to a result with a vote in the Plenary and a back and forth between first and second reading, because we have tried to accelerate things.

92 Therefore, I think that the suggested agreement has to be reviewed by the Legal Affairs Committee again. As my colleague Masip Hidalgo said, it can necessarily be amended. Otherwise, I do not know how to accept an agreement which has been forced on us by the Council without any negotiations. From my standpoint, this poses a serious problem. I am sorry to be a killjoy in this concert of praises, but for me, the champagne about which you speak has a bitter taste.”

93 **Klaus-Heiner Lehne:**

„Thank you. Colleague López-Istúriz, please.“

94 **Antonio López-Istúriz White (EPP group):**<sup>16</sup>

95 “Thank you, Mr Chairman. Yes, I always take a lead with my speeches. I think, this has been noted already. I have always spoken in favor of the idea of the patent. In favor of bringing this to an end as quickly as possible and also the lot of work that Commissioner Barnier and the opponents and all others have with it.

96 At this point, I would like to say that we have indicated in the past already that we feel a little betrayed and were not clear about the legal securities of this topic. And thus, we have, the Spanish and the Italian state, decided to start legal proceedings. Not all Italians, this is true, but the Italian state and the Spanish state have decided to start legal proceedings. The Council was... Maybe you will now threaten me that this may be my last political discussion which is why I would like to use it to give my last political statement. For me, it looks like this: Were initially one language was planned, we now have three. Where one seat for the court was planned, we now have three. And instead of a decision, in the end there will be none. Also in relation to the patent, instead of one, there will in the end be 27 or 25, due to the fact that there are two member states having decided to follow a different approach.

97 I find all of this a little complicated, therefore I say to my colleague Wikström that I believe the Spanish, at least as far as I am concerned, will take some time before accepting this open door. Because I find it complicated in my own decisions, having to explain the numerous seats, numerous languages and numerous things. We have decided not to defend the Spanish language in favor of the approach “all in English” which was an enormous concession and nonetheless, everything is changed from one day to the next. Welcome to everybody seeing that there is some uncertainty here.

98 I do not want to be tempted to the definition of negligence cited by my friend, colleague Karim. No, I do not want to be tempted to this definition of negligence. I will not be critical, but I will nonetheless clarify that there are some issue here which cause doubts, in political, legal and a number of other terms. Thus, this matter deserves an opportunity for suggestions for improvement. However, I do not know whether you will now not only order me to be silent, but also that I

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<sup>16</sup> Translation of the Spanish original speech, from 1:05:01.

am not allowed to submit any requests for amendments. I do not know how this will work. I assume that someone will explain to me a lot, especially the Legal Service of this Parliament.

99 And of course it is not our intention to oppose. But obviously, there is a reaction. If it has been said to us that you keep the door open for us, the Italians and the Spanish, to return, so do we, the Italians and the Spanish, keep the door open for those feeling legally and politically uncomfortable. They can support our position since, as a matter of fact, we are open to welcome those starting to have suspicions and doubts in relation to the activity of the European Council of the 25, because I want to make it very clear that, at this point, they are 25. If there are people somewhere, speaking about the Council and the member states, I would like them to say very clearly that they are 25. This is all. Thank you.”

100 **Klaus-Heiner Lehne:**

„Thank you. Colleague Rapkay. Afterwards, I have put myself on the list of speakers.”

101 **Bernhard Rapkay:**<sup>17</sup>

102 “Good. But the Lisbon Treaty does say that if 27 cannot come to an agreement where unanimity is necessary, the procedure of enhanced cooperation exists. Then 25 of 27 do it. So it is. This is set out in the Treaty. Where is the problem? Where is the problem?”

103 Second comment: It would be good, even though it is late in the evening, to listen to the things presented here. To colleague Lopez, I can only say: The topic languages and the topic seat of the Patent Court are not a subject of our debate. Because, we have voted on languages. We have voted here in the Committee. And the Council has done exactly, what we have voted on in the Committee. To say here, the Council would present us something and we could not do anything about it. This is sort of odd. The Council has adopted what we have said before. What we have indeed negotiated, one year ago.

104 The question of the three seats, I have already commented on that. I also consider this smeared. I have said before, we can be glad that only three member states have claimed the seat. Had eight member states claimed the seat, we would now have eight seats. But this is something for the Council, it is a matter of the executive. We can evaluate this. And I evaluate it the way I just did, but it is a matter of the executive and not a matter of the legislative.

105 In order to probably make this a little bit clearer: My impression is... This has just started to sort of heel, the debate, the Council has presented us something based on the motto “Take it or leave it”. Guys, let me tell you a secret: WE have presented something to the Council. WE! And when I say We, indeed, it is the rapporteurs. I can tell you in detail that I have amended something in the Council proposal last week and that I have said „Guys, this is the only version I will accept”. Now, the procedure, of course, stipulates that the COREPER has to say something on this. And when I say, this is the only version which I as a rapporteur will accept and recommend, then the Council has no choice but to say “Guys, this is the only version”. Where are we? We prevail here with no end and then there is such a debate.

106 Also, the issue of Carte Blanche. Also insofar, I can only repeat: Please do listen. I have said, we will – as far as I am concerned, I will recommend this – only vote finally, once the Council has voted, not only in COREPER, but in their formation of the Competitiveness Council. They will do so on Monday, the 9<sup>th</sup>. We will have our vote in the Plenary only thereafter. This means, we will stay on top of the game until the very last second. Until the very last second, we stay on top

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<sup>17</sup> Translation of the German original speech, from 1:08:36.

of the game. The situation is, indeed, that nothing is decided, before not everything has been decided. I know very well, that in some delegations – in the Council, in COREPER – this has caused more than discomfort. Because, we have told them for the first time: “Guys, you are not above us. We are the ones determining! We are the ones determining!”

- 107 Now one can say, we should have stuck 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!
- 108 Really, stick with it. The rapporteurs which have been selected here, have really negotiated pretty tough. Those who know me, I have not only done so here, but also in other matters in the past. I have a certain experience, others also have experience. I do not want to prompt the Council Presidency to confirm this. We also do not need this, because it is so. We have negotiated really tough.
- 109 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 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. We have jumped relatively well and I think there is no need for us to hide ourselves away. WE have prevailed and nobody else!”
- 110 **Klaus-Heiner Lehne:**<sup>18</sup>
- 111 “Thank you. I will add a few sentences. Institutionally, this was a very difficult situation. Because, basically, we had a completed first-reading-agreement. Because the Council suddenly interfered in a context, in which they have nothing to do. They were only to decide about the seat of the Patent Court, because this is a matter which does not concern the legislator, namely us. But they have then interfered with the Regulation, where we had long closed negotiations, with a related Exchange of Letters.
- 112 Under these circumstances, we could not simply reopen a triologue and pretend that this agreement never existed. Because this was a very fundamental violation of inter-institutional agreements which, from the view of Parliament, could not be accepted in this form. Nonetheless, one has to tackle such a topic in a pragmatic form. So, what did we do? At an informal level, as rapporteurs, we discussed with the Council Presidency and with the Commission, we have furthermore had a number of individual meetings with other governments. Maybe this is also worth mentioning here. The result has been that we have insisted on this and succeeded on this – I can only confirm what colleague Rapkay said –, that in the end a proposal was put on the table that, at least from our view, after an assessment, is, in principle, acceptable. In principle acceptable.

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<sup>18</sup> Translation of the German original speech, from 1:15:03.

113 Finally, it happened exactly what colleague Rapkay has said. We now have a compromise text on the table, still subject to a material assessment of the final text of the intergovernmental Agreement which I have received only today. But today, we have a compromise text, at least for the Regulation, in terms of which I would just like to emphasize that I would not agree to any other text, only to that. From my perspective, the central message of today to the Council is that further amendments to the text are unacceptable and can no longer happen. And that also the text for the intergovernmental Agreement, as it is on the table now, is not amended any more, since for us, this is a package which includes this Agreement. Therefore, there must not be any changes here and this is a precondition for our acceptance of this and even this only, once the Council has formally decided on the intergovernmental Agreement. Once they have formally decided, not the refinements up to the initialling by the secretaries of state, this is a formal protocol act. But the contents must be final. Only once this is the case, the whole matter can be voted on in Plenary.

114 A brief comment on the statement by Ms Lichtenberger. Ms Lichtenberger, this does not convince me already for the reason that you do not reject this patent not for the absence of 6 to 8, but you have already rejected it when 6 to 8 were still in the text. This means, the group of the Greens has demonstrated an attitude, during the negotiations, that they reject the patent as such, in the present situation. [Heckling] Yes, but the amendments made by the European Council were not decisive for the conduct of the Greens group, but the conduct was the exactly the same even before. Therefore, if I may say so, I do not find this convincing. [Heckling] This is the situation.  
115 Yes, please. Ms Lichtenberger, afterwards Mr Zodiates. Please.“

116 **Eva Lichtenberger:**<sup>19</sup>

117 „I would like to make a correction here. Our rejection was based on the fact that we want a better, a sustainable and real European Parliament [sic], no a general rejection of the patent, this is absolutely clear. I am used to go on working with majorities, even though the majority stands against me. Today, I could have leaned back and say “Do what you like, I was critical from the beginning”. No, I go on working constructively, pointing out potential error sources for the future, because it is nonetheless important to me. This is not a... Now there is something attributed to sort of an opposition, but this is not the point. I am interested in having a working patent.

118 Initially, my criticism was directed to the weaknesses and through the removal of 6 to 8, these weaknesses have increased. My argumentation was directed to this issue, as you have mentioned quite correctly. The procedure was the decisive aspect, namely that an existing agreement was annulled. I am afraid that this will have consequences in the future. Anyway. If the rule now is that if one has voted against a proposal once, one is no more allowed to comment on this matter, then we have to introduce new rules. This is not my attitude. I go on working constructively, even when the majority stands against me. Thank you.”

119 **Klaus-Heiner Lehne:**

„For clarification: Nobody said that you are not allowed to comment. I only said that this was not convincing. This is a small but subtle difference. Mr Zodiates, please.“

120 **George Zodiates:**<sup>20</sup>

121 „Thank you, Chairman. I have asked for the floor a bit earlier on, but now I can very safely say that I have been fully covered both by your last intervention and by the intervention of rapporteur Rapkay. I would simply once again like to ensure you that we have worked honestly in order to

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<sup>19</sup> Translation of the German original speech, from 1:18:13.

<sup>20</sup> Transcript of the English original speech, from 1:20:11.

bridge the gaps and the differences between the Council and the European Parliament. We think that we have put on the table, after long discussions with you, a text which is solid. We consider that we are very close to an agreement, we are very close to an agreement. We simply cannot afford losing this opportunity once again. We owe that to Europe and to our enterprises. That is all I wanted to say. Thank you very much.”

122 **Klaus-Heiner Lehne:**

„Thank you. Commissioner, please.“

123 **Michel Barnier:**<sup>21</sup>

124 “Chairman, I will have to leave you shortly, I have to participate in a meeting on a report relating to social entrepreneurship. However, and without wanting to intervene in the debates of your Committee, I would like to thank you for having invited me under your Presidency, and I would also like to thank Ms Wikström, Mr Karim, Mr Masip Hidalgo, Mr Voss and Mr Berlinguer for their support.

125 As I have said to Ms Castex already, there is no reason to be self-congratulatory. Many of us have said that they would have preferred to stick with the previous text and with the guarantees it offered. But there was this decision of the European Council, the Heads of State and Government, which blocked the proceedings. And why did I thank to Cyprus Presidency? Because they have worked intelligently. Not alone, we have assisted them, they have cooperated with Chairman Lehne and the other two rapporteurs.

126 In terms of what has been discussed in COREPER this morning, I would like to say that it is interesting, Ms Castex, that you have reacted exactly like Ms Lichtenberger. Because there are members of the COREPER who have reacted like you, saying that a text is imposed upon them. Because in COREPER, it was said that this would be the only acceptable text for Parliament. And this is exactly it, you had the feeling that one would expect of you...

127 The Presidency has done very important work, to which we have contributed, because we stuck to the guidelines of the proceedings which is also the reason for the uniform attitude in COREPER, because they were told that any other text would never be acceptable for the Parliament. And this is why we are at this point today. As I have said to Ms Lichtenberger, I think that you can go on working on the text of the intergovernmental Agreement and take your time to review it. The legal guarantees which you demand can be formulated more clearly. Nonetheless, I think – and I say this with all honesty – we have made the greatest possible efforts to finally get to this patent. If we do not reach an Agreement now, in my opinion, this will mean the end and we fall back to situation 30 years ago which would mean a very long “pregnancy”.

128 Maybe I can say two more things as to conform what Mr Karim mentioned before about what is going on in the rest of the world. I have very interesting figures on the number of patents filed in the different parts of the world. In the US, having 310 million inhabitants, 224 000 patents were applied for last year. Here in Europe, with 500 million inhabitants, we had 62 000 patents, this is merely one fourth. And in China, with 1,3 billion people, there were 172 000 patents. Why are there so few patents? This is not a question of the intelligence of the Europeans working in our labs, but many patents are not applied for because it is too expensive. Or they are applied for only in a part of Europe, so that counterfeits – which are often dangerous for human health, in case of pharmaceuticals, or for safety – start flowing into the common market slowly in one or another place, subsequently flooding the whole market.

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<sup>21</sup> Translation of the French original speech, from 1:21:18.

- 129 We are about to reach an Agreement on the process for final adoption of the package mentioned by Mr Lehne. Maybe we can grant the first patent prior to the end of your mandate in the first quarter of 2014. This is what I am aiming for and, by the way, this is also approximately the end of my mandate. I think this would be great for the European economy.
- 130 I confirm to Mr Berlinguer and also to Mr López-Istúriz that there will be no discrimination against Spain or Italy – this is what is written in your proposal –, so that I can also confirm to rapporteur Baldassarre that he has acted in line with the common European interests. But there will be no discrimination, as, even before Italy and Spain seize on this proposal, enterprises can use this patent for the protection of their inventions on a non-discriminatory basis. I thank you for welcoming me in your property as a Chairman and I just wanted to explain to you the backgrounds of this discussion, because it is really 5 to 12. This was it, thank you to all of you.”
- 131 **Klaus-Heiner Lehne:**<sup>22</sup>
- 132 “Right. Then, I think, we can close the discussion. We will go on as I have described it before. Those groups wanting to support the compromise will approach the Plenary with amendment request in a suitable manner. Apart from this, the rapporteurs will especially review the intergovernmental Agreement and we are looking forward to the further decisions of the Council on the 10th. Thank you.”

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<sup>22</sup> Translation of the German original speech, from 1:25:50.