



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency

to: Permanent Representatives Committee (Part 1) / Council

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Subject: Draft Agreement on the creation of a Unified Patent Court
- Preparation of the Competitiveness Council on 5 December 2011

I. INTRODUCTION

1. On 29 September 2011, the Competitiveness Council held an exchange of views on the creation of a unified patent litigation system, in particular on the compatibility of the draft Agreement with the EU legal order. The Presidency concluded that delegations seemed sufficiently reassured in this respect and announced that it would continue working with a view to reaching political agreement on the patent "package" by the end of the year.
2. In the course of October and November 2011, the Presidency organised numerous technical meetings to further elaborate the text of the draft Agreement. A 3-day long drafting session in Warsaw on 12-14 October was followed by meetings of the "Friends of the Presidency" group on 18 and 27 October and 14 November.

In parallel, on 11 October, 9 November, 16 November, 21 November and 30 November, five informal trilogues were held on the regulations implementing enhanced cooperation in the area of unitary patent protection, addressing also the European Parliament's draft own-initiative report on a jurisdictional system for patent disputes.

3. The Commission made a commitment to present the necessary amendments to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation) in early 2012 in order to ensure the compatibility of the draft Agreement with Union law.
4. Whilst the text of the draft Agreement has been thoroughly discussed and elaborated at technical level, there remain a set of issues that require political consideration and decision at the next meeting of the Competitiveness Council.

II. ISSUES TO BE DISCUSSED BY MINISTERS AT THE COMPETITIVENESS COUNCIL ON 5 DECEMBER 2011

A) ISSUES RELATING TO THE CREATION OF THE UNIFIED PATENT COURT

The Presidency considers that the following issues need the attention of Ministers. Ministers should discuss these items with a view to reaching a global compromise on the Agreement creating the Unified Patent Court.

