

Note from the Belgian and Swedish delegations to the Committee of Permanent
Representatives/Council on the finalization of the implementation and entry into operation of the
Unitary Patent and the Unified Patent Court

As recognized by Member States at the last Competitiveness Council meeting on 28 November 2016 the timely entry into operation of the Unitary Patent package is vital for innovation, competitiveness and economic growth in Europe. This has been stressed also by European businesses, including associations of SMEs from all over Europe, in their urging that this major reform should come into operation as quickly as possible.

At the last Competitiveness Council meeting it became clear that the requisite number of ratifications of the Agreement on a Unified Patent Court (the Agreement) can be achieved shortly, which should normally allow for the Unitary Patent package to come into operation in due course. With this in mind, the final preparatory work for the entry into operation of the Unitary Patent package has been intensified and the Preparatory Committee for the Unified Patent Court has published a new timetable aiming at an entry into operation before the end of the year.

However, in order to meet this timetable, it will be vital to start the provisional application of the Agreement as soon as possible. The provisional application of the institutional, organisational and financial provisions of the Agreement is a prerequisite for the orderly entry into operation of the Unified Patent Court. It will allow to put into place formally and officially all the necessary legal, administrative and financial arrangements, including the recruitment of judges, before the system starts to operate. These tasks cannot be carried out by the current Preparatory Committee since they require that the relevant provisions of the Agreement are in force, at least provisionally.

To this end the Protocol to the Agreement on a Unified Patent Court on provisional application (the Protocol) has been established, signed and approved already by a number of Member States. In order for the Protocol to enter into force and to initiate the period of provisional application, it is necessary that at least 13 of the participating Member States (including Germany, France and the United Kingdom) which have either ratified or received parliamentary approval to ratify the Agreement itself have also expressed their consent to be bound by the Protocol. Such consent can be expressed in many different ways, including by a unilateral declaration.

To date the requisite number of Member States having expressed their consent to be bound by the Protocol has not been achieved. The current state of play concerning the Protocol, together with the current state of ratifications of the Agreement, is reflected in the annex. If the requisite number of Member States approving the Protocol cannot be achieved within the coming months, this could lead to considerable delays for the entry into operation of the Unitary Patent package. Considering that the necessary duration of the provisional application is deemed to be about 6 months, it is vital that the provisional application begins as soon as possible and at the latest in May, in order to allow for the Unitary Patent package to come into operation before the end of the year.

Consequently we urge those participating Member States which have ratified the Agreement or are in the process of doing so, but which have not yet approved the Protocol, to declare as quickly as

possible their consent to be bound by the Protocol. We would also like to recall that it is in the interest of every participating Member State to take part in the provisional application. During the provisional application important decisions will be taken for example with respect to the recruitment of judges and administrative staff, including staff for the Patent Mediation and Arbitration Centre and the Training Centre. But only those Member States which participate in the provisional application will have voting rights in the relevant Committees of the Unified Patent Court and thus be able to take part in the decision-making processes.

In conclusion we urge all relevant participating Member States to express their consent to be bound by the Protocol to the Agreement on a Unified Patent Court on provisional application as quickly as possible in order to allow for an entry into operation of the Unitary Patent package in the course of this year and to ensure that as many Member States as possible can take part in the decision-making processes during the provisional application.