Enhanced cooperation in the area of the creation of unitary patent protection: implementation

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The Council **exchanged views** on a draft agreement aimed at establishing a unified patent litigation system in the context of the creation of unitary patent protection.

The outcome of the debate provides the Presidency with political guidance for continuing work with a view to **reaching a political agreement on the patent package before the end of the year**.

The draft package is made of legislative measures on how to obtain European patent titles with unitary effect that ensure uniform protection for inventions together with the translation arrangements, and the creation of a unified patent litigation system.

The debate focused on the **main principles of a future agreement** for creating a common patent court that would ensure compliance with the EU treaties, as requested by the Court of Justice of the EU in its Opinion 1/09 on the compatibility of the envisaged system with EU law.

The vast majority of delegations supported the creation of a cost-effective and legally sound system that would include the following main features:

- the future court will be common to EU Member States and thus part of the judicial order of the EU, including the arrangements for requesting a preliminary ruling from the Court of Justice of the EU;
- third countries will not participate in the agreement setting up the unified patent court;
- the new court will apply EU law in its entirety and respect its primacy;
- the draft agreement will contain guarantees for the protection of individuals' rights in the case of infringements of Union law committed by the future unified patent court.

On 27 June 2011 the Council agreed on **general approaches** on two draft regulations implementing enhanced cooperation in the area of unitary patent protection:

- proposal for a Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection;
- proposal for a Regulation implementing enhanced cooperation in the area of unitary patent protection with regard to the applicable translation arrangements.

On 30 May 2011, a large majority of member states endorsed the way forward proposed by the Commission of setting up a common jurisdiction by means of an agreement to be concluded between Member States.