



El Presidente del Gobierno



*Il Presidente
del Consiglio dei Ministri*

Madrid-Roma, December 7th 2010

Mr. Herman Van Rompuy
President of the European Council
Mr. José Manuel Durao Barroso
President of the European Commission
Mr. Yves Leterme
Prime Minister of the Kingdom of Belgium

Dear Presidents:

As part of the Council's ongoing efforts to create a Patent for the European Union under the Belgian Presidency, Spain and Italy would like to share some thoughts in order to better resolve this extraordinarily important negotiation process.

We would like, above all, to restate our firm commitment to the Patent for the European Union, which should contribute to substantially promote innovation in Europe, and to achieve the goals set forth in the Europe 2020 Strategy for Employment and Growth.

At the same time we also consider important to highlight—as the Competitiveness Council already did at its meeting of 4 December 2009 when it approved the Council Regulation on the Patent for the European Union—that the language regime represents a key factor in attaining a fair and effective agreement. Only in this manner shall we respect the EU's cultural and linguistic diversity, provide maximum legal security in protecting innovation in Europe, contribute to further development of the internal market, and respect the principle of territorial cohesion set forth in the Treaty.

Taking all of these elements into consideration, it is essential for us to explore every possibility for negotiation so as to achieve a consensus-based solution along the lines expressed by the majority of EU members.

In this context, the possibility raised by some Member States of launching enhanced cooperation—based on the proposal presented by the European Commission on 30 June—constitutes, in our view, an initiative that, far from taking advantage of the negotiation efforts made to date, runs the risk of widening the gap between EU members and preventing an EU-wide agreement on an issue of such strategic significance.



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We should recall that enhanced cooperation is an exceptional mechanism which must be used cautiously in order to promote EU objectives and strengthen the integration process, and which, under no circumstances, should become an instrument for excluding certain Member States, when they are still committed to carrying on negotiations. An inappropriate use of enhanced cooperation in this case would set a negative precedent, and would be contrary to the objectives for which this mechanism was initially created.

Moreover, we insist that enhanced cooperation should only be applied as a last resort mechanism, a requirement that is not met in the negotiations concerning the Patent's language regime.

In this sense, it is difficult to consider the barely five months that have passed since the Commission's presentation of its proposal as a reasonable period of time for reaching an agreement on such a relevant economic, legal, and institutional issue. Moreover, the Council has yet to analyse other possible language regime options, since throughout this short period of time we have mainly limited ourselves to insisting on the proposed formula, with certain transitory amendments.

The important interests at stake, their impact on the competitiveness of European industry, and the high political profile of the language issue are all well worth the additional effort needed to reach the unanimity desired.

Furthermore, an enhanced cooperation directly contradicts one of the basic goals of the Europe 2020 Strategy for Employment and Growth, developed through the emblematic *Union for Innovation* initiative, which sets forth that, with the aim of improving framework conditions for innovation in Europe, a single European patent should be created, as well as a specialised European jurisdictional system. The Commission's proposal would make it impossible to achieve either one on a European scale.

In addition, when discussing enhanced cooperation, we cannot ignore the issue of the European Union Patent's jurisdictional system—a mandatory condition to ensure the patent's usefulness, and which would be difficult to include in a future enhanced cooperation, as general procedural regulations already exist on this matter.

Therefore, and for the sake of caution, we should wait for the Court opinion on the European Jurisdictional System for Patents. It may in fact provide us further elements to clarify important issues, including those related to the language regime of the future jurisdictional system.

Given these circumstances, and bearing in mind all these arguments, Spain and Italy consider it necessary to continue negotiation efforts on the European Union Patent's language regime, and we commit to evaluate—with flexibility and in a constructive spirit—new solutions that will benefit the entire European Union, and that are acceptable to all Member States.



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In the light of what has been stated above, the European Council should consider the need to continue negotiations in order to find an agreement between all the Member States on the language regime of the Patent of the European Union.

José Luis Rodríguez Zapatero
President of Government

Silvio Berlusconi
President of the Council of Ministers

C/C: ALL MEMBERS OF THE EUROPEAN COUNCIL