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THE EUROPEAN UNION**

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**NOTE**

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From: Presidency

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To: Permanent Representatives Committee

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Subject: Setting up of the Preparatory Committee in the context of the Agreement on a Unified Patent Court

- Information from the Presidency

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1. The Agreement on a Unified Patent Court is an international agreement between Signatory States, who are Member States of the European Union. 25 Member States have signed the Agreement so far. The remaining Member States, and future Member States, can accede to the Agreement at any time. The European Union itself is not a party to the Agreement.
2. In the Declaration attached to the minutes of the signing ceremony (doc. 6572/13), the Signatory States stated the intention to set up a Preparatory Committee without any delay, composed of their representatives, to undertake the practical arrangements required for the early establishment and coming into operation of the Court.

3. In addition to setting out a roadmap for the timely implementation of the Agreement, the Preparatory Committee may also establish subgroups and make use of teams of experts in its tasks, which will include the training of future judges, preparing the setting-up of an integrated and efficient IT system, preparing the Court's Rules of Procedure, preparing the budget of the Court and preparing the setting-up of the Administrative Committee and the Budget Committee.
4. A meeting of the Friends of the Presidency group (Patents) was convened on 27 February, with the objective of both hearing and considering delegations' views on how this Preparatory Committee could be organised.
5. To assist these discussions, the Netherlands and Sweden circulated a non-paper to all delegations setting out a possible orientation for the Preparatory Committee (attached at Annex). This paper, entitled "Note on the initial phase of work in the Preparatory Committee", addresses the key challenges ahead, as well as setting out a number of concrete proposals for handling the practical aspects of the considerable preparatory work ahead.
6. At the abovementioned meeting of the Friends of the Presidency group, a clear consensus emerged from the Signatory States endorsing the paper, including the proposal that the work be driven by the Member States, and thus outside the framework of existing institutional structures. In this latter respect, a number of Signatory States offered to put their resources – human and/or logistical – at the service of the Preparatory Committee once it begins its work. The European Commission offered its expertise, as and when requested by the Preparatory Committee. There was general agreement that the Preparatory Committee should be efficient, flexible, open and inclusive in its working methods.
7. Following on from the meeting of Coreper on 13 March, the Irish delegation, in its capacity as President-in-office (hereafter referred to as the Presidency), envisages convening forthwith the inaugural meeting of the Preparatory Committee. The meeting would take place on 26 March 2013 in the Permanent Representation of one of the participating Member States. The timing of this meeting would be to satisfy the view expressed by a large number of parties on 27 February that the Preparatory Committee should hold its first meeting by the end of March. All Signatory States will be invited to attend as full participants to the meeting.

Following the requests of Poland and the Commission at the recent Friends of the Presidency meeting, the Presidency proposes to extend a courtesy invitation to thereby make it possible for them to be in attendance at this meeting. These courtesy invitations would be without prejudice to the competence of the Preparatory Committee, once it is set up, to decide on observers.

**8. The Permanent Representatives Committee is invited to take note:**

- **of the agreed position of the Signatory States regarding the Preparatory Committee of the Agreement on a Unified Patent Court, as set out in the paper contained in the Annex and in this cover note;**
- **of the intention of the Presidency to convene the inaugural meeting of the Preparatory Committee on 26 March 2013 in Brussels; and**
- **that Council, at the appropriate level, will be kept informed of progress of the work of the Preparatory Committee when needed.**

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Note on the initial phase of work in the Preparatory Committee

**I. Establishment of the Preparatory Committee**

When signing the UPC Agreement, the Signatory States have committed to establish without delay a Preparatory Committee.<sup>1</sup> The Preparatory Committee shall be composed of the representatives of the Signatory States.<sup>2</sup>

Thus, a new phase has dawned, in which the Signatory States have to take their responsibility in actually building the UPC. In this note we would like to share our ideas on how this can be put into practice.

**II. First Meeting of the Preparatory Committee**

A first meeting of the Preparatory Committee should take place promptly after the signature of the UPC Agreement, preferably within 4 weeks.

Invitations to this first meeting could be issued by the Irish Presidency or by any Signatory State. To this end the Signatory States should notify the names of their representatives to the Irish Presidency or to the State which would take the initiative to invite to the first meeting.

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<sup>1</sup> The Declaration to that effect shall be included in the "Minutes of the signing of the UPC Agreement", see document 16221/12 of 14.11.2012.

<sup>2</sup> Declaration, point 3.

At the first meeting, representatives should endeavour to agree on:

- a chairperson and a deputy-chairperson,
- a few basic organisational rules for the work within the Preparatory Committee
- a comprehensive list of tasks to be carried out,
- a tentative target date for the completion of the preparatory work in the Preparatory Committee, and
- an establishment of groups to deal with the discerned tasks in project teams on expert level.

Some of the above points warrant more detailed consideration, as follows.

## **1. Basic rules for the organisation of the work in the Preparatory Committee**

A set of basic organisational rules will be needed to ensure a smooth work-flow in the Preparatory Committee. These rules should provide some details on meetings, chairperson, agenda, documents, voting rules, minutes, transparency and consultations, confidentiality, groups with project teams, experts and secretarial arrangements.

Annex I below sets out a preliminary draft for a set of such rules.

## **2. Tasks to be elaborated in groups with project teams**

A list of four main tasks to be elaborated in groups with project teams before the UPC can start operations can be identified:

- Legal framework,
- Financial aspects,
- IT & Facilities, and
- Human resources & Training.

The list is to a certain degree elaborated in Annex II. The corresponding groups should be established by the Preparatory Committee. For each group a coordinator should be appointed.

The coordinators of the groups should assist the chairperson of the Preparatory Committee as rapporteurs for the tasks dealt with by their respective group.

### 3. Target date

For the organisation of the work, it is crucial that representatives agree early on a target date for the completion of the work of the Preparatory Committee.

An agreed target date will enable the chairperson to focus and prioritize work ("count-down" until the start of operations of the UPC). Specific timeframes may then be set for the work on particular tasks in the groups (see below) which will report to the Preparatory Committee on the progress with the various tasks.

The target date and the specific timeframes may be adjusted later on, when the Preparatory Committee will be updated on progress with national ratification procedures.

The target date would also give the signatory states some guidance in planning their national ratification endeavours.

### III. Roadmap

The above arrangements should enable the Preparatory Committee to agree already at its first meeting – provisionally and subject to later adjustment – on

- a comprehensive list of tasks,
- a tentative target date for the completion of the preparatory work in the Preparatory Committee, and
- a first allocation of tasks to the groups and the appointment of group coordinators.

In a second meeting coordinators can present the allocation of tasks in project teams and their composition and indicate timeframes for the delivery of draft proposals.

Together, the above elements would constitute the roadmap referred to in the Draft Declaration (point 3). On this basis, the preparatory work to be carried out by the groups could be kicked off immediately.

**Preliminary draft set of organisational rules for the work in the Preparatory Committee**

- **Meetings** of the Preparatory Committee
  - should be convened by the chairperson, on his/her initiative or on request by a representative, and
  - make use of Signatory States' facilities for holding meetings, e.g. at the Permanent Representation of a Signatory State in Brussels or in any Signatory State willing to host one or more meetings.
  
- **Chair**
  - A chairperson and a deputy-chairperson should be elected from among the representatives of the Signatory States.
  - The chairperson should when needed report to the Member States at the appropriate political level (Friends of the Presidency / COREPER / Council)
  - The chairperson should be responsible for the work of the Preparatory Committee and preside over its meetings.
  - At any time during the discussions, representatives may raise objections to the chairperson's conduct of business; if the chairperson does not uphold the objection, any representative of a Signatory State may call for an immediate decision by the Preparatory Committee.
  - The deputy-chairperson should of his/her own motion replace the chairperson in his/her absence.
  
- **Agenda**
  - A provisional agenda should be drawn up by the chairperson and circulated to representatives well in advance of any meeting.
  - Any representative of a Signatory State may request that an item be included in the provisional agenda.
  - At the beginning of each meeting, the Preparatory Committee should adopt the agenda and the order in which the agenda items are to be discussed.

- **Documents** may be submitted to the Preparatory Committee by the chairperson, the deputy-chairperson, any representative of a Signatory State or any group coordinator.
  
- **Voting rules**
  - At meetings, the Preparatory Committee should attempt to reach consensus. Where this is not possible it should take its decisions by a two third majority of the Signatory State representatives present and voting; voting should be by show of hands unless a Signatory State representative requests a secret ballot
  - Where the chairperson considers this appropriate, the Preparatory Committee should be able to take a vote in written procedure, as follows:
    - The chairperson should communicate the wording of the proposal in question to the Signatory State representatives and invite them to inform him/her, within 14 calendar days, whether they agree to use the written procedure and whether they approve the proposal.
    - The proposal shall be deemed to be adopted if a majority of three quarters of Signatory State representatives have approved the chairperson's proposal.
    - At the beginning of each meeting of the Preparatory Committee, the chairperson shall inform the Signatory State representatives of any decisions taken by written procedure since its last meeting.
  
- **Minutes including summary of decisions**
  - Minutes including summary of decisions should be forwarded to the Signatory State representatives as soon as possible after the meeting.
  
- **Transparency and consultations of interested circles**
  - The Preparatory Committee should ensure appropriate involvement of and regular contacts with interested circles.
  - Proposals and other documents which have reached an appropriate stage should be made available to the public, unless the Preparatory Committee decides otherwise in a particular case.

- The Preparatory Committee should when needed hold consultations with interested circles (in particular judges, industry representatives, lawyers, patent attorneys and other interested parties). The first issue on which the users need to be consulted by the Preparatory Committee are the draft rules of procedure.
  - Signatory States may of their own motion hold consultations at national level.
  - The Preparatory Committee should decide on the admittance of observers to its meetings.
- **Confidentiality**
    - Persons taking part in meetings of the Preparatory Committee and receiving documents should preserve the confidentiality of proceedings, votes and documents marked confidential.
- **Groups and teams of experts**
    - The Preparatory Committee should establish groups and where necessary mandate teams of experts to advise a group and / or the Preparatory Committee on particular questions.
    - The Preparatory Committee should designate a coordinator for each group provide guidance for its work.
    - Each group should establish its own work methods, on a proposal from its coordinator.
    - Reports and proposals from the groups should be submitted to the Preparatory Committee for discussion and approval.
    - The rules on confidentiality should apply to any group or team of experts.

- **Representatives shall bear their own travel and subsistence expenses**
- **Secretarial arrangements**
  - A secretariat should provide administrative and logistical support to the Preparatory Committee and its chairperson; this should include to
    - maintain a database containing all documents of the Preparatory Committee,
    - draw up and update the list of Signatory State representatives (names, addresses),
    - format, distribute and archive documents,
    - inform representatives about practical arrangements for meetings (venue, time, local transport, hotels), and
    - draw up draft Minutes and Summary of decisions after each meeting and submit them to the chairperson.
  - The secretariat should provide assistance as above where the Preparatory Committee decides to hold consultations with interested circles.
  - In terms of manpower, one secretarial assistant should be able to deal with the above tasks, at least to start with.
  - Various concepts could be envisaged
    - a (small) group of Signatory States could hire an assistant to carry out the above tasks or
    - one Signatory State could put at the disposal of the Preparatory Committee an assistant from its national administration or
    - the chairperson could bring his assistant.
  - The secretariat could be established in a Permanent Representation of a Signatory State in Brussels or alternatively may be established in the capital of a Signatory State.

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**LIST OF TASKS**

**Area 1. Legal framework**

Proposals should be prepared for:

- Rules relating to the procedures before the UPC
  - Rules of Procedure of the UPC<sup>3</sup>
  - Rules governing the Registry and the sub-registries<sup>4</sup>
  - Rules governing the Registrar's service<sup>5</sup>
- Rules on legal aid.
- Rules on court fees.
- Rules of Procedure of the Administrative, Budget and Advisory Committees<sup>6</sup>
- Rules relating to mediation and arbitration<sup>7</sup>
- Rules on the litigation certificate for patent attorneys.

Forms, model pleadings, "toolboxes" and other guidance to users should be prepared.

**Area 2. Financial aspects**

Proposals should be prepared for the

- level of Court fees<sup>8</sup>,
- level of legal aid<sup>9</sup>,
- schedule for Member States' proportional contribution to a Member State that has paid damages to a party in case of violation of Union law by the UPC<sup>10</sup>,

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<sup>3</sup> To be adopted by the Administrative Committee, see Article 41(2) UPC Agreement.

<sup>4</sup> To be adopted by the Presidium, see Articles 15(3)(e) and 24(1) UPC Statute.

<sup>5</sup> To be adopted by the Court, see Article 10(4) UPC Agreement.

<sup>6</sup> To be adopted by the respective Committee, see Articles 12(4), 13(4) and 14(4) UPC Agreement.

<sup>7</sup> To be established by the Center, see Article 35(3) UPC Agreement.

<sup>8</sup> To be adopted by the Administrative Committee, see Article 36(3) UPC Agreement.

<sup>9</sup> To be adopted by the Administrative Committee, on a proposal from the Court, see Article 71(3) UPC Agreement.

<sup>10</sup> To be determined by the Administrative Committee, see Article 22(3) UPC Agreement.

- Financial Regulations<sup>11</sup>,
- first budget of the UPC<sup>12</sup>,
- salary schemes of the Presidents (CoA, CFI), the judges (including part-time judges), the Registrar and Deputy-Registrar and staff of the UPC<sup>13</sup>, and
- pension arrangements and social security schemes.

### Area 3. IT and Facilities

Software should be developed and tested with a view to

- set up an electronic filing & case management system which must
  - be fully accessible on-line for judges and other staff of the UPC, and
  - enable secure exchange of documents and information both internally (between seats, sections, divisions, panels, judges and staff of the Registry and sub-registries) and externally (between the UPC and parties to proceedings, who should be able to file submissions and documents in electronic form),
- enable public on-line inspection of certain parts of the files<sup>14</sup>, and
- design a comprehensive court website.

An action plan for the UPC's facilities and staff at local level should be prepared,<sup>15</sup> based on recommendations from the Preparatory Committee and regular reports from Member States who will be hosting a division or an instance of the UPC, concerning in particular

- adequate court rooms, offices and other premises,
- software and equipment for video-conferences, audio and video-recording and simultaneous interpretation, and
- recruitment and training of UPC staff at local level (language skills, tasks, work-flow).

<sup>11</sup> To be adopted by the Administrative Committee, see Article 33(1) UPC Statute.

<sup>12</sup> To be adopted by the Budget Committee on a proposal from the Presidium, see Articles 26(1) and 15(3)(b) UPC Statute.

<sup>13</sup> Article 12 UPC Statute. However, administrative support staff will for the most part be remunerated directly by Contracting Member States (during the first 7 years), in accordance with Article 37(1) UPC Agreement.

<sup>14</sup> Article 10(1) UPC Agreement provides that "the register ... shall be public". See also Article 24(2) UPC Statute and Rule 262.1 of the draft Rules of Procedure of the UPC.

<sup>15</sup> See Draft Declaration, point 7.

#### Area 4. Human resources and training

As regards the training of judges, the Draft Declaration already provides that a training plan for judges must be set up as soon as possible by the Preparatory Committee.<sup>16</sup> Later on, preparations should be made for setting up the permanent Training framework for Judges provided for by Article 19(1) UPC Agreement.<sup>17</sup>

Preparations should in addition be made for the election of the members of the Advisory Committee and the selection of the first judges. Thoughts should also be given to the establishment of the "Pool of Judges"<sup>18</sup> and the "regional list of judges"<sup>19</sup>.

Proposals for staff regulations of officials and other servants of the UPC should also be prepared.<sup>20</sup>

Finally, preparations must be made for drawing up the following lists

- List of European Patent Attorneys entitled to represent parties before the Court. ")<sup>21</sup>
- List of mediators and arbitrators<sup>22</sup>
- List of experts<sup>23</sup>

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<sup>16</sup> Draft Declaration points 4 and 5.

<sup>17</sup> To be adopted by the Presidium, see Article 19(1) UPC Agreement and Article 11(1) UPC Statute. Article 15(3)(c) UPC Statute refers to "guidelines for the training programme for judges".

<sup>18</sup> To be drawn up by the Registrar, see Article 20(1) UPC Statute.

<sup>19</sup> Article 8(4) UPC Agreement.

<sup>20</sup> To be adopted by the Administrative Committee, see Article 16(2) UPC Statute.

<sup>21</sup> To be established by the Administrative Committee, see Article 48(3) UPC Agreement.

<sup>22</sup> Article 35(4) UPC Agreement.

<sup>23</sup> Article 57(2) draft UPC Agreement.