



## EU unitary patent: Council move would infringe EU law, says EP rapporteur

Committees: Committee on Legal Affairs

**The European Council's move to change the draft law to create an EU patent would "infringe EU law" and make the rules "not effective at all", Bernhard Rapkay (S&D, DE), who is responsible for the draft legislation, told the Legal Affairs Committee on Tuesday. Most MEPs strongly criticised the European Council's move and agreed to resume the discussion in September.**

The European Council's move to delete 3 key articles from the long-awaited EU patent regulation, and thus greatly reduce the European Court of Justice's power to enforce it, "infringes EU law", said Mr Rapkay. "If you take that content out, there is nothing left to regulate" he pointed out, adding that what remained "would not be effective at all" in ensuring EU-wide protection of patent rights.

Article 6 defines a direct infringement of a unitary patent, article 7 an indirect one, and article 8 the limits on rights conferred by such a patent. Parliament's legal service backed Mr Rapkay, saying that to delete them would "affect the essence of the regulation" and would not be compatible with EU law.

Mr Rapkay commented "Today is not a starting point for new negotiations. We shall stick to the agreement" reached in December 2011. "If there is no EU patent, it's the Council's fault", he added.

Replying to MEPs' questions, a representative of the Council of Ministers' Cyprus Presidency said "We remain committed to achieving a first-reading agreement as soon as possible, since "we cannot lose this opportunity after so many years".

### Members' reactions

"This sets a serious political precedent", said Raffaele Baldassarre (EPP, IT), who was on the negotiating team. After 30 years of "national egoism (...), we need to find a solution that fully respects EU law and follows a transparent procedure with the Council". His view was backed by Eva Lichtenberger (Greens, AT), who added "Council has acted irresponsibly in this area".

Cecila Wikström (ALDE, SE), had no objection to the change of content but said that the European Council's decision meant "national prestige won over the common good, which is a shame". Sajjad Karim (ECR, UK), the only speaker who favoured deleting the three articles, explained that he was against referring patent disputes to the ECJ, as this would be "too slow".

The committee will discuss the issue with Parliament's legal service again after the summer recess, possibly in September.

### Background

# Press release

Parliament and Council negotiators reached a political deal in December 2011 on the so-called "patent package", which includes the unitary patent, the language regime and the unified patent court. Nevertheless, Parliament several times postponed the vote as the question of the location of the seat of the Unified Patent Court had yet to be decided by the member states.

The location of the Unified Patent Court's seat was in fact settled at the European Council of 28 and 29 June 2012. However, the heads of state and government suggested that articles 6 to 8 of the draft regulation on the creation of the unitary patent should be deleted. In effect, this would mean that the competence of the European Court of Justice in patent litigation cases would be considerably reduced.

The three MEPs who brokered the agreement with Council in December 2011 are Mr. Rapkay, Klaus-Heiner Lehne (EPP, DE) and Mr. Baldassarre.

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*In the Chair: Klaus-Heiner LEHNE (EPP, DE)*

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