



**COUNCIL OF
THE EUROPEAN UNION**



17076/09 (Presse 365)

PROVISIONAL VERSION

PRESS RELEASE

2982nd Council meeting

Competitiveness (Internal Market, Industry and Research)

Brussels, 3-4 December 2009

President

Mr Tobias KRANTZ

Minister for Higher Education and Research

Mrs Nyamco SABUNI

Minister for Consumer Affairs

Mrs Maud OLOFSSON

Deputy Prime Minister and Minister for Enterprise and
Energy

Dr Ewa BJÖRLING

Minister for Trade

of Sweden

P R E S S

Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 5389 / 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu <http://www.consilium.europa.eu/Newsroom>

17076/09 (Presse 365)

1
EN

Main results of the Council

*The Council adopted conclusions on an enhanced **patent system for Europe** and reached agreement on a future regulation on the **EU-patent** (earlier the "Community" patent).*

*As a contribution to the **EU's future strategy for sustainable jobs and growth**, the Council adopted conclusions on ways to achieve a competitive, innovative and eco-efficient economy, on priorities for the internal market and on the better regulation agenda.*

In the field of research, the Council adopted conclusions on:

- *guidance on **future priorities for European research** and research-based innovation in post-2010 Lisbon strategy;*
- *the future of **information and communication technologies research**, innovation and infrastructures; and*
- ***joint programming of research** in Europe, including the launch of a pilot research initiative on **combating neurodegenerative diseases**, in particular Alzheimer's.*

*Furthermore, the Council adopted a resolution on the enhanced **governance of the European Research Area**.*

CONTENTS¹

PARTICIPANTS5

ITEMS DEBATED

GUIDANCE ON FUTURE PRIORITIES FOR EUROPEAN RESEARCH AND
RESEARCH BASED-INNOVATION - *Council conclusions* 8

ENHANCED GOVERNANCE OF THE EUROPEAN RESEARCH AREA - *Council
resolution*..... 8

THE FUTURE OF INFORMATION AND COMMUNICATION TECHNOLOGIES
RESEARCH, INNOVATION AND INFRASTRUCTURES - *Council conclusions*..... 8

JOINT PROGRAMMING OF RESEARCH IN EUROPE - *Council conclusions*..... 9

CONSUMER RIGHTS DIRECTIVE 10

ENHANCED PATENT SYSTEM FOR EUROPE - *Council conclusions*..... 12

TOWARDS A COMPETITIVE, INNOVATIVE AND ECO-EFFICIENT EUROPE - *Council
conclusions* 23

BETTER REGULATION - *Council conclusions* 23

EUROPEAN PRIVATE COMPANY 24

PRIORITIES FOR THE INTERNAL MARKET - *Council conclusions* 24

OTHER BUSINESS..... 25

OTHER ITEMS APPROVED

INTERNAL MARKET

– Thresholds for award of contracts - Public procurement 29

GENERAL AFFAIRS

– Implementation of the Lisbon Treaty - appointments 29

¹ Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
Documents for which references are given in the text are available on the Council's Internet site (<http://www.consilium.europa.eu>).
Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's Internet site or may be obtained from the Press Office.

AGRICULTURE

- Type-approval of agricultural or forestry tractors - regulatory procedure with scrutiny30

PARTICIPANTS

The Governments of the Member States and the European Commission were represented as follows:

Belgium:

Mr Vincent VAN QUICKENBORNE
Mr Benoît CEREXHE

Minister for Enterprise and Simplification
Minister of the Brussels Capital Regional Government,
with responsibility for Employment, Economic Affairs,
Scientific Research, Fire Prevention and Emergency
Medical Aid

Mr Kris PEETERS

Minister-President of the Flemish Government and
Flemish Minister for Institutional Reform, Administrative
Affairs, External Policy, Media, Tourism, Ports,
Agriculture, Sea Fisheries and Rural Policy

Bulgaria:

Mr Evgeny ANGELOV

Deputy Minister for Economy, Energy and Tourism

Czech Republic:

Ms Miroslava KOPICOVÁ
Mr Martin TLAPA

Minister for Education, Youth and Sport
Deputy Minister for Industry and Trade

Denmark:

Ms Lene ESPERSEN
Mr Uffe TOUDAHL PEDERSEN

Minister for Economic Affairs, Trade and Industry
State Secretary, Ministry of Science, Technology and
Innovation

Germany:

Mr Rainer BRÜDERLE
Ms Sabine LEUTHEUSSER-SCHNARRENBARGER
Mr Thomas RACHEL

Federal Minister for Economics and Technology
Federal Minister for Justice
Parliamentary State Secretary to the Federal Minister for
Education and Research

Estonia:

Mr Tõnis LUKAS
Mr Juhan PARTS

Minister for Education and Science
Minister for Economic Affairs and Communications

Ireland:

Ms Mary COUGHLAN

Tánaiste (Deputy Prime Minister) and Minister for
Enterprise, Trade and Employment

Greece:

Mr Stavros ARNAOUTAKIS

State Secretary, Ministry of Economy, Competitiveness
and Shipping

Spain:

Ms Cristina GARMENDIA MENDIZÁBAL
Mr Miguel SEBASTIÁN GASCÓN

Minister for Science and Innovation
Minister for Industry, Tourism and Trade

France:

Mr Pierre LELLOUCHE

Minister of State with responsibility for European affairs,
attached to the Minister for Foreign and European Affairs

Italy:

Mr Andrea RONCHI

Minister without portfolio, Minister for European Policies

Cyprus:

Mr Costas IACOVOU
Mr Efstathios CHAMBOULLAS

Director of Planning at the Planning Bureau
General Director, Ministry of Commerce

Latvia:

Mr Artis KAMPARS
Ms Tatjana KOŅE

Minister for Economic Affairs
Minister for Education and Science

Lithuania:

Mr Rimantas ŽYLIUS

Deputy Minister for the Economy

Luxembourg:

Mr Jeannot KRECKÉ

Minister for Economic Affairs and Foreign Trade

Hungary:

Ms Judit LÉVAYNÉ FAZEKAS

Mr Zoltán MESTER

State Secretary, Ministry of Justice and Law Enforcement
State Secretary, Ministry of National Development and
Economic Affairs

Malta:

Mr Jason AZZOPARDI

Parliamentary Secretary for Revenues and Land in the
Ministry of Finance, the Economy and Investment

Netherlands:

Ms Maria van der HOEVEN

Mr Ronald PLASTERK

Minister for Economic Affairs
Minister for Education, Culture and Science

Austria:

Mr Johannes HAHN

Mr Reinhold MITTERLEHNER

Federal Minister for Science and Research
Federal Minister for Economics, Family and Youth

Poland:

Mr Igor DZIALUK

Mr Marcin KOROLEC

Mr Jerzy SZWED

Deputy State Secretary, Ministry of Justice
Deputy State Secretary, Ministry of Economic Affairs
Deputy State Secretary, Ministry of Science and Higher
Education

Portugal:

Mr José MARIANO GAGO

Mr José VIEIRA DA SILVA

Mr Fernando SERRASQUEIRO

Minister for Science, Technology and Higher Education
Minister for Economic Affairs, Innovation and
Development
State Secretary for Trade, Services and Consumer
Protection

Romania:

Mr Bogdan MANOIU

Mr Bogdan CHIRIOIU

Mr Marian ECHANESCU

Minister for European Affairs
State Secretary
State Secretary

Slovenia:

Mr Jozsef GYÖRKÖS

State Secretary at the Ministry of Higher Education,
Science and Technology

Slovakia:

Mr Jozef HABÁNIK

Mr Peter ŽIGA

State Secretary at the Ministry of Education
State Secretary at the Ministry of the Economy

Finland:

Ms Anni SINNEMÄKI

Ms Riina NEVAMÄKI

Minister for Labour
State Secretary for Economic Affairs

Sweden:

Ms Maud OLOFSSON

Ms Ewa BJÖRLING

Mr Tobias KRANTZ

Ms Nyamko SABUNI

Mr Peter HONETH

Mr Jöran HÄGGLUND

Mr Gunnar WIESLANDER

Deputy Prime Minister and Minister for Enterprise and
Energy
Minister for Trade
Minister for Higher Education and Research
Minister for Integration and Equal Opportunities
State Secretary to the Minister for Higher Education and
Research
State Secretary to the Minister for Enterprise and Energy
State Secretary to the Minister for Trade

United Kingdom:

Mr Kevin BRENNAN

Mr David LAMMY

Mr Ian LUCAS

Minister of State for Further Education, Skills,
Apprenticeships and Consumer Affairs
Minister of State for Higher Education and Intellectual
Property
Parliamentary Under Secretary of State for Business and
Regulatory Reform

Commission:

Mr Günter VERHEUGEN
Mr Janez POTOČNIK
Ms Neelie KROES
Ms Meglena KUNEVA

Vice-President
Member
Member
Member

ITEMS DEBATED

**GUIDANCE ON FUTURE PRIORITIES FOR EUROPEAN RESEARCH AND RESEARCH
BASED-INNOVATION - *Council conclusions***

The Council held a public policy debate on future priorities for research as a contribution to the post-2010 Lisbon strategy for the creation of growth and jobs.

The debate concentrated on three main subjects dealing with targets in the post-2010 strategy, the need to ensure a better interaction between research, research-based innovation and education, as well as a substantial simplification of administrative processes and rules for research funding.

After the debate, the Council adopted the conclusions set out in document [17189/09](#).

**ENHANCED GOVERNANCE OF THE EUROPEAN RESEARCH AREA - *Council
resolution***

The Council adopted the resolution set out in document [17159/09](#).

**THE FUTURE OF INFORMATION AND COMMUNICATION TECHNOLOGIES
RESEARCH, INNOVATION AND INFRASTRUCTURES - *Council conclusions***

The Council adopted the conclusions set out in document [17190/09](#).

JOINT PROGRAMMING OF RESEARCH IN EUROPE - Council conclusions

- (a) Launch of the pilot joint programming initiative on combating neurodegenerative diseases, in particular Alzheimer's
- (b) Progress in joint programming and the way ahead

The Council adopted the conclusions set out in document [17226/09](#).

CONSUMER RIGHTS DIRECTIVE

In public session, the Council held a policy debate on a draft directive aimed at improving the functioning of the Internal Market while ensuring a high level of consumer rights across the EU, by revising and complementing four existing directives¹ and introducing new rules on delivery and the passing of risk.

The outcome of the debate will provide guidance and a solid basis for continuing work in the coming months.

After the debate the Presidency summed up the debate along the following lines:

"Interventions focused on important challenges ahead, including:

- the consumers and the citizens situation in the internal market;
- the technical development and the e-Commerce, which by nature is borderless;
- the cross-border dimension between regions, between neighbouring countries and within the whole internal market; and
- the need for balance between consumer rights and the obligations on traders.

Although the points of departure of the member states sometimes differ, we see the need for more common rules to achieve a modern, clear European consumer policy providing legal certainty.

The Swedish Presidency will take into account views expressed by delegations when finalising a revised version of the draft directive.

¹ Directive 85/577/EEC on contracts negotiated away from business premises, Directive 93/13/EEC on unfair terms in consumer contracts, Directive 97/7/EC on distance contracts and Directive 1999/44/EC on consumer sales and guarantees.

There is a broad support for wide definitions of distance contracts and off premises contracts so as to ensure that consumers are entitled to specific information and a right of withdrawal in more cases than today.

A number of delegations expressed support for common rules on the right of withdrawal and a large majority of delegations mentioned a 14 day right of withdrawal for consumers both for distance and off premises contracts.

When it comes to the rules on delivery and faulty goods, several participants raised some concerns, while showing the willingness to pave the way for achieving solutions.

A large number of EU member states think that there are specific areas which should not be covered by some or all parts of the directive, such as contracts on immovable property and financial services."

Previous negotiations proved that clarifications are deemed necessary to the text of the Commission proposal ([14183/08](#)) in order to well reflect essential elements such as the scope of the future directive, the coherence with other Community legislation and the interaction with the general contract law of the member states.

The proposal covers the right to information and withdrawal when buying on distance and off premises, refund when terminating a contract due to late delivery and remedies for faulty goods. There is also a ban on unfair contract terms. The aim is an updated, clear and more uniform set of rules concerning consumer rights when purchasing goods and services in order to contribute to a properly functioning internal market as well as to ensure a high level of protection for consumers.

The proposal, which requires co-decision with the European Parliament, was submitted in October 2008 following the review of the *consumer acquis* launched in 2004.

ENHANCED PATENT SYSTEM FOR EUROPE - Council conclusions

EU-PATENT REGULATION

The Council held a debate on an enhanced patent system in Europe and adopted conclusions on the main features of the future patent system based on two main pillars comprising:

1. the creation of a unified patent litigation system that would have exclusive jurisdiction in respect of civil litigation related to the infringements and validity of EU and European patents, and would consist of a court of first instance (with a central division and local and regional divisions), and a court of appeal.
2. the creation of an EU patent as a unitary legal instrument for granting patents valid in the EU as a whole. In a public session the Council also agreed on a general approach (i.e. an agreement in principle pending the opinion of the European Parliament) on a draft regulation establishing the EU patent.

The conclusions, which will form the basis for continuing work, are reproduced here below:

"THE COUNCIL OF THE EUROPEAN UNION,

1. RECALLING that enhancing the patent system in Europe is a necessary prerequisite for boosting growth through innovation and for helping European business, in particular SMEs, face the economic crisis and international competition;
2. CONSIDERING that such an enhanced patent system is a vital element of the Internal Market and that it should be based on two pillars, i.e. the creation of a European Union patent (hereafter "EU patent") and the setting up of an integrated specialised and unified jurisdiction for patent related disputes thus improving the enforcement of patents and enhancing legal certainty;
3. ACKNOWLEDGING the considerable amount of work accomplished so far by the Council's preparatory bodies on the legal instruments needed to establish the above-mentioned two pillars;

4. AGREES that the following conclusions on the main features of the European and EU Patents Court (I) could form the basis of, while on the EU patent (II) they should form part of the overall final agreement on a package of measures for an Enhanced Patent System in Europe comprising the creation of a European and EU Patents Court (EEUPC), an EU patent, including the separate regulation on the translation arrangements referred to in point 36 below, an Enhanced Partnership between the European Patent Office and central industrial property offices of Member States and, to the extent necessary, amendments to the European Patent Convention;
5. STRESSES that the following conclusions are without prejudice to the request for an opinion of the European Court of Justice as well as to Member States' individual written submissions and are conditional on the opinion of the European Court of Justice ;
6. TAKES NOTE of the Draft Agreement on the European and Community Patents Court in document 7928/09 of 23 March 2009 (below the Draft Agreement), acknowledges that some elements of the envisaged agreement are under particular discussion;
7. STRESSES, that the system here envisaged should be established with due regard to the constitutional provisions of the Member States and is without prejudice to the request for an opinion of the European Court of Justice; and that the establishment of the EEUPC would be based on an agreement, the ratification of which by the Member States would have to take place in full compliance with their respective constitutional requirements;
8. AGREES that the decision on the seat arrangements for the EEUPC should be taken as part of the overall final agreement referred to in point 4 above and shall be in accordance with relevant EU acquis;

9. RECOGNISES that some Member States have fundamental legal concerns concerning the creation of the EEUPC and its envisaged overall architecture as reflected in these conclusions, which would have to be revisited in the light of the opinion of the European Court of Justice.

I. MAIN FEATURES OF THE EUROPEAN AND EU PATENTS COURT

THE EUROPEAN AND EU PATENTS COURT

10. The EEUPC should have exclusive jurisdiction in respect of civil litigation related to the infringement and validity of EU patents and European patents.
11. As outlined in the Draft Agreement, the EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions.
12. The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.

THE COMPOSITION OF THE PANELS

13. In order to build up trust and confidence with users of the patent system and to guarantee the high quality and efficiency of the EEUPC's work, it is vital that the composition of the panels is organised in a way which makes best use of experience of patent litigation among judges and practitioners at national level through pooling of resources. Experience could also be acquired through theoretical and practical training which should be provided in order to improve and increase available patent litigation expertise and to ensure a broad geographic distribution of such specific knowledge and experience.
14. All panels of the local and regional divisions and the central division of the Court of First Instance should guarantee the same high quality of work and the same high level of legal and technical expertise.

15. Divisions in a Contracting State where, during a period of three successive years, less than fifty cases per year have been commenced, should either join a regional division with a critical mass of at least fifty cases per year or sit in a composition whereby one of the legally qualified judges is a national of the Contracting State concerned and two of the legally qualified judges, who are not nationals of the Contracting State concerned, come from the pool of judges to be allocated to the division on a case by case basis.
16. Divisions in a Contracting State where, during a period of three successive years, more than fifty cases per calendar year have been commenced should sit in a composition whereby two of the legally qualified judges are nationals of the Contracting State. The third legally qualified judge, who would be of a different nationality, would be allocated from the pool of judges. The legally qualified judges from the pool should be allocated on a long term basis where this is necessary for the efficient functioning of divisions with a high work load.
17. All panels of the local and regional divisions should comprise an additional technical judge in the case of a counterclaim for revocation or, in the case of an action for infringement, when requested by one of the parties. All panels of the central division should sit in a composition of two legally qualified judges and one technically qualified judge. The technically qualified judge should be qualified in the field of technology concerned and be allocated to the panel from the pool of judges on a case by case basis. Under certain conditions to be defined in the Rules of Procedure and with the agreement of the parties, cases in the First Instance may be heard by a single legally qualified judge.
18. The allocation of judges should be based on their legal or technical expertise, linguistic skills and relevant experience.
19. The provisions regarding the composition of the panels and the allocation of judges should ensure that the EEUPC is an independent and impartial tribunal within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union.

JURISDICTION IN RESPECT OF ACTIONS AND COUNTERCLAIMS FOR REVOCATION

20. In order to ensure that local and regional divisions work in an expeditious and highly efficient way, it is vital that the divisions have some flexibility on how to proceed with counterclaims for revocation.
- (a) Direct actions for revocation of patents should be brought before the central division.
 - (b) A counterclaim for revocation can be brought in the case of an action for infringement before a local or regional division. The local or regional division concerned may;
 - (i) proceed with the counterclaim for revocation; or,
 - (ii) refer the counterclaim to the central division and either proceed with the infringement action or stay those proceedings; or,
 - (iii) with the agreement of the parties, refer the whole case for decision to the central division.

LANGUAGES OF PROCEEDINGS

21. The Draft Agreement, the Statute and the Rules of procedure should provide for arrangements which would guarantee fairness and predictability of the language regime for the parties. Furthermore, any division of the EEUPC should provide translation and interpretation facilities in oral proceedings to assist the parties concerned to the extent deemed appropriate, in particular when one of the parties is an SME or a private party.
22. The language of proceedings of the local and regional divisions should in general be the language(s) of the Contracting State(s) where they would be established. Contracting States may however designate one or more of the official languages of the European Patent Office as language of proceedings of the local or regional division they host. The language of proceedings of the central division should be the language of the patent. The language of proceedings of the Court of Appeal should be the language of the proceedings at the First Instance.

23. Any subsequent decisions which would in any way affect the arrangements regarding the language of proceedings under the Agreement on the EEUPC should be adopted by unanimity.

THE TRANSITIONAL PERIOD

24. The transitional period should not last longer than five years after the entry into force of the Agreement on the EEUPC.
25. During the transitional period, proceedings for infringement or for revocation of a European patent may still be initiated before the national courts or other competent authorities of a Contracting State having jurisdiction under national law. Any proceedings pending before a national court at the end of the transitional period should continue to be subject to the transitional regime.
26. Unless proceedings have already been initiated before the EEUPC, holders of European patents or patent applications granted or applied for prior to the entry into force of the Agreement on the EEUPC should have the possibility to opt out of the exclusive jurisdiction of the EEUPC, if the opt out is notified to the Registry no later than one month before the end of the transitional period.

REVISION CLAUSE CONCERNING THE COMPOSITION OF PANELS AND COUNTERCLAIMS FOR REVOCATION

27. The Commission should closely monitor the functioning, the efficiency and the implications of the provisions regarding the composition of the panels of the First Instance and the jurisdiction in respect of actions and counterclaims for revocation, see points 15, 16 and 20 above. Either six years after the entry into force of the agreement on the EEUPC or after a sufficient number of infringement cases, approximately 2000, have been decided by the EEUPC, whichever is the later point in time, and if necessary at regular intervals thereafter, the Commission should, on the basis of a broad consultation with users and an opinion of the EEUPC, draw up a report with recommendations concerning the continuation, termination or modification of the relevant provisions which should be decided by the Mixed Committee.

28. The Commission should in particular consider alternative solutions that would reinforce the multinational composition of the panels of the local and regional divisions and that would make a referral to the central division of a counterclaim for revocation, or the whole case, subject to agreement of both parties.

PRINCIPLES ON THE FINANCING OF THE EEUPC

29. The EEUPC should be financed by the EEUPC's own financial revenues consisting of the court fees, and at least in the transitional period referred to in point 24 as necessary by contributions from the European Union (hereafter "EU") and from the Contracting States which are not Member States.
30. A Contracting State setting up a local division should provide the facilities necessary for that purpose.
31. The court fees should be fixed by the Mixed Committee on a proposal by the Commission which should include an assessment by the Commission of the expected costs of the EEUPC. The court fees should be fixed at such a level as to ensure a right balance between the principle of fair access to justice, in particular for SMEs and micro-entities, and an adequate contribution of the parties for the costs incurred by the EEUPC, recognising the economic benefits to the parties involved, and the objective of a self-financing court with balanced finances. Targeted support measures for SMEs and micro-entities might also be considered.
32. The EEUPC should be organised in the most efficient and cost effective manner and should ensure equitable access to justice, taking into account the needs of SMEs and micro-entities.
33. The EEUPC costs and financing should be regularly monitored by the Mixed Committee, and the level of the court fees should be reviewed periodically, in accordance with point 31 above.

34. At the end of the transitional period, on the basis of a report from the Commission on costs and financing of the EEUPC, the Mixed Committee should consider the adoption of measures aimed at the objective of self-financing.

ACCESSION

35. Initially, accession by Contracting States of the European Patent Convention who are not Member States of the EU should be open for Contracting Parties to the European Free Trade Agreement. After the transitional period, the Mixed Committee could by unanimity decide to invite Contracting States of the European Patent Convention to adhere if they have fully implemented all relevant provisions of EU law and have put into place effective structures for patent protection.

II. THE EU PATENT

TRANSLATION ARRANGEMENTS

36. The EU Patent Regulation should be accompanied by a separate regulation, which should govern the translation arrangements for the EU patent adopted by the Council with unanimity in accordance with Article 118 second subparagraph of the Treaty on the Functioning of the European Union. The EU Patent Regulation should come into force together with the separate regulation on the translation arrangements for the EU patent.

THE RENEWAL FEES

37. The renewal fees for EU patents should be progressive throughout the life of the patent and, together with the fees due to be paid during the application phase, cover all costs associated with the granting and administration of the EU patent. The renewal fees would be payable to the European Patent Office, which would retain 50 percent of the renewal fees and distribute the remaining amount among the Member States in accordance with a distribution key to be used for patent-related purposes.

38. A Select Committee of the Administrative Council of the European Patent Organisation should, once the EU Patent Regulation enters into force, fix both the exact level of the renewal fees and the distribution key for their allocation. The Select Committee should be composed only of representatives of the EU and all the Member States. The position to be taken by the EU and the Member States in the Select Committee would need to be determined within the Council, at the same time as the EU Patent Regulation is adopted. The level of the renewal fees should in addition to the above mentioned principles be fixed with the aim of facilitating innovation and fostering the competitiveness of European business. It should also reflect the size of the market covered by the EU patent and be similar to the level of the renewal fees for what is deemed to be an average European Patent at the time of the first decision of the Select Committee.
39. The distribution key should be fixed taking into account a basket of fair, equitable and relevant criteria such as for instance the level of patent activity and the size of the market. The distribution key should provide compensation for, among other things, having an official language other than one of the official languages of the European Patent Office, for having disproportionately low levels of patent activity and for more recent EPC-membership.
40. The Select Committee should periodically review its decisions.

THE ENHANCED PARTNERSHIP

41. The aim of the Enhanced Partnership is to promote innovation by enhancing the efficiency of the patent granting process through avoiding duplication of work, with the goal of more rapid delivery of patents which will increase speed of access to market for innovative products and services and reduce costs for applicants. Enhanced Partnership should both make use of central industrial property offices' existing expertise and strengthen their capacity to enhance the overall quality of the patent system in future.

42. Enhanced Partnership should enable the European Patent Office to make regular use, where appropriate, of the result of any search carried out by central industrial property offices of Member States of the European Patent Organisation on a national patent application the priority of which is claimed in a subsequent filing of a European patent application. Such a result should be available to the European Patent Office in accordance with the Utilisation Scheme of the European Patent Office.
43. Central industrial property offices can play a vital role in fostering innovation. All central industrial property offices, including those which do not perform searches in the course of a national patent granting procedure, can have an essential role under the Enhanced Partnership, advising potential applicants including SMEs, disseminating patent information and receiving applications.
44. Enhanced Partnership should fully respect the central role of the European Patent Office in examining and granting European patents. Under the Enhanced Partnership the European Patent Office would be expected to consider but not be obliged to use the work provided by participating offices. The European Patent Office should remain free to carry out further searches. The Enhanced Partnership should not restrict the possibility for applicants to file their application directly at the European Patent Office.
45. Enhanced partnership would be subject to periodic reviews, adequately involving views of the users of the patent system. In addition, regular feed back from the European Patent Office to the participating offices on how search reports are utilised at the European Patent Office would be essential for the enabling of the fine-tuning of the search process to the benefit of the optimal utilisation of resources.
46. Enhanced partnership should be based on a European Standard for Searches (ESS), containing criteria for ensuring quality. The ESS should in addition to searches include standards on inter alia training, tools, feedback and assessment.

47. At the same time as the EU Patent Regulation is adopted, the position to be taken by the EU and the Member States on the implementation of the Enhanced Partnership, including the ESS, should be determined within the Council and then be implemented within the context of the European Patent Network (EPN), in particular, the Utilization Scheme and the European Quality System, within the policy of the European Patent Organisation.
48. The participation of central industrial property offices in an Enhanced Partnership should be voluntary but open to all. In the spirit of facilitating the utilization and pooling of all available resources, regional cooperation should be encouraged. In addition the possibility of limiting the participation of a central industrial property office to one or more specific technical fields should be further analysed, tested and evaluated.
49. The steps now taken should be without prejudice to any future development of the Enhanced Partnership, including future models for improving the partnership between the European Patent Office and the central industrial property offices. Against this background, the European Patent Office and Member States should give a comprehensive evaluation of the functioning and the further development of the Enhanced Partnership, based on experience gained through the implementation and the performance achieved by central industrial property offices in meeting the ESS.

AMENDMENTS TO THE EUROPEAN PATENT CONVENTION AND ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN PATENT CONVENTION

50. In order for the EU patent to become operational, to the extent necessary, amendments would be made to the European Patent Convention (EPC). The EU and its Member States should take any necessary measures and put them into force, including those for the accession of the EU to the EPC. Amendments to the EPC deemed necessary in this regard should not imply any revision of substantive patent law, not related to the creation of the EU patent."

TOWARDS A COMPETITIVE, INNOVATIVE AND ECO-EFFICIENT EUROPE - Council conclusions

Following a debate, the Council adopted the conclusions set out in document [17179/09](#).

BETTER REGULATION - Council conclusions

The Council adopted the conclusions set out in document [16111/09](#).

EUROPEAN PRIVATE COMPANY

Since the unanimity needed for an agreement was not reached, the Council noted that further work is required on the proposal aimed at establishing the legal form for the European private company (also called "*Societas Privata Europaea*" or "SPE").

The draft regulation was presented by the Commission on 27 June 2008 ([11252/08](#)) as part of a series of measures in the Small Business Act for Europe (SBA). It has been examined on a number of occasions in the Council's preparatory bodies and, last May, the Council took note of a progress report ([9658/09](#)) during discussions concerning the implementation of the SBA.

The objective of the proposal is to create a new instrument which seeks to enhance the competitiveness of small and medium-sized enterprises (SMEs) with limited liability by facilitating their establishment and operation in the single market, providing for a flexible corporate law regime across the EU and reducing the compliance costs which arise at the stage of setting-up and operating of SMEs.

PRIORITIES FOR THE INTERNAL MARKET - Council conclusions

The Council adopted the following conclusions with a view to preparing the post-2010 Lisbon agenda for sustainable jobs and growth: ([16112/09](#)).

OTHER BUSINESS

Working lunch discussion on the automotive industry

The Presidency invited representatives of General Motors (GM) to present their plans for restructuring their European operations at an informal lunch in connection with the Council meeting. After the presentation, ministers discussed the situation in the automotive industry. The Presidency noted converging views on the following principles:

- A restructured European automotive industry must build on unique European areas of strength, primarily the internal market and targets to create a greener European car fleet that will contribute to meeting our climate objectives.
- The whole automotive industry can thrive on efficient business processes spanning Europe without market distorting state aid.
- Understanding of the need for manufacturers to adapt production capacities to market developments.
- Member states and the Commission play an important role in promoting research, development and innovation, not least technological development measures taken as part of the European Economic Recovery Plan.
- Any financial support granted to the industry should be based on strictly objective and economic criteria, under the continued strict monitoring and approval by the Commission.
- There is a need for a high degree of transparency, sharing information and not allowing non-commercial conditions to influence the geographic distribution of restructuring measures taken by GM or other companies in the automotive industry.
- Information and consultation practices must be respected and a socially responsible approach should be used.

- It remains essential to avoid subsidy races between the member states and any fragmentation of the internal market.

On the basis of these principles the Commission was invited to continue to coordinate EU policies in this matter, including to make an ex-ante evaluation of the business plan, and verify compliance with state aid and internal market rules.

The Belgian delegation contributed with an information note ([16693/09](#)).

Baltic Sea research project (BONUS-169)

The Commission made a brief presentation on the proposal ([15234/09](#)) for combating the negative impact of pollution, climate change, acidification, overexploitation and biodiversity loss in the Baltic Sea by means of a joint research and development project (the "BONUS-169" programme) undertaken by EU Baltic Sea countries ([16768/09](#)).

ITER experimental fusion reactor project

The Council took note of information by the Commission on the outcome of a meeting of the council of the ITER International Fusion Energy Organisation that took place in Cadarache (France) on 18 and 19 November.

Development of low-carbon technologies (SET-Plan)

The Commission provided the Council with information referring to its communication on Investing in the development of low-carbon technologies (SET-plan). The European Strategic Energy Technology Plan (SET-Plan) was launched by Council conclusions of 28 February 2008. It is aimed at an accelerated development and wide-scale application of clean, sustainable and efficient energy technologies, thereby contributing to the achievement of the EU's energy and climate goals for 2020 as well as to a worldwide transition to a low-carbon economy by 2050.

Extreme Light Infrastructure (ELI) research project

Ministers responsible for research of the Czech Republic, Hungary and Romania proclaimed their will and readiness to construct the ELI research project and invited all member states to participate in the initiative ([16197/09](#)).

Cross-border business to consumer e-Commerce in the EU

The Commission made a brief presentation on a communication ([15058/09](#)) which analyses the impact of the current policy framework affecting the cross-border sale of goods through the Internet. It shows also that e-Commerce is still largely fragmented along national lines, despite considerable potential for more cross-border trade. A number of regulatory barriers are identified in different policy areas.

Conference "Consumer rights when purchasing digital content" (Stockholm, 4 November)

The Presidency briefed the Council on the outcome of the conference¹.

Global Monitoring for Environment and Security (GMES):

The Commission provided an information note ([16546/09](#)) on its communication on GMES: Challenges and Next Steps for the Space Component ([15496/09](#)).

Gambling and betting in the EU

The Council took note of a Presidency report ([16571/09](#)) concerning the legal framework for gambling and betting in the EU member states. The Swedish Presidency conducted a number of experts meetings on exchange of best practice with a particular focus on socio-economic costs of gambling, gambling responsibility measures and bans on the promotion and abetting of crimes.

Marketing of construction products in the internal market

The Council took note of a Presidency progress report regarding the state of play of negotiations on a draft regulation laying down harmonised conditions for the marketing of construction products ([16570/09](#)).

¹ [Consumer rights when purchasing digital content](#)

Better regulation: exercise on sharing good examples

The Presidency briefly presented the results of a survey, inviting member states to list good examples of better regulation measures and their effects ([16596/09](#)).

Google Books

The Commission presented to the ministers for competitiveness a written report on the draft settlement of the pending class action concerning the "Google Library" project. The report was also presented to the Education, Youth and Culture Council on 26/27 November ([15109/09](#)).

Work programme of the incoming Presidency

The Spanish delegation briefed the Council on the working programme in the field of competitiveness policies under its presidency in the first half of 2010. The programme is in line with the combined programme prepared by the Spanish, Belgian and Hungarian presidencies covering the period January 2010 to June 2011 ([16771/09](#)).

OTHER ITEMS APPROVED

INTERNAL MARKET

Thresholds for award of contracts - Public procurement

The Council decided not to oppose the adoption by the Commission of a regulation aimed at adapting the thresholds for the procedures for the award of contracts under:

- directive 2004/17/EC concerning entities operating in the water, energy, transport and postal services;
- directive 2004/18/EC on the coordination of procedures for the award of public contracts; and
- directive 2009/81/EC on the award of contracts in the fields of defence and security.

GENERAL AFFAIRS

Implementation of the Lisbon Treaty - appointments

The Council adopted by common accord with the President-elect of the next Commission, José Manuel Durão Barroso, and in accordance with article 17(3) and (4) and 17(7) of the Lisbon Treaty the list of the other persons whom it proposes for appointment as members of the Commission for the period from the end of the current term of office of the Commission until 31 October 2014 ([16937/09](#)).

Separately, the European Council appointed, with the agreement of the President of the Commission, and in accordance with article 18(1) of the Lisbon Treaty, Catherine Ashton as High Representative of the Union for Foreign Affairs and Security Policy for the period from the end of the current term of office of the Commission until 31 October 2014 ([1/09](#)).

In accordance with article 17(7), third subparagraph, of the Lisbon Treaty, the President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission will be subject as a body to a vote of consent by the European Parliament.

AGRICULTURE

Type-approval of agricultural or forestry tractors - regulatory procedure with scrutiny

The Council decided not to oppose a Commission decision adapting a number of directives relating to the type-approval of agricultural or forestry tractors to technical progress. In accordance with the regulatory procedure with scrutiny, the Council can oppose the Commission's adoption of an act which exceeds the implementing powers of the Commission, is not compatible with the aim or content of the basic instrument or does not respect subsidiarity or proportionality if the regulatory committee previously supported the envisaged measures.
