

# Kluwer Patent Blog

## More time for discussion on Code of Conduct of Unified Patent Court

Kluwer Patent blogger · Thursday, May 12th, 2016

A decision on the Code of Conduct for practitioners at the Unified Patent Court, which was scheduled for May 2016, will likely be postponed. In reaction to a critical letter of the Council of Bars and Law Societies of Europe (CCBE), that argued it should have the opportunity to advise on the draft Code, the UPC Preparatory Committee has said it is happy to receive input from the CCBE and will alter the timetable if necessary.

The [letter of the CCBE](#), an organization that ‘represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers’, was sent to the UPC Preparatory Committee earlier this month.

In the letter, CCBE president Michel Benichou writes: ‘We note that the proposal for a Code of Conduct for the UPC – Second Draft, of which CCBE was only made aware of on 15 April 2016, refers to the Code of Conduct developed by CCBE. I should make clear that, although those at EPLAW who worked on the draft may have seen the CCBE Code, CCBE has not, either through its Patents Working-Group or its Deontology Committee, had the opportunity to consider the draft Code.’ So far, the [EPLAW](#), [EPLIT](#) and [epi](#) have been involved in working on the Code.

Benichou expresses the ‘desire of the CCBE to provide assistance to support the Preparatory Committee’, as it has done ‘about various aspects of the UPC throughout its gestation. (...) We believe that the CCBE is well-positioned to make a considerable contribution to this process, particularly in areas where it has long standing expertise, such as the Codes of Conduct for lawyers in Europe.’

The letter also points out a number of issues with the current, second version of the UPC draft Code of Conduct.

- Complaints Procedure

‘Neither the Rules of Procedure nor the Code appears to explain how a complaint of a breach of the Code is to be made, whether anyone is free to make such a complaint, to whom they should complain, nor whether there is any time limit.’

- Possible conflicting obligations

‘Certain aspects of the draft Code (...) may not take into account the diversity of national

deontological rules, and consequently, risk creating conflicting obligations regarding national codes and charters. This could give rise to a situation whereby a representative could not comply with both the national rules and the UPC Code of Conduct.’

- Appeals

‘The Rules of Procedure and draft Code are both silent on to whom a representative or client may appeal if they consider that a sanction applied by the Court is unfair or inappropriate.’

- Sanctions

‘The Rules of Procedure appear to indicate there is only one sanction available to the judges, namely exclusion from the proceedings under Rule 291. Regulators and Ethics Committees enforcing Codes of Conduct normally have available to them a wide range of sanctions so that they can deal proportionately with each complaint.’

The letter contains only ‘initial observations from within the CCBE which are provided without the benefit of full study’ and states ‘a slightly extended timetable for this aspect of the Preparatory Committee’s work would help achieve a code which is fully fit for purpose. The CCBE will do what it can to ensure a prompt response to the draft Code, but we believe that for a properly considered response to be given, the earliest our views are likely to be available is 24 June.’

According to Peter McNamee, CCBE Senior Legal Advisor, the UPC Preparatory Committee reacted swiftly to the letter. In answer to questions by Kluwer IP Law he explained chairman Alexander Ramsey of the Preparatory Committee has been in contact since. ‘He is happy to receive our input and is happy to cooperate.’ Ramsey also said that he would alter the timetable for an agreement on the Code of Conduct if necessary, according to McNamee, who stressed the contact with the chairman was very positive.

A ‘slightly extended timetable’ seems highly likely, in other words. It remains to be seen what this means for the ambition of the UPC Preparatory Committee to complete its work by its meeting in June 2016.

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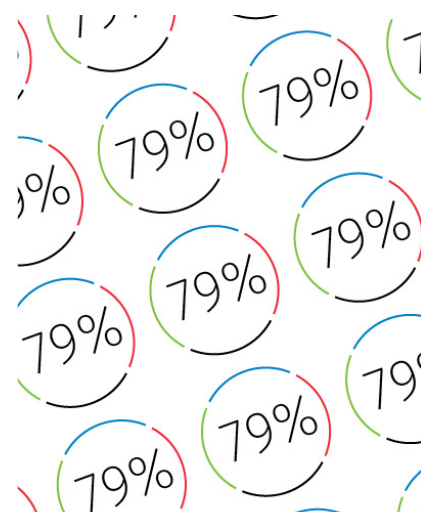
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