



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 5 July 2011**

**12500/11**

**JUR 346**

**PI 87**

**INFORMATION NOTE**

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from : Legal Service

to : Permanent Representatives Committee (part I)

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Subject : **Case before the Court of Justice of the European Union**

- Case **C-274/11** (Kingdom of Spain against Council of the European Union)

- Enhanced cooperation in the area of the creation of unitary patent protection

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1. By application of 30 May 2011, which was notified to the General Secretariat of the Council by the Registrar of the Court of Justice of the European Union on 8 June 2011, the Kingdom of Spain filed an action for annulment, pursuant to Article 263 TFEU, of Council Decision of 10 March 2011<sup>1</sup> authorising enhanced cooperation in the area of the creation of unitary patent protection.
2. Spain considers that the Decision should be annulled by the Court for the following reasons:
  - A. Misuse of powers, since the envisaged enhanced cooperation does not aim to further the objectives of the Union but to exclude a Member State from the negotiations and since the objectives could have been attained via a special agreement provided for in Article 142 of the European Patent Convention.

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<sup>1</sup> OJ L 76 of 22.03.2011, p. 53.

- B. Violation of the jurisdictional system of the Union because of envisaging no procedure to settle disputes concerning the new patent titles.
  - C. Non-respect of essential requirements to establish an enhanced cooperation, particularly those laid down in Article 20 (1) TEU and Articles 236 and 327 TFEU.
3. The Council will submit its statement of defence within the deadline to be set by the Court (the Council has requested an extension of the deadline initially fixed by the Court).
  4. The Director-General of the Legal Service of the Council has appointed Mr Timothy MIDDLETON, Director in the Legal Service of the Council, and Mrs Anna LO MONACO and Mr Fernando FLORINDO GIJÓN, legal advisers in the said service, as the Council's agents in this case.
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