



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 July 2011

12502/11

**JUR 347
PI 88**

INFORMATION NOTE

from : Legal Service
to : Permanent Representatives Committee (part I)
Subject : **Case before the Court of Justice of the European Union**
- Case **C-295/11** (Italy against Council of the European Union)
- Enhanced cooperation in the area of the creation of unitary patent protection

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 17 June 2011, Italy filed an action for annulment, pursuant to Article 263 TFEU, of Council Decision of 10 March 2011¹ authorising enhanced cooperation in the area of the creation of unitary patent protection.
2. Italy considers that the Decision should be annulled by the Court for the following reasons:
 - A. Lack of competence and violation of Article 20(1) first subparagraph TUE : the Union has no competence to establish an enhanced cooperation in the field of Article 118 TFEU for the creation of a new Union intellectual property title .
 - B. Misuse of powers: the envisaged enhanced cooperation does not aim to further the objectives of the Union but to circumvent the unanimity requirement in Article 118(2).

¹ OJ L 76 of 22.03.2011, p. 53.

- C. Non respect of essential requirements to establish an enhanced cooperation, particularly those laid down in Article 20 (2) TEU (last resort condition and impossibility to attain the objectives in a reasonable period by the Union as a whole).
- D. Violation of Articles 118 and 326 TFEU and 20(1) second subparagraph TUE : the enhanced cooperation does not realise a uniform protection of intellectual property rights throughout the Union and hinders the functioning of the internal market since it creates obstacles to trade between Members States and distorts competition.
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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