



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 47/13

Luxembourg, 16 April 2013

Judgment in Joined Cases C-274/11 and C-295/11
Spain and Italy v Council

The Court has dismissed the actions brought by Spain and Italy against the Council's decision authorising enhanced cooperation in the area of the single European patent

In the light of it being impossible for the Member States to agree on a common system for the whole EU within a reasonable period, the contested decision contributes to the process of European integration

Enhanced cooperation is aimed at furthering the objectives of the EU, protecting its interests and reinforcing its integration process. A decision authorising enhanced cooperation is to be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the EU as a whole. The decision is adopted by the Council on a proposal from the Commission and after obtaining the consent of the Parliament.

By a decision adopted in 2011¹, the Council authorised enhanced cooperation, with a view to creating the single European patent, between 25 Member States (out of the 27 in the EU), Spain and Italy having refused to participate. The aim of that cooperation is also to set up centralised EU-wide authorisation, coordination and supervision arrangements.

Spain and Italy requested the Court of Justice to annul the Council's decision², maintaining that it was invalid for several reasons.

The Court has observed, first of all, that the Treaty on the Functioning of the European Union (TFEU) authorises the EU, in the context of the internal market, to create European intellectual property rights. Furthermore, the competence to adopt the language arrangements for those rights is closely bound up with their creation. As a result, those competences that fall within the sphere of the functioning of the internal market come within the ambit of competences shared between the EU and the Member States. The non-exclusiveness of those competences means that the Council is competent to authorise that enhanced cooperation.

In their actions, Spain and Italy claimed that the Council, by authorising that enhanced cooperation, circumvented the requirement of unanimity and brushed aside those two Member States' objections to the Commission's proposal on the language arrangements for the single European patent. Examining this argument, the Court stressed that nothing forbids the Member States to establish between themselves enhanced cooperation within the ambit of those competences of the EU that must, in accordance with the Treaties, be exercised unanimously. On the contrary, it follows from the TFEU that, when the conditions laid down in the Treaties have been satisfied, those powers may be used in enhanced cooperation and that, in that case, provided that the Council has not decided to act by qualified majority, it is the votes of only those Member States taking part that constitute unanimity. Consequently, the Council's decision to authorise enhanced cooperation, having found that the single European patent and its language arrangements could not be established by the EU as a whole within a reasonable period, by no means constitutes

¹ Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53).

² The Council is supported by Belgium, the Czech Republic, Germany, Ireland, France, Hungary, the Netherlands, Poland, Sweden, the United Kingdom, the European Parliament and the Commission.

circumvention of the requirement of unanimity or exclusion of those Member States that did not join in making requests for enhanced cooperation, but rather, having regard to its being impossible to reach common arrangements for the whole EU within a reasonable period, contributes to the **process of integration**.

Next, the Court considered Spain and Italy's argument based on the provision of the Treaty on European Union under which the Council may not authorise enhanced cooperation except '**as a last resort**, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the EU as a whole.' In this regard, the Court emphasised that the EU's interests and the process of integration would, quite clearly, not be protected if all fruitless negotiations could lead to one or more instances of enhanced cooperation, to the detriment of the search for a compromise enabling the adoption of legislation for the EU as a whole. However, in this case it has been shown that the Council did carefully and impartially ascertain whether the condition of 'last resort' had been met.

In this connection the Council took into consideration the fact that the legislative process undertaken with a view to the establishing of a unitary patent at EU level was begun during the year 2000 and carried out in several stages. It is apparent too that a considerable number of different language arrangements for the unitary patent were discussed among all the Member States within the Council and that none of those arrangements found support capable of leading to the adoption at EU level of a full 'legislative package' relating to that patent.

The Court has held to be unfounded Spain and Italy's argument that the protection conferred by that unitary patent would not be advantageous in terms of uniformity, and so of integration, compared to the situation created by the operation of the rules laid down by the EPC³. European patents granted in accordance with the rules of the EPC do not confer uniform protection in the Contracting States to that convention but rather, in every one of those States, guarantee protection whose extent is defined by national law. In contrast, the single European patent contemplated by the contested decision would confer uniform protection in the territory of all the Member States taking part in the enhanced cooperation. Furthermore, contrary to what has been claimed, **the contested decision does not damage the internal market or the economic, social and territorial cohesion of the EU**. What is more, according to the Court, **the contested decision does not prejudice any competence, right or obligation of those Member States** not participating in this enhanced cooperation. While it is, admittedly, essential for enhanced cooperation not to lead to the adoption of measures that might prevent the non-participating Member States from exercising their competences and rights or shouldering their obligations, it is, in contrast, permissible for those taking part in this cooperation to prescribe rules with which those non-participating States would not agree if they did take part in it. The prescription of such rules does not, in any case, render ineffective the opportunity for non-participating Member States of joining in the enhanced cooperation in future.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

³ Convention on the grant of European patents (European Patent Convention), signed at Munich (Germany) on 5 October 1973, which entered into force on 7 October 1977.