

**Question for written answer P-002594/2011
to the Council**
Rule 117
Antonio Masip Hidalgo (S&D)

Subject: Court of Justice opinion on European Patent Court

The 'important' Opinion 1/09 delivered yesterday, 8 March, by the European Union's Court of Justice states that the European scheme for creating a 'European and Community Patent Court' 'is not compatible with the provisions of European Union law', because the European and Community Patent Court 'has a duty to interpret and apply not only the provisions of the envisaged international agreement, but also provision of European Union law', which would 'deprive national courts and tribunals of the power, or, as the case may be, the obligation, to refer questions to the Court of Justice for a preliminary ruling'; and that 'if a decision of the European and Community Patent Court were to be in breach of European Union law it could not be the subject of infringement proceedings nor could it give rise to any financial liability on the part of one or more Member States'. Does the Council think that enhanced cooperation in the area of patents is still viable, in the shape in which it was formulated before this extremely important Opinion was delivered?

Does the Council not think that this Opinion constitutes an important legal precedent which will have to be taken into account in the enhanced cooperation in question, the legal bases whereof should therefore be amended?

Does the Council not think that the changes which need to be made to the draft proposal for a European Patents Court call for a fresh deadline to be set? Does the Council still envisage adopting this enhanced cooperation within the established deadline, under the Hungarian Presidency? Does it still have the same degree of Member State support for enhanced cooperation as existed before the Opinion was delivered?