



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 June 2009

11183/09

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"I/A" ITEM NOTE

from : Legal Service
to : Permanent Representatives Committee (Part 1)/Council
Subject : Request for an opinion by the European Court of Justice on the compatibility with the EC Treaty of the envisaged Agreement creating a Unified Patent Litigation System

1. At its 2945th meeting on 28 and 29 May 2009 the Council agreed in principle to request the Court of Justice to give an opinion on whether the envisaged Agreement, to be concluded between the Community, its Member States and other Contracting Parties to the European Patent Convention, is compatible with the EC Treaty. The Council instructed the Council Legal Service to prepare the necessary documents and submit them to the Council for approval as soon as possible.
2. The Legal Service drew up a draft request for an opinion¹, which was discussed by the Working Party on Intellectual Property (Patents) on 12 June 2009. In the light of comments made during the meeting and comments subsequently received by the Legal Service, the draft request was amended and informally distributed to members of the said Working Party for comments on 16 June 2009. Further to the comments received, two additions have been made: a last sentence has been added to paragraph 17 to provide a more complete picture of views expressed by delegations and footnote 31 has been rendered more explicit. The revised draft is to be found in document No 11125/09 of 18 June 2009.

¹ Document of the Council No 10571/09 of 9 June 2009.

3. Annex 3 to the draft request for an opinion is a "LIMITE" document, i.e. the Recommendation from the Commission to the Council to authorise the Commission to open negotiations for the adoption of an Agreement creating a Unified Patent Litigation System (document No 7927/09). The Legal Service is of the view that this document does not contain any confidential information which might prejudice the Council's interests if it was produced for use in legal proceedings.

4. Therefore, the Legal Service recommends that Coreper/Council:

- decide to seek the opinion of the Court of Justice, in accordance with Article 300(6) of the EC Treaty, on the following question, which is set out in document No 11125/09 of 18 June 2009:

"Is the envisaged Agreement creating a Unified Patent Litigation System (currently named European and Community Patents Court) compatible with the provisions of the Treaty establishing the European Community?"

- authorise the production of the document referred to in paragraph 3 above for use before the Court of Justice, in accordance with Article 6(2) of the Council's Rules of Procedure.
- enter into the minutes of the Council the statement by Cyprus set out in the Addendum to this Note.
