



Opinion 1/09 of 8 March 2011

The Court rules that the plan to create the European Patents Court is incompatible with Union law.

In this opinion, the Court of Justice ruled on the compatibility with Union law of a draft agreement between the Member States, the European Union and third countries which are parties to the European Patent Convention signed at Munich on 5 October 1973. This draft agreement concerned the creation of a court with jurisdiction to hear actions related to European and future Community patents (the latter being a unitary industrial property right valid throughout the Union, provided for under a Commission proposal for a Regulation in 2000).

The Court points out in its opinion that a new international court created in this way would be vested with exclusive jurisdiction (to the detriment of the national courts) in respect of a significant number of actions brought by individuals in the field of patents. In addition, it would be called upon, in the field of its jurisdiction, to interpret and apply secondary Union legislation and certain rules of the TFEU. Likewise, it could determine disputes in the light of the fundamental rights and general principles of Union law.

According to the Court, this transfer of powers to an international court which is outside the institutional and judicial framework of the Union would deprive the national courts of their task, as "ordinary" courts within the Union legal order, to implement Union law. In particular, the Court emphasises that, according to the draft agreement, a preliminary ruling mechanism would reserve the power to refer for a preliminary ruling questions within the scope of that agreement to that court alone, by removing that power from the national courts.

In addition, the system of reference for a preliminary ruling set up by Article 267 TFEU establishes direct cooperation between the Court of Justice and the national courts, which in this way are involved in the correct application and uniform interpretation of Union law and in the protection of individual rights conferred by that legal order. Consequently, the tasks attributed to the national courts and to the Court of Justice respectively in this context are indispensable to the preservation of the nature of Union law.

Moreover, the Court finds that if a decision by the international court provided for by the draft agreement were to be in breach of Union law, that decision (contrary to the decisions of the national courts) could not be the subject of infringement proceedings nor could it give rise to any financial liability on the part of the Member States.

The Court concludes from this that the creation of the European and Community Patents Court under the conditions provided for in the draft agreement would be incompatible with the Treaties.