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## **REPORT**

on the proposal for a Council regulation amending Council Regulation (EC) No 1587/98 of 17 July 1998 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of those regions' remoteness (COM(2001) 498 – C5-0446/2001 – 2001/0200(CNS))

Committee on Fisheries

Rapporteur: Carlos Lage

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 25 September 2001 the Council consulted Parliament, pursuant to Article 37 of the EC Treaty, on the proposal for a Council regulation amending Council Regulation (EC) No 1587/98 of 17 July 1998 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of those regions' remoteness (COM(2001) 498 – - 2001/0200(CNS)).

At the sitting of 1 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Fisheries as the committee responsible and the Committee on Budgets and the Committee on Regional Policy, Transport and Tourism for their opinions (C5-0446/2001).

The Committee on Fisheries appointed Carlos Lage rapporteur at its meeting of 9 October 2001.

It considered the Commission proposal and the draft report at its meetings of 19 November 2001, 24 January and 20 February 2002.

By letter of 5 February 2002 the Committee decided to request the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis of the proposal, pursuant to Rule 63(2) of the Rules of Procedure.

At the latter/last meeting it adopted the draft legislative resolution by 17 votes to 1.

The following were present for the vote: Rosa Miguélez Ramos, acting chairman, Brigitte Langenhagen and Hugues Martin, vice-chairmen; Carlos Lage, rapporteur; Elspeth Attwooll, Niels Busk, Arlindo Cunha, Ian Stewart Hudghton, Salvador Jové Peres, Heinz Kindermann, Giorgio Lisi, Albert Jan Maat, (for Struan Stevenson), Patricia McKenna, James Nicholson, Juan Ojeda Sanz, Manuel Pérez Álvarez, Bernard Poignant, Dominique F.C. Souchet (for Michael John Holmes), Catherine Stihler and Daniel Varela Suanzes-Carpegna.

The opinion of the Committee on Legal Affairs and the Internal Market on the legal basis is attached. The Committee on Regional Policy, Transport and Tourism decided on 20 November 2001 not to deliver an opinion. The Committee on Budgets decided on 22 January 2002 not to deliver an opinion.

The report was tabled on 21 February 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Proposal for a Council regulation amending Council Regulation (EC) No 1587/98 of 17 July 1998 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of those regions' remoteness (COM(2001) 498 – C5-0446/2001 – 2001/0200(CNS))**

The proposal is amended as follows:

Text proposed by the Commission<sup>1</sup>

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Amendments by Parliament

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### Amendment 1

#### Recital 1

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 37 *and Article 299(2)* thereof,

### *Justification*

*Article 299(2) allows the Council, on a proposal from the Commission and after consulting the European Parliament, to adopt specific measures for the outermost regions, aimed at laying down the conditions of application of common policies, such as fisheries policy..*

### Amendment 2

#### Recital 4

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<sup>1</sup> OJ C 332 E, 27.11.2001, p. 247.

(4) A detailed evaluation of the impact of the implementation of the special measures adopted for the fisheries sector in the outermost regions is needed in order to submit the report provided for in Article 6 of Regulation (EC) No 1587/98. It is not possible to carry out the evaluation by 1 June 2001, as required under that Article.

(4) A detailed evaluation of the impact of the implementation of the special measures adopted for the fisheries sector in the outermost regions is needed in order to submit the report provided for in Article 6 of Regulation (EC) No 1587/98. It is not possible to carry out the evaluation by 1 June 2001, as required under that Article, ***since the results of the study which the Commission has in the meantime requested from external consultants will not be available until the final quarter of 2001.***

#### *Justification*

*The Commission itself states that the absence of this study by external consultants is the reason for the failure to submit the evaluation report required under Article 6 of Council Regulation (EC) No 1587/98.*

#### Amendment 3 Recital 5

(5) After carrying out the above evaluation, and as part of the debate on the future of the common fisheries policy, the Commission will submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the measures provided for in Regulation (EC) No 1587/98 together, ***if appropriate***, with a new proposal.

(5) After carrying out the above evaluation, and as part of the debate on the future of the common fisheries policy, the Commission will submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the measures provided for in Regulation (EC) No 1587/98 together with a new proposal, ***based on Article 299(2) of the Treaty, which will take into account the need to envisage the creation of a permanent scheme to compensate for the additional costs, without prejudice to its regular revision.***

*Justification*

*Given that the conditions which give rise to the additional costs are not likely to change, since they stem from the particular situation of the outermost regions, it must be envisaged that a scheme for compensating those costs should be maintained indefinitely. That scheme would be adjusted at regular intervals instead of being restricted to a certain period through a series of regulations, with Article 299(2) of the Treaty being clearly cited as the legal basis.*

Amendment 4  
Recital 6 a (new)

***(6a) Such an extension must not however prevent specific adjustments to the scheme, without entailing any change to the overall financial provisions set out in Article 2(1) to (5) of Council Regulation (EC) No 1587/98 for each of the outermost regions.***

*Justification*

*To make it possible for the funds not used in the various regions, with respect to certain species or products, for particular reasons linked to the characteristics of some species or activities, and to the circumstances in which some species are caught, to be reassigned to other species or products provided for in the above Regulation.*

Amendment 5  
Article 1 a (new)

***Article 1a***  
***Article 2(6) of Regulation (EC) No 1587/98 of 17 July 1998 shall read as follows: 'The Commission may, in accordance with the procedure laid down in Article 4, adjust the amounts and quantities set for the various species and products in the light of their marketing conditions and characteristics, within the overall financial provisions set out in***

*each of paragraphs 1 to 5'.*

*Justification*

*This amendment would make it possible, in certain cases, to reassign funds which, for particular reasons, were not used for certain species and products to other species or products covered by adjusting both the amounts and the quantities set, within the overall financial provisions laid down in Regulation (EC) No 1587/98 for each of the outermost regions.*

Amendment 6  
Article 1 b (new)

***Article 1b***

***1b. The Commission shall send the European Parliament a copy of the study carried out by external consultants on the impact of all the Community measures adopted to date in the fisheries sector for the outermost regions as soon as it is available.***

*Justification*

*It is important to improve the information supplied to Parliament if Parliament is to be able to prepare its position properly and in good time, in this as in other matters related to fisheries in the outermost regions. The relevance of the study is underlined in the amendment tabled to recital 4.*



## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a Council regulation amending Council Regulation (EC) No 1587/98 of 17 July 1998 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of those regions' remoteness (COM(2001) 498 – C5-0446/2001 – 2001/0200(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2001) 498<sup>1</sup>),
  - having been consulted by the Council pursuant to Article 37 of the EC Treaty (C5-0446/2001),
  - having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Fisheries (A5-0041/2002),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
  5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 332 E, 27.11.2001, p. 247.

## EXPLANATORY STATEMENT

### Commission proposal

On 17 July 1998 the Council adopted Regulation (EC) No 1587/98 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of those regions' remoteness.

Under Article 7 of the Regulation, this scheme applies from 1 January 1998 to 31 December 2001.

In accordance with Article 6 of the Regulation, by 1 June 2001 the Commission was to have submitted a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the measures provided for in the Regulation together, where appropriate, with proposals necessary to achieve the objectives set out in Article 1 thereof.

However, the Commission decided to carry out a detailed evaluation, with the aid of external consultants, on the impact of the measures adopted in support of the fisheries sector in the outermost regions. According to the Commission, the results of this study will be available in the final quarter of 2001.

So that the results of the study can be included in its report and, where appropriate, in its future proposal, the Commission is proposing to extend for one year, until 1 June 2002, the deadline for submission of the report laid down in Article 6 and to extend the scheme in force for one year, until 31 December 2002, thereby ensuring the continuity of the legal framework of the scheme to compensate for additional costs.

### For a permanent scheme with regular adjustment

The Community system to support the marketing of certain fishery products from particular outermost regions was set up in 1992<sup>1</sup>, following on from the POSEI programmes<sup>2</sup>. That system was successively extended and revised in 1994<sup>3</sup>, 1995<sup>4</sup> and 1998<sup>5</sup>.

The legal basis for the adoption of specific measures for the outermost regions is currently provided by Article 158 and Article 299(2) of the Treaty on European Union. Article 158 lays down that 'the Community *shall aim at reducing disparities* between the levels of development of the various regions and *the backwardness of the least favoured regions or islands*, including rural areas'. Article 299(2) recognises the '*structural social and economic situation*', which is worsened by features such as '*remoteness*', '*insularity*', '*small size*',

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<sup>1</sup> Commission Decisions 92/448/EEC and 92/449/EEC of 30 July 1992, OJ L 248, 28.8.1992, pp. 73 and 75.

<sup>2</sup> Council Decisions 89/687/EEC, 91/314/EEC and 91/315/EEC (OJ L 399, 30.12.1989, p. 39; OJ L 171, 29.6.1999, p. 5 and OJ L 171, 29.6.1991, p. 10) setting up programmes of options specific to the remote and insular nature of the French overseas departments (Poseidom), the Canary Islands (Poseican) and Madeira and the Azores (Poseima) respectively.

<sup>3</sup> Regulation (EC) No 1503/94 of 27 June 1994, OJ L 162, 30.6.1994, p. 8.

<sup>4</sup> Regulation (EC) No 2237/95 of 2 October 1995, OJ L 236, 5.10.1995, p. 2.

<sup>5</sup> Regulation (EC) No 1587/98 of 17 July 1998, OJ L 208, 24.7.1998, p. 1.

'topography', 'climate', and 'economic dependence on a few products', 'the permanence and combination of which seriously restrain their development', which justifies the adoption of specific measures aimed at laying down the conditions of application of the Treaty to those regions, including common policies.

The Commission report on the measures to implement Article 299(2) concerning the outermost regions of the European Union (COM(2000) 147 final) further highlights these regions' *'situation far from continental Europe and, in most cases, their proximity to less-developed non-member countries'*.

Parliament has repeatedly taken the view that the outermost regions are permanently handicapped by the adverse effects of these characteristics and that specific measures linked to their situation must therefore also be permanent and should be maintained indefinitely, without prejudice to possible adjustments<sup>1</sup>.

The fisheries section (point I.b.2) of the above Commission report (COM(2000) 147 final) itself emphasises that *'... the conditions which are at the root of the higher production costs are not likely to change as they stem from the very location of the outermost regions. These additional costs will therefore remain, which completely justifies maintaining the system of compensation ...'*.

A *permanent* system to compensate for the additional costs of marketing certain fishery products, with provision being made for gradual adjustment, was also called for in the resolution adopted by the Seventh Conference of Presidents of the Outermost Regions held on Lanzarote on 25 September 2001.

There is no doubt that instruments designed to support the outermost regions, such as that under review here, should be maintained, particularly bearing in mind that the assessment of their application has been overwhelmingly positive.

The disadvantages resulting from remoteness are structural in nature and pose a permanent obstacle to the marketing of fishery products from the regions concerned. These disadvantages include their great distance from the areas where Union fishery products are marketed, the small size of markets, the difficulties involved in providing a regular and adequate supply of raw materials for the canning industry, the increased transport and energy costs and the need for substantial stocks of spare parts for boats. Account must also be taken of the growing competition stemming from the significant commercial advantages granted to third countries and the fact that the fishing industry in these regions is of particular social and economic importance.

## **Remarks and conclusions**

The rapporteur reiterates that *it is, consequently, not appropriate to set a time limit for the granting of this aid* and that the scheme to compensate for additional costs *must be*

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<sup>1</sup> For example, the resolutions of 25 October 2000 on the Commission report on the measures to implement Article 299(2): the outermost regions of the European Union (OJ C 197, 12.7.2001, p. 8) and 29 April 1997 on development problems in the outermost regions of the European Union (OJ C 150, 19.5.1997, p. 62).

*permanent, based on Article 299(2) of the Treaty, without prejudice to regular revision in line, in particular, with developments in production, catches and markets.*

Concerning the present Commission proposal, the delay in evaluating the impact of the measures provided for in Regulation (EC) No 1587/98 is to be regretted, particularly since this evaluation had already been planned more than three years ago under Article 6 of that Regulation.

The importance of the *study carried out for the Commission by external consultants* on the impact of all Community measures adopted to date in the fisheries sector for the outermost regions, which is underlined by the fact that the lack of such a report has entailed the extension of Regulation No 1587/98, justifies the demand that a copy of the report should be forwarded to Parliament as soon as it is available. Only if this is guaranteed will Parliament be able to prepare its position properly and in good time in this as in other matters relating to fisheries in the outermost regions.

Furthermore, it should not be forgotten that, even though extending Regulation (EC) No 1587/98 is doubtless a desirable solution in the present circumstances, and one which is supported by the rapporteur, extending the regulation without making the necessary adjustments also means that any inadequacies in the light of developments which have meanwhile taken place in the sector will also be maintained for a further year.

The characteristics of some species or activities, as well as the circumstances in which some species are caught, may make it appropriate for various adjustments to be made to the quotas set. It should be possible to compensate for a reduction in catches of certain species, and the consequent reduction in grants paid and failure to utilise some of the funds available, by reallocating these funds to other species or to aquaculture by means of adjustments within the quantitative limits initially laid down.

So that account can be taken of these circumstances, the rapporteur believes that Article 6 of Regulation No 1587/98 should be amended so as to enable the Commission, in accordance with Article 4 of that Regulation<sup>1</sup>, not only to adjust the amounts set for the various species but also the distribution of *quantities* for the species concerned, in the light of their marketing conditions and characteristics, which would help *ensure that all the funds available under this Regulation can be used.*

This amendment would not imply any change to the overall financial provisions set down in each of paragraphs 1 to 5 of Article 2 of Regulation No 1587/98 for each of the outermost regions, but would at the same time respond to the wishes expressed by these regions by minimising the negative consequences of extending the regulation for a further year without the necessary revision.

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<sup>1</sup> Article 4 of Regulation No 1587/98: 'Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 32 of Council Regulation (EEC) No 3759/92 of 17 December 1992 ...' (currently Article 38 of Council Regulation (EC) No 104/2000 of 17 December 1999, OJ L 17, 21.1.2000, p. 22).

# OPINION IN LETTER FORM OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET ON THE LEGAL BASIS OF THE PROPOSAL

COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET  
THE CHAIRMAN

M. Struan STEVENSON  
Chairman of the Committee on Fisheries  
ASP 08E153  
Brussels

Subject: Legal basis of the proposal for a Council Regulation amending Regulation (EEC) no. 1587/1998 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary islands and the French departments of Guyana and Reunion as a result of those regions' remoteness - (COM (2001) 498 - C5-0446/2001 - 2001/0200(CNS))

Chairman and dear colleague,

In accordance with Rule 63(2), the committee on fisheries has asked the opinion of the committee on legal affairs and internal market on the legal basis of the proposal for a Council Regulation.

Regulation 1587/1998 introduced a scheme to compensate the Azores, Madeira, the Canary islands and the French departments of Guyana and Reunion for additional costs incurred in the marketing of certain fishery products as a result of their remoteness. Its aim is to adapt the common fisheries policy so as to take into consideration the specific characteristics and constraints of these regions. This Regulation is set to apply from 1 January 1998 to 31 December 2001. Under this Regulation, the Commission submitted a report on the implementation of the measures provided for in the Regulation. In this report, the Commission proposes a one-year extension of the framework in order to ensure the continuity of the current legal framework.

Accordingly, the content of the proposal consists of *modifying* the rules of Council Regulation 1587/1998 in order to extend the existing legal framework in respect of fishery products for the benefit of outermost regions. The difficulties facing the fisheries industry in the European Union are aggravated in particular by the cost of transporting fishery products to markets as a result of the remoteness and isolation of the outermost regions.

The Regulation is a measure that aims at adapting (or rather derogating from the general rules on) common fisheries policy in order to take fully account of the special characteristics and constraints of outermost territories.

The proposal at issue thus concerns modifying an existing Regulation in the area of structural funds and fisheries, in order to answer the specific needs and problems of outermost regions. In other words, specific measures (which lay down the conditions for its application to outermost regions) are to be added, which *derogate* from a common policy - in the present case, fisheries.

The Commission mentions in the explanatory memorandum that the aim of EC Regulation 1587/98 is "to adapt the common fisheries policy to take account of the *specific conditions* of those regions".

As regards the aim of the proposal, it must be observed that, according to its second recital, "Article 299(2) of the EC Treaty recognises the particular handicaps affecting the structural social and economic situation of the outermost regions, made worse by their remoteness and insularity. This is also the case for the fisheries sector". In view of its objective the proposal for a Regulation therefore serves a purpose which falls within Article 299 (2) EC.

The content of the proposal concerns the one-year extension of Regulation 1587/98. However, Article 7 of the latter Regulation provides that it applies from 1 January 1998 to 31 December 2001. The Regulation is therefore no longer in force.

It is clear from settled case law of the ECJ that the choice of the legal basis does not depend on the discretion of the Community legislature but must be based on objective elements which are amenable to judicial control. Among these elements are, in particular, the aim and the content of the legal act<sup>1</sup>. In practice, the Court bases its findings essentially on the recitals stated in the preamble.

The legal basis of the proposed Regulation is article 37 EC. This provision concerns agricultural policy. This article must be interpreted in light of article 32 EC and annex I (former annex II) to the EC Treaty. Article 32(1) EC defines "agricultural products" as including the products of fisheries.

The agricultural policy objectives are set out in article 33 EC. Article 33 (2) (a) and (c) provide that in working out the common agricultural policy account must be taken of the particular nature of agricultural activity and of the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole. It follows that agricultural policy objectives must be conceived in such a manner as to enable the Community institutions to carry out their duties in the light of developments in agriculture and in the economy as a whole.

In a case concerning laying hens, the ECJ stated that "article 37 is the appropriate legal basis for any legislation concerning the production and marketing of agricultural products listed in annex I to the Treaty which contributes to the achievement of one or more of the objectives of the common agricultural policy set out in article 33 of the Treaty"<sup>2</sup>.

Article 299 EC determines the territorial application of the EC Treaty. The Treaty of Amsterdam introduced major changes in relation to article 299 (2) EC to establish the general principle that the Treaty applied to the French overseas departments, the Azores, Madeira and the Canary Islands.

Together with that general rule, there was provision for the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, to adopt *specific measures* aimed, in particular, at laying down the *conditions of application* of the Treaty to those regions, *including common policies*.

In particular, in accordance with that provision, the areas affected by the specific measures are customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumers goods, State aids and conditions

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<sup>1</sup> See, *inter alia*, ECJ, case C-42/97, *Parliament v Council*, para. 36.

<sup>2</sup> ECJ, Case 131/86, *UK v Council*.

of access to structural funds and to horizontal Community programmes.

This provision lists the reasons which may prompt the Council to determine the conditions under which certain provisions of the Treaty are to apply to those territories. The reasons lie in the *structural, social and economic situation* of those territories, which is compounded by their remoteness, insularity, small size, difficult topography and climate and their economic dependence on a few products.

Finally, when adopting these measures, the Council must take into account the *special characteristics and constraints* of the outermost regions. However, the integrity and coherence of the Community legal order must not be undermined.

At its meeting of 19 February 2002<sup>1</sup>, the Committee on Legal Affairs and the Internal Market therefore unanimously decided that Article 299 (2) EC is the adequate legal basis for the adoption of the proposal for a Regulation.

For the sake of completeness, the attention of the main committee is drawn to the fact that Regulation 1587/98 is no longer in force, pursuant to its Article 7. For this purpose, it is suggested that the main committee might consider whether the expectations of the recipients of the compensation provided therein do not justify that the one-year extension provided for in the proposal applies as of 1 January 2002.

Yours sincerely,

(sgd) Giuseppe Gargani

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<sup>1</sup> Were present : Giuseppe Gargani (chairman), Willi Rothley, Ioannis Koukiadis, Bill Miller (vice-chairmen), Paolo Bartolozzi (draftsman), Luis Berenguer Fuster, Ward Beysen, Isabelle Caullery, Brian Crowley, Michel J.M. Dary, Willy C.E.H. De Clercq, Bert Doorn, Francesco Fiori, Nicole Fontaine, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, Othmar Karas, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Helmuth Markov, Manuel Medina Ortega, Angelika Niebler, Elena Ornella Paciotti, Marianne L.P. Thyssen, Rijk van Dam, Michiel van Hulten, Theresa Villiers, Diana Wallis and Stefano Zappalà.