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REPORT

on the draft Council decision amending the Protocol on the Statute of the Court of Justice of the European Communities
(6283/2003 – C5-0057/2003 – 2003/0805(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: José María Gil-Robles Gil-Delgado

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 21 February 2003 the Council consulted Parliament, pursuant to Article 245(2) of the EC Treaty and Article 160(2) of the EAEC Treaty, on the draft Council decision amending the Protocol on the Statute of the Court of Justice of the European Communities (6283/2003 – C5-0057/2003 – 2003/0805(CNS))

At the sitting of 13 March 2003 the President of Parliament announced that he had referred the proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Constitutional Affairs for its opinion (C5-0057/2003).

The Committee on Legal Affairs and the Internal Market appointed José María Gil-Robles Gil-Delgado rapporteur at its meeting of 18 March 2003.

The committee considered the Commission proposal and draft report at its meetings of 23 April 2003, 26 January and 27 January 2004.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley, Ioannis Koukiadis et Bill Miller (vice-chairmen), José María Gil-Robles Gil-Delgado (rapporteur), Uma Aaltonen, Marie-Françoise Garaud, Evelyne Gebhardt, Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Toine Manders, Hans-Peter Mayer (for Rainer Wieland), Arlene McCarthy, Manuel Medina Ortega, Anne-Marie Schaffner, Francesco Enrico Speroni (for Ward Beysen), Diana Wallis and Joachim Wuermeling.

The Committee on Constitutional Affairs decided on 19 January 2004 not to deliver an opinion.

The report was tabled on 30 January 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council decision amending the Protocol on the Statute of the Court of Justice of the European Communities
(6283/2003 – C5-0057/2003 – 2003/0805(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (6283/2003)¹,
 - having regard to Article 245(2) of the EC Treaty and Article 160(2) of the EAEC Treaty, pursuant to which the Council consulted Parliament (C5-0057/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0046/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

Council text

Amendments by Parliament

Amendment 1

ARTICLE 1, POINT 1

Article 51 (Protocol on the Statute of the Court of Justice)

an act of or failure to act by the European Parliament or the Council, or by both those institutions acting jointly, except for

- decisions taken by the Council under the third subparagraph of Article 88(2) of the EC Treaty;
- acts of the Council adopted pursuant to a Council regulation concerning measures

an act of or failure to act by the European Parliament or the Council, or by both those institutions acting jointly, except for

- decisions taken by the Council under the third subparagraph of Article 88(2) of the EC Treaty;
- acts of the Council adopted pursuant to a Council regulation concerning measures

¹ Not yet published in OJ.

to protect trade within the meaning of Article 133 of the EC Treaty;

- acts of the Council by which it exercises implementing powers directly in accordance with the third indent of Article 202 of the EC Treaty;
- against an act of or failure to act by the Commission under Article 11a of the EC Treaty.

Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same articles when they are brought by an institution of the Communities or by the European Central Bank against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Communities against an act of or failure to act by the European Central Bank."

to protect trade within the meaning of Article 133 of the EC Treaty;

- acts of the Council by which it exercises implementing powers directly in accordance with the third indent of Article 202 of the EC Treaty;
- against an act of or failure to act by the Commission under Article 11a of the EC Treaty.

Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same articles when they are brought by an institution of the Communities or by the European Central Bank against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Communities against an act of or failure to act by the European Central Bank ***or by a Member of the European Parliament against an act of the latter concerning the performance of his or her electoral mandate.***"

Justification

See explanatory statement.

EXPLANATORY STATEMENT

1. When the Court of First Instance was established in 1987, the Court of Justice was experiencing severe difficulties caused by the expansion of its role. It was finding it increasingly difficult to carry out effectively its role as a constitutional court, particularly as regards cooperating with national courts and providing them with an interpretation of the provisions of the Treaties or of Acts adopted by the institutions. On average, it was taking 16 months to reach a decision on preliminary rulings. It was therefore vital to lighten its workload and create a Court of First Instance. Initially, its competence was confined to more technical cases brought by individuals and undertakings (competition law), trade protection measures, public service).
2. The reform of the Community's legal system only came later, with the adoption of the Treaty of Nice. The Treaty provides for the possibility of extending the sphere of competence of the Court of First Instance and also introduces the possibility of setting up judicial panels ('specialised courts' in the terminology used by the Constitution) designed to 'hear and determine at first instance certain classes of action or proceeding brought in specific areas' (Article 225a, first paragraph, of the EC Treaty), in other words in clearly defined cases (trademarks, public services). The setting up of these panels should go hand in hand with an increase in the powers of the Court of First Instance to enable the Court of Justice to focus more effectively on the most important cases.
3. With this in view, Article 225(1) of the EC Treaty, which lists the classes of action falling under the jurisdiction of the Court of First Instance, stipulates that 'the Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceedings'. This provision thus enables the Court of Justice (which in practice always submits requests to amend the Statute itself) to take account of the development of the Community legal system, and, if necessary, propose that other actions or proceedings should be brought within the jurisdiction of the Court of First Instance. This is the objective of the current request¹ seeking to amend Article 51 of the Statute of the Court of Justice (see below).
4. According to the Court, 'the aim has to been to achieve the transfer of a significant number of cases so as to leave the Court of Justice exclusive jurisdiction at first and last instance only in respect of judicial review of basic legislative activity and in respect of the determination of interinstitutional disputes'². The Court therefore stresses that, by virtue of the Treaty of Nice, the Court of First Instance is the court of general jurisdiction at first instance not only for actions brought by individuals and undertakings, but for all the direct actions referred to in Article 225(1) of the EC Treaty. The Court's request extends the competence of the Court of First Instance to rule at first instance - whether the actions are brought by individuals and undertakings or not - essentially on Council decisions in the field of:

¹ Forwarded to the Council on 13 February 2003 (Doc. 6282/03).

² Op cit, p. 2.

- (a) state aids (Article 88(2), third subparagraph, of the EC Treaty);
 - (b) measures to protect trade (particularly anti-dumping measures) within the meaning of Article 133 of the EC Treaty;
 - (c) implementing powers in accordance with the rules referred to in the third paragraph of Article 202 of the EC Treaty (cases in which the Council has either reserved implementing powers or exercises them in connection with 'comitology' proceedings).
5. These proposals are along the right lines, since they seek to ensure that the Court will be able in future to focus more effectively on its tasks as a constitutional court (important direct actions, infringement proceedings, opinions), a court of appeal (ruling on appeals against judgements of the Court of First Instance) and a court of last instance dealing with requests for preliminary rulings and requests for review (when the specialised courts are set up).
6. It certainly seems that the Court is taking a very cautious approach to the scope of the proposed changes. At this stage, it has not seen fit to exploit all the possibilities offered by the last sentence of Article 225(1), first subparagraph, of the EC Treaty. Accordingly, it has not made provision for divesting itself of jurisdiction in actions for infringement of Treaty obligations (even in cases where the Member States have simply failed in their duty to provide notification of measures to transpose directives) or preliminary rulings concerning specific matters (e.g. trademarks, sixth VAT directive, common customs tariff).
7. The merit of this cautious approach, however, is that it makes it possible to move in gradual stages as needs arise. The wording of Article 225(1) of the EC Treaty gives the Court full scope to act in this manner. The impact of the proposed changes therefore needs to be assessed once they have been in force for some time¹. Overall, the Court of Justice's proposal can only be endorsed. Having said that, the present opportunity must be taken in order to assess which categories of action should be reserved for the exclusive competence of the Court of Justice.
8. As was stressed above, the main thread of the Court of Justice's proposal is to maintain its exclusive competence in respect of judicial review of 'basic legislative activity' and 'the determination of interinstitutional disputes'. Although this objective can be fully endorsed, it has to be asked whether, under this future breakdown of competence between the Court and the Court of First Instance, there is a need to review the Community jurisdiction competence to hear and determine actions brought by Members of the European Parliament. In recent years, the Court of First Instance has built up a substantial case law in this area. While not wishing to call into question the quality of the judgments delivered by this Court, it must be noted that some of these actions

¹ It must be said that the statistics concerning the length of proceedings give cause for concern, particularly preliminary rulings, the average duration having increased considerably (1998: 21.4 months; 1999: 21.2 months; 2000: 21.6 months; 2001: 22.7 months; 2002: 24.1 months). This raises particular problems, since requests for preliminary rulings forwarded by national courts entail suspension of the main proceedings.

concern disputes raising questions regarding the performance of the mandate of a Member of the European Parliament¹ or even interinstitutional questions².

9. However, such cases entail legal questions of a constitutional nature that would warrant exclusive competence on the part of the Court of Justice. Furthermore, under some national legal systems, constitutional courts are competent to hear and determine disputes concerning the scope of the rights and obligations of the internal rules of procedure of national parliaments, in other words disputes concerning the exercise of a parliamentary mandate³.
10. There is also a practical consideration that would favour exclusive competence of the Court of Justice. At present, when a Member of the European Parliament brings proceedings for annulment against Parliament concerning the conditions under which he performs his electoral mandate, it is vital that the dispute should be settled as quickly as possible, as the very composition of the European Parliament may be at stake. At present, however, such disputes are subject to double jurisdiction, with a risk that the Member's term of office may be over by the time a final legal solution is found⁴.
11. In conclusion, it is proposed that a favourable opinion be given on the Court of Justice's request amending Articles 51 and 54 of its Statute, while proposing an addition to the end of Article 51 (see Amendment 1).

¹ See for example the judgment of the Court of First Instance of 2 October 2001 in joined Cases T-222/99, T-327/99 and T-329/99, Martinez and others v European Parliament, concerning the dissolution of the Technical Group of Independent Members (TDI); judgment of the Court of First Instance of 10 April 2003, Case T-353/00, Le Pen v European Parliament, concerning the termination of the term of office of a Member of the European Parliament.

² See the order of the Court of First Instance of 17 January 2002, Case T-326/00, Stauner and others v European Parliament, concerning the framework agreement of relations between the European Parliament and the Commission; judgment of the Court of First Instance of 26 February 2002, Case T-17/00, Rothley v European Parliament, concerning in particular the powers of investigation of the European Anti-Fraud Office (OLAF).

³ Article 93(1), first subparagraph, of the German Constitution stipulates that:

'Das Bundesverfassungsgericht entscheidet : über die Auslegung dieses Grundgesetzes aus Anlass von Streitigkeiten über den Umfang der Rechte und Pflichten eines obersten Bundesorgans oder anderer Beteiligter, die durch dieses Grundgesetz oder in der Geschäftsordnung eines obersten Bundesorgans mit eigenen Rechten ausgestattet sind' ('The Federal Constitutional Court decides: (1) on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a supreme federal organ or of other parties concerned who have been endowed with independent rights by this basic law or by rules of procedure of a supreme federal organ.').

⁴ See for example the three cases mentioned above concerning the dissolution of the Technical Group of Independent Members (TDI). These cases were brought before the Court of First Instance by Mr Martinez MEP and others in October and November 1999. The Court delivered its judgment on 2 October 2001. The parties lodged an appeal against this judgment with the Court of Justice, which held an oral hearing on 9 December 2003. It is by no means certain that the Court of Justice will have delivered its judgment before the end of the current Parliament.