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**A5-0049/2004**

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## **REPORT**

on the draft Council decision amending the Protocol on the Statute of the Court  
of Justice  
(12464/2003 – C5-0450/2003 – 2003/0820(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Willi Rothley

### ***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.

**CONTENTS**

	<b>Page</b>
PROCEDURAL PAGE .....	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	6

## PROCEDURAL PAGE

By letter of 2 October 2003 the Council consulted Parliament, pursuant to Article 245(2) of the EC Treaty and Article 160(2) of the Treaty establishing the European Atomic Energy Community, on the draft Council decision amending the Protocol on the Statute of the Court of Justice to lay down the conditions and limits for review by the Court of Justice of decisions delivered by the Court of First Instance (12464/2003 – 2003/0820(CNS)).

At the sitting of 8 October 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 (C5-0450/2003).

The committee appointed Willi Rothley rapporteur at its meeting of 6 November 2003.

It considered the Commission proposal and draft report at its meetings of 26 and 27 January 2004.

At the last meeting it adopted the draft legislative resolution.

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

The report was tabled on 8 January 2004.

## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the draft Council decision amending the Protocol on the Statute of the Court of Justice to lay down the conditions and limits for review by the Court of Justice of decisions delivered by the Court of First Instance  
(12464/2003 – C5-0450/2003 – 2003/0820(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the draft Council decision (12464/2003)<sup>1</sup>,
  - having regard to Article 245(2) of the EC Treaty and Article 160(2) of the Treaty establishing the European Atomic Energy Community, pursuant to which the Council consulted Parliament (C5-0450/2003),
  - 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 (A5-0049/2004),
1. Approves the Commission proposal;
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

## EXPLANATORY STATEMENT

The proposed amendment supplements the text of the Statute of the Court of Justice, as required pursuant to Article 225(2) and (3) of the EC Treaty as amended by the Treaty of Nice. It is intended to take account of Declaration No 13 adopted on 26 February 2001 at the Nice Summit by the Conference of the Representatives of the Governments of the Member States, and to incorporate into the Statute of the Court of Justice the essential provisions of the procedure in Article 225(2) and (3) of the EC Treaty for review by the Court of Justice of decisions given by the Court of First Instance.

### **I. Background**

1. In a new Article 225a, the Treaty of Nice introduced the possibility of creating judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.

Paragraph 3 of Article 225a provides for a right of appeal against decisions given by these judicial panels before the Court of First Instance (cf. Article 225(2)(1) of the EC Treaty).

Such (appeal) decisions given by the Court of First Instance may exceptionally be subject to review by the Court of Justice 'where there is a serious risk of the unity or consistency of Community law being affected' (Article 225(2)(2) of the EC Treaty).

2. Another new provision introduced by the Treaty of Nice concerns questions referred for a preliminary ruling under Article 234 of the EC Treaty, which previously came exclusively under the jurisdiction of the Court of Justice. Pursuant to Article 225(3)(1) of the EC Treaty as amended by the Treaty of Nice, the Court of First Instance now has jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234 in specific areas laid down by the Statute. Decisions on such questions by the Court of First Instance may exceptionally be subject to review by the Court of Justice 'where there is a serious risk of the unity or consistency of Community law being affected' (Article 225(3)(3) of the EC Treaty).
3. Article 140a(2) and (3) of the EAEC Treaty was similarly amended by Article 3(13) of the Treaty of Nice.
4. The Protocol on the new Statute of the Court of Justice of the European Communities annexed to the Treaty of Nice takes account only in part of these amendments. Pursuant to Article 62 of the Statute, in the cases provided for in Article 225(2) and (3) of the EC Treaty the First Advocate-General may propose that the Court of Justice review the decision of the Court of First Instance where he considers that there is a serious risk of the unity or consistency of Community law being affected. Further provisions concerning the review procedure are not laid down.
5. Pursuant to Declaration No 13 adopted by the Conference at the Nice Summit, the

essential provisions of the review procedure should be defined in the Statute of the Court of Justice, specifying in particular:

- the role of the parties in proceedings before the Court of Justice, in order to safeguard their rights;
- the effect of the review procedure on the enforceability of the decision of the Court of First Instance;
- the effect of the Court of Justice decision on the dispute between the parties.

## **II. Substance of the proposal**

The proposed amendments take account of that Declaration and provide for the insertion of three articles (Articles 62a to 62c) into the Statute of the Court of Justice:

- Article 62a provides that proposals for review and decisions to open the review procedure are not to have suspensory effect. Given that appeals (on a point of law) to the Court of Justice do not themselves have suspensory effect, it would be inconsistent for the exceptional review procedure to have effects on the enforceability of the Court of First Instance's decision which went further than those of appeals.
- Article 62b is intended to ensure that the adversarial principle is observed, while avoiding unnecessary prolongation of the proceedings. The Article thus provides that written observations may be submitted by the parties to the proceedings before the Court of First Instance in the case of review of a judgment of the Court of First Instance ruling on the decision of a judicial panel and by the parties to the dispute in the main proceedings in the case of review of a judgment of the Court of First Instance on a question referred for a preliminary ruling. In addition, it is stated that the Member States and the institutions may, in either case, submit observations subject to the conditions in Article 23 of the Statute which lays down, *inter alia*, the rules for the written procedure in references for a preliminary ruling.
- Article 62c proposes as a general rule that the Court of Justice is to give a ruling on the question or questions which are subject to review. If the Court of Justice finds that the decision of the Court of First Instance does not affect the unity or consistency of Community law, that decision will become final (paragraph 1).

If, however, the Court of Justice finds that the decision of the Court of First Instance affects the unity or consistency of Community law, the Court of Justice will, in the cases provided for in Article 225(2) of the EC Treaty, refer the case back to the Court of First Instance, which will be bound by the points of law decided by the Court of Justice (first subparagraph of point 1 of paragraph 2 of Article 62c). In this connection, the Court of Justice may state which of the effects of the decision of the Court of First Instance are to be considered as definitive in respect of the parties to the litigation. (third subparagraph of point 1 of paragraph 2 of Article 62c).

However, the Court of Justice also has the power in exceptional circumstances to give final judgment if the outcome of the proceedings depends on the findings of fact on which the decision of the Court of First Instance was based, having regard to the result of the review (second subparagraph of point 1 of paragraph 2 of Article 62c). The

intention is to enable the Court of Justice to settle an old dispute where no point of law or of fact warrants its being referred back to the Court of First Instance. In such circumstances, referral back to the Court of First Instance would prolong the proceedings to no purpose.

The purpose of point 2 of paragraph 2 of Article 62c is to enable, with regard to review of a decision of the Court of First Instance given on a question referred for a preliminary ruling (Article 225(3) of the EC Treaty), the 'new interpretation' of the Community rule as it emerges from that review to produce its full effect immediately. It is proposed that the answer given as a result of the review to the question referred by the national court is to be 'substituted' for that given by the Court of First Instance.

### **III. Assessment**

The proposal may be approved, as it adapts the Statute of the Court of Justice in accordance with the provisions of the Treaty of Nice.