

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

17 March 2004

FINAL  
**A5-0181/2004**

**\***

## **REPORT**

on the proposal for a Council decision establishing the European Civil Service Tribunal  
(COM(2003) 705 – C5-0581/2003 – 2003/0280(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Manuel Medina Ortega

### ***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

	Page
PROCEDURAL PAGE.....	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5

## PROCEDURAL PAGE

By letter of 28 November 2003 the Council consulted Parliament, pursuant to Articles 225a and 245 of the EC Treaty and Articles 140b and 160 of the EAEC Treaty, on the proposal for a Council decision establishing the European Civil Service Tribunal (COM(2003) 705 – 2003/0280(CNS)).

At the sitting of 3 December 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 (C5-0581/2003).

The Committee on Legal Affairs and the Internal Market appointed Manuel Medina Ortega rapporteur at its meeting of 22 January 2004.

It considered the Commission proposal and the draft report at its meetings of 23 February and 17 March 2004.

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

The following were present for the vote: Willi Rothley (acting chairman), Ioannis Koukiadis (vice-chairman), Manuel Medina Ortega (rapporteur), Maria Berger, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Angelika Niebler (for Rainer Wieland), Marianne L.P. Thyssen, Ian Twinn (for Lord Inglewood) and Diana Wallis.

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

The report was tabled on 17 March 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision establishing the European Civil Service Tribunal  
(COM(2003) 705 – C5-0581/2003 – 2003/0280(CNS))

(Consultation procedure)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2003) 705)<sup>1</sup>,
  - having regard to Articles 225a and 245 of the EC Treaty and Articles 140b and 160 of the EAEC Treaty, pursuant to which the Council consulted Parliament (C5-0581/2003),
  - 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 (A5-0181/2004),
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 if it intends to depart from the text approved by Parliament;
  4. 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;
  5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and Commission.

---

Text proposed by the Commission

---

Amendments by Parliament

### Amendment 1

#### ARTICLE 2, POINT 1

#### Title VI (new) Protocol on the Statute of the Court of Justice

1) The following ***Title VI*** shall be added:

***“Titre VI***

JUDICIAL PANELS

***Article 65***

1) The following ***Title Va*** shall be added:

***“Titre Va***

JUDICIAL PANELS

***Article 62a***

---

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

The provisions relating to the jurisdiction, composition, organisation and procedure of the judicial panels established under Articles 225a of the EC Treaty and 140b of the Euratom Treaty are set forth in an Annex to this Statute.”

The provisions relating to the jurisdiction, composition, organisation and procedure of the judicial panels established under Articles 225a of the EC Treaty and 140b of the Euratom Treaty are set forth in an Annex to this Statute.”

#### *Justification*

*This is a purely technical change. Its purpose is to insert the new provisions on the judicial panels before Title V, Final provisions, of the Court’s Statute, and not after it.*

#### Amendment 2

##### ANNEX

#### Annex I, Article 2 – Protocol on the Statute of the Court of Justice

The Civil Service Tribunal shall consist of six judges, appointed for a period of six years by the Council from among candidates ***presented by the Member States after consulting*** the committee provided for by Article 3.

The Civil Service Tribunal shall consist of six judges, appointed for a period of six years by the Council from among candidates ***appearing on the list presented by*** the committee provided for by Article 3, ***following a procedure calling for applications. The committee shall adopt an opinion before the Council takes its decision.***

Every three years there shall be a partial replacement of the judges. Retiring judges may be reappointed.

Every three years there shall be a partial replacement of the judges. Retiring judges may be reappointed.

#### *Justification*

*It is proposed to scrap the idea that the Council should take its decision on the basis of nominations by the Member States, because that poses an inherent risk of stalemate and is also difficult to reconcile with the procedure under Article 3. If the governments put forward candidates there will in theory be a number higher than 12, whereas the list that the committee draws up would have 12 as a maximum. No changes are proposed in this report as to the term of office of the tribunal’s judges, but the Committee on Legal Affairs and the Internal Market expects to be able to look into the question of whether it wishes to come out in favour of a nine-year, non-renewable mandate.*

#### Amendment 3

##### ANNEX

#### Annex I, Article 3 – Protocol on the Statute of the Court of Justice

A committee shall be set up to give an opinion on candidates’ suitability to perform the duties of judge at the Civil Service Tribunal before the appointment

A committee shall be set up to give an opinion on candidates’ suitability to perform the duties of judge at the Civil Service Tribunal before the appointment

decision is taken. The committee *may* append to its Opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of twice as many candidates as there are judges to be appointed by the Council.

The committee shall comprise seven persons chosen from among former members of the Court of Justice and the Court of First Instance and lawyers of recognised competence. The committee's membership and operating rules shall be determined by the Council, acting by a qualified majority on a recommendation by the President of the Court of Justice.

decision is taken. The committee *shall* append to its Opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of twice as many candidates as there are judges to be appointed by the Council.

The committee shall comprise seven persons chosen from among former members of the Court of Justice and the Court of First Instance and lawyers of recognised competence, ***one of whom shall be proposed by the European Parliament.*** The committee's membership and operating rules shall be determined by the Council, acting by a qualified majority, ***after consulting the European Parliament and*** on a recommendation by the President of the Court of Justice.

#### *Justification*

*The Commission has drawn on the work of the Convention, particularly on Article III-262. But it has omitted to indicate the member designated by the European Parliament taking account of the specific nature of the dispute concerned. On grounds of consistency it seems to us that, if Parliament is entitled to designate a lawyer for the committee in the case of members of the Court and the Court of First Instance, it should also be able to do so for specialist courts of first instance, such as the Civil Service Tribunal. Besides, the European Parliament is just as interested as the Council in the establishment and running of this court. This being so Parliament should also be consulted on the Council decision concerning the members of the committee and its rules of operation. Finally, there is a need to specify that the committee must draw up the list, and that it is not an optional matter.*

#### Amendment 4 ANNEX

##### Annex I, Article 7, paragraph 2 – Protocol on the Statute of the Court of Justice

2. Without prejudice to Article 40 of the Statute of the Court of Justice, the written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. ***Where there is such second exchange,*** the Civil Service Tribunal may, after hearing the parties, decide to proceed to judgment without an oral procedure.

2. Without prejudice to Article 40 of the Statute of the Court of Justice, the written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. The Civil Service Tribunal may, after hearing the parties, decide to proceed to judgment without an oral procedure.

### *Justification*

*In the Commission's proposal the Tribunal cannot decide without an oral procedure unless a second exchange of written pleadings (applicant's reply and defence rejoinder) has taken place. But the Tribunal may be dealing with a case that is sufficiently straightforward for it to consider, after receiving the application instituting proceedings and the statement of defence, that it is able to proceed to judgment. So it is proposed to give the Tribunal a wider margin for assessment as regards organisation of the oral stage of the procedure.*

### Amendment 5

#### ANNEX

#### Annex I, Article 7, paragraph 3 – Protocol on the Statute of the Court of Justice

**3. At all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal shall examine the possibilities of an amicable settlement of the dispute and shall be at pains to facilitate such settlement.** *deleted*

### *Justification*

*It is proposed to delete this paragraph. The purpose of the proposal for a decision is to set up a 'jurisdiction' (Article 225a of the EC Treaty uses the term 'judicial panel' and Article I-28 of the draft Constitution calls it a 'specialised court'). By definition, a jurisdiction settles a dispute on the basis of the legal provisions and case-law applicable. If the act setting up the court specified that it should 'be at pains to facilitate an amicable settlement of the dispute', there is a risk of diluting the jurisdictional nature of the court. This could also adversely affect the actual choice of candidates 'having the most suitable ... experience' (Article 3); experience in the arbitration of disputes would need to be taken into account, whereas the need is to select 'judges'. Moreover, in civil service disputes we need to bear in mind that if an application is made it is because the appeal procedure has already shown amicable settlement of the dispute to be impossible. To include in the act setting up the Tribunal a requirement that it should 'be at pains to facilitate' an amicable settlement may also have the counterproductive effect that the court will feel 'obliged' to make detailed proposals to that end. This might even in some cases be harmful to the position of the party that declined the offer of an amicable settlement, placing it in a less comfortable position in the procedure. So it seems preferable to remove this paragraph and leave it to the court to decide whether to include the possibility of amicable settlement in its rules of procedure, on the lines of Article 64(2)(d) of the rules of procedure of the Court of First Instance.*