

AMENDMENT FORM

Suggestion for amendment of Article : Title ...: Area of freedom, security and justice, 9

Suggestion for protocol :

By / Mr : Hain With the support of Lord Tomlinson, substitute

Status : - Member -

Article 9: [Judicial control]

In exercising its competences regarding the provisions of Chapters 3 and 4 of this Title, the Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal-their national security, ~~where such action is a matter of national law~~.

A Member State may at any time make a declaration that only a court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling under [Article 234] on a question raised in a case pending before it and concerning the validity or interpretation of acts of the institutions of the Community based on a Chapter of this Title.

Where a Member State makes a declaration under this paragraph the only court or tribunal of that State that may make a request to the Court of Justice [under Article 234] to give a preliminary ruling concerning the validity or interpretation of acts based on the Chapter or Chapters referred to in the declaration shall be a court or tribunal against whose decisions there is no judicial remedy under national law.

A Member State may withdraw a declaration made under this paragraph.

Explanation (if any) :

Article 9: *The references to security in Article 9 should use the same language as Article 6. We propose “their national security” for both. The safeguarding of its national security is one of a state’s fundamental responsibilities. The events of 11 September have demonstrated the potential level of threat. A Member State must remain free to take such measures as it considers necessary to protect its national security. The review of those measures must be a matter for that Member*

State's national courts alone. It is already clear from the language "responsibilities incumbent on Member States" that the ECJ's jurisdiction is only being restricted in relations to areas which fall within the competence of Member States; the additional words will only add confusion.

The additional paragraphs would regulate the rules on preliminary rulings references. This would ensure that the Court of Justice had jurisdiction to give preliminary rulings in relation to each of the chapters of the Title on an Area of Freedom, Security and Justice. It would, however, give Member States flexibility to decide which arrangements for preliminary rulings fit best with their national judicial systems, maintaining the theme of respect for the diversity of legal systems and traditions which needs to run throughout this title. The United Kingdom is concerned that there would be a much greater number of preliminary rulings in asylum and immigration cases in particular, which the Court of Justice is not equipped to manage, if it was open to any court or tribunal to refer a case. The limitation currently found in Article 68(1) TEC in relation to immigration, asylum etc. matters should remain available to Member State; this can act as an effective filter mechanism. Similarly, Member States should be free to choose which referral arrangements should apply in respect of the former Third Pillar.