

AMENDMENT FORM

Part One, Title IV

Suggestion for amendment of Article : 20

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Ben Fayot, Mr Puiu Hasotti, Mr Rein Lang, Mr Johannes Voggenhuber, Members of the Convention and Mrs Maria Berger, Mrs Lone Dybkjaer, Lord Macleannan of Rogart, Mr Neil McCorimick, Mr Adrian Severin, Mr Wim Van Eekelen, Mr Alexander Arabadjiev Alternate Members of the Convention

Status : Members and alternate members.

Article 20 : The Court of Justice of the European Union

1. The Court of Justice, including the High Court, shall ensure *that, in the interpretation and application of the Constitution and of acts made under it, the law is observed.*

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article [XX] of Part II. *Member States shall appoint the judges to the Court of Justice by common accord, for a non-renewable period of nine years. They shall appoint the judges to the High Court and the Advocates General for a period of six years, renewable once.*

3. The Court of Justice shall be competent for :

- ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;
- preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
- ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.

Explanation:

- 1. The description of the powers of the Court seems too limited. We propose here a re-formulation of the present Article 220 TEC in order to guarantee that there is to be no regression from the present acquis.*
- 2. The term of office for Court of Justice judges of nine years, non-renewable, is the best way to achieve the joint objective of stability and neutrality. The term for the judges in the High Court and Advocates-Generals remains unchanged.*

AMENDMENT FORM

Suggestion for amendment of Article : 240a

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Ben Fayot, Mr Puiu Hasotti, Mr Johannes Voggenhuber, Members of the Convention and Mrs Maria Berger, Mrs Lone Dybkjaer, Mrs Eva Lichtenberger, Lord MacLennan of Rogart, Mr Neil McCorimick, Mr Adrian Severin, Mr Wim Van Eekelen, Ms Marie Nagy, Mr Alexander Arabadjiev Alternate Members of the Convention

Status : Members and Alternates

Article 240a

Delete

Explanation:

The decisions of the Convention to seek a legal personality for the Union and to install the Charter of Fundamental Rights within the Constitution have important implications for the scope of the supervision of the Court of Justice. Certainly there can be no a priori reason why common foreign, security and defence policy should enjoy a derogation from judicial oversight - especially in circumstances where the salience of Union activity in this area is set to increase.

The Union must establish a judicial regime that covers the full spectrum of its competences (whether exclusive or shared) and the exercise of all its powers. Examples of Union action in the field of CFSP will include political sanctions against individuals, the actions of the Union's relevant agencies (including the Agency for Armaments and Strategic Research), and the actions of EU police or armed forces in the field. The Union also has employment and resource responsibilities in CFSDP.

Under the existing Treaty on European Union, and despite the general prohibition of the supervision of the Court in CFSP matters (Article 47), the Court has the right to ensure that CFSP agreements do not encroach on first pillar prerogatives (Article 46). As the Praesidium itself states:

"Currently, where action in the CFSP sphere provides for economic sanctions against a third country, implementing measures at Community level are required; these are taken on the basis of Articles 60 and 301 TEC. In the case of economic sanctions against individuals Article 308 TEC is used. However, the Council has interpreted Articles 60 and 301 TEC broadly, using them as a legal basis for adopting sanctions against persons or associations which actually exercised control over a country or part of a country. The Court already exercises its judicial control with regard to all such implementing acts in accordance with the EC Treaty."

We welcome the Praesidium's proposal to allow the Court the jurisdiction to give a preliminary opinion on the compatibility of a proposed international agreement under CFSP (Article 300(6)).

We also note the Praesidium's proposal to explicitly permit the adoption of economic sanctions against individuals in Article 31 of Chapter 4 of Title B (External action). Clearly, in the cases covered by this provision, the Court exercises judicial control. However, the question of whether there could be actions brought by individuals against political sanctions adopted on the basis of CFSP decisions, such as the prohibition of entry into the Union, the free movement of persons or the refusal of visas, is left open. In our view, the possibility should be established for persons directly and individually affected by, say, a visa ban, to challenge the decision before the Court of Justice, and to seek both damages and the annulment of the measure in question.

We would also wish, at the very least, to permit a member state or an institution to bring an action for annulment against CFSP acts adopted in "infringement of an essential procedural requirement" (Article 230.2).

Given the special, governmental nature of foreign policy and security matters, we do not advocate that the Court should have precisely the same powers over CFSDP as it has over the areas currently covered by the Treaty establishing the European Community. For example, it would be stretching credulity to allow an application to the Court for an alleged failure to act in CFSP (Article 232).

However, it strikes us as axiomatic that the Court should be able to strike down any action of the Union, at home or abroad, that was taken in violation of the Constitution.

We also want to extend the Court's powers to rule over breaches of international law agreed by the Union's member states. It would be anomalous that the European Court of Human Rights at Strasbourg could exercise external scrutiny on the foreign policy actions of the Union, but that its own home-grown courts at Luxembourg were forbidden from doing so.

AMENDMENT FORM

PART III

Suggestion for amendment of Article : 230

By Members: Mr Andrew Duff, Mr Ben Fayot, Mr Puiu Hasotti, Mr Johannes Voggenhuber, Members of the Convention and Mrs Maria Berger, Mrs Lone Dybkjaer, Mrs Eva Lichtenberger, Lord MacLennan of Rogart, Mr Neil McCorimick, Mr Adrian Severin, Mr Wim Van Eekelen, Ms Marie Nagy, Mr Alexander Arabadjiev Alternate Members of the Convention

Status :Members and Alternates

Article 230:

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4. Any natural or legal person may, under the same conditions, institute proceedings against **an act addressed to that person or which is of direct concern to him, and *has, or is likely to have, a substantial adverse effect on his interests.***

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Explanation:

The judicial construction accorded to the fourth paragraph of Article 230 has been strongly criticised in the Convention, in the academic literature and by members of the Union's judiciary. The problem was well described in Working Document I of the Discussion Circle on the Court of Justice.

As things stand, it is extremely difficult for an individual to challenge directly a Union act, which is not addressed directly to him, even though the act may have direct and serious consequences for him. There are moreover a number of difficulties, practical, procedural and substantive, in challenging such acts indirectly through Article 234.

The Praesidium's proposed version of Article 230(4) does little to alleviate the difficulties faced by those who seek directly to challenge the legality of Union action. It leaves the existing law in place, subject only to a relatively minor modification for regulatory acts that do not require implementing measures.

The proposed amendment would provide a test for direct access under Article 230(4) that is much closer to the rules pertaining in the Member States. It would lead to a more rational distribution of case-load between the Court of Justice and the High Court. It would enhance the legitimacy of the Union by strengthening the rule of law, in respect of challenges to acts on the grounds listed in Article 230(2), including challenges for breach of Charter rights.

It should be borne in mind that the possibility of cases being joined will prevent the 'floodgates' from opening. Once the Court of Justice or the High Court has pronounced on the legality of the contested measure in relation to a claim brought by an applicant who was deemed to have his interests essentially affected, that would be the end of the matter. The Court's decision would resolve the issue in relation to any other possible claimant unless he could raise some new legal argument that had not been addressed in the earlier case.

Moreover, providing citizens with greater direct access before the Court of Justice and High Court would lead to a decrease in the number of preliminary references raised via Article 234 TEC.

Arguments about limited resources should not be allowed to affect the question of how best to guarantee effective judicial protection for Europe's citizens.

AMENDMENT FORM

Part III

Suggestion for amendment of Article : 240b

By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Ben Fayot, Mr Puiu Hasotti, Mr Johannes Voggenhuber, Members of the Convention and Mrs Maria Berger, Mrs Lone Dybkjaer, Mrs Eva Lichtenberger, Lord MacLennan of Rogart, Mr Neil McCrimick, Mr Adrian Severin, Mr Wim Van Eekelen, Ms Marie Nagy, Mr Alexander Arabadjiev Alternate Members of the Convention

Status :Members and Alternates

Article 240b

Delete

Explanation:

We apply much the same argument to the question of the Courts' supervision of the Union's activities in the area of freedom, security and justice as we do to CFSDP (Article 240a).

The decision to merge the third pillar with the first absolutely requires the suppression of Article 35.5 TEU. Nobody would understand why the Convention had sought to restrict the supervisory scope of the European Court of Justice over matters so sensitive to the citizen. How is it possible to justify the exclusion of Europol, for example, from judicial supervision?

Already, Articles 1 and 9 of Part One, as well as the horizontal provisions of the Charter, insist on respect for both Union competence and national law. Together they comprise an adequate constitutional safeguard.

We have already put in an amendment to delete this provision from the Title in Part II on the Area of Freedom, Security and Justice (Article 9).