

AMENDMENT FORM

Part III - Chapter VI: The Functionings of the Union - Chapter 1 - Section 4 - The Institutions

Suggestion for amendment of Article : III 266

By Members: Mr Andrew Duff

Article III- 266 (ex Article 230)

1. The Court of Justice shall review the legality of European laws and European framework laws, of acts of the Council, of the Commission, *the European Council* and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of agencies and bodies of the Union which produce legal effects vis-à-vis third parties.
 2. It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.
 3. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
 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.**
 5. Acts setting up agencies and bodies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies intended to produce legal effects.
 6. The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.
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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.