

AMENDMENT FORM

Suggestion for amendment of Article : III-266

By Mr : Farnleitner

Status : - Member

Article III- 266 (ex Article 230)

1. The European Court of Justice shall review the legality of European laws and European framework laws, **of European decisions of the European Council**, of acts of the Council, of the Commission 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.

...

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 and individual concern to him, and against **an regulatory** act which is of direct concern to him without entailing implementing measures.

...

Explanation:

With regard to para. 1

I would like to recall my consistent opposition to the European Council becoming an institution. I continue to oppose such a development. However, since Article I-18 para. 2 as currently drafted includes the European Council amongst the Union's Institutions and since its decisions would be legally binding, it is in my view indispensable that these decisions are subject to the control of the European Court of Justice.

Article I-18 para. 2 includes the European Council amongst the Union's Institutions and Article I-20 para. 4 expressly mentions the fact that the European Council has the power to adopt "decisions". Furthermore, Art. I-39 para. 3 stipulates that apart from the Council also the European Council shall adopt the necessary European decisions with regard to the common foreign and security policy. Art. III-189 para. 1 provides for European decisions of the European Council on the strategic interests and objectives of the Union relating to foreign policy and other areas of external

action and stipulates that these decisions shall be implemented in accordance with the procedures provided for in the Constitution. In all instances mentioned and in contrast to the current legal situation, these European decisions adopted by the European Council will have binding legal effect. It is therefore of utmost importance for the maintenance of the rule of law within the remit of the European Union's institutions that these decisions of the European Council are subject to judicial review by the European Court of Justice. For this reason, European decisions of the European Council need to be included among the acts subject to an action for nullity.

With regard to para. 4

It will be hardly understandable for the citizens why only regulatory acts shall be challengeable, when rights provided by the Constitution are infringed by European Laws or Framework Laws. The distinction between regulatory acts und legislative acts depends largely on the legislator's choice. However legal protection cannot be dependent on legislative choices.