

## **AMENDMENT FORM**

**Suggestion for amendment of Article : 224a**

**By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Gerhard Tusek**

**Status :        - Members and Alternate Members**

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**[Article 224a**

**A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the High Court before the governments of the Member States take the decisions referred to in Articles 223 and 224.**

**The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The appointment of members of the panel and the panel's operating rules shall be decided by the Council, acting by a qualified majority, on a proposal from the President of the Court of Justice.]**

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### **Explanation:**

Support in principle, but it is recommended to reflect once more on more transparent possibilities to give an opinion on the candidates' suitability (maybe elements of the concept chosen by the ECHR could be used).

## AMENDMENT FORM

### Suggestion for amendment of Article : 228

By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Gerhard Tusek

Status : - Members and Alternate Members

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#### Article 228

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.
2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgment, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.  
If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.  
This procedure shall be without prejudice to Article 227.
3. ~~When the Commission brings a case before the Court of Justice pursuant to Article 226 on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgment.~~

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#### Explanation :

It seems inappropriate to immediately impose financial penalties on Member States for the mere fact of non-notification. On the other hand cases of non-transposition may be hardly discerned from cases of non-complete transposition. If Member States could simply avoid the penalty being imposed by claiming transposition (notification), the provision will not improve the current enforcement system.

## AMENDMENT FORM

### Suggestion for amendment of Article : 245

By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Gerhard Tusek

Status : - Members and Alternate Members

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#### Article 245

The Statute of the Court of Justice shall be laid down in a Protocol.

**The A European law may amend the provisions of the Statute, with the exception of the matters contained in Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consulting the Commission, or at the request of the Commission and after consulting the Court of Justice.**

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#### Explanation:

The exception for Title I and Art. 64 should not only give a formal but also a substantial guarantee for the matters being dealt with there.

## **AMENDMENT FORM**

### **Suggestion for amendment of Article : 229**

**By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Reinhard Rack,  
Mr Gerhard Tusek**

**Status :        - Members and Alternate Members**

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#### **Article 229**

European laws and framework laws as well as Council laws and regulations, adopted pursuant to the provisions of the Constitution, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in them.

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#### **Explanation:**

There are no Council laws in Part one.

## AMENDMENT FORM

### Suggestion for amendment of Article : 229a

By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Reinhard Rack,  
Mr Gerhard Tusek

Status : - Members and Alternate Members

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#### Article 229a

Without prejudice to the other provisions of the Constitution, **a European law shall** ~~may~~ confer on the Court of Justice, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create industrial property rights.

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#### Explanation:

There is no justification to change the existing legal situation and thus to oblige the legislator to confer jurisdiction on the ECJ.

## AMENDMENT FORM

### Suggestion for amendment of Article : 230

**By Mr Peter Altmaier, Ms Maria Berger, Mr Elmar Brok, Mr Panayiotis Demetriu, Mr Andrew Duff, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Ben Fayot, Ms Elena Paciotti, Mr Reinhard Rack, Mr Gerhard Tusek, Mr Joachim Würmeling**

**Status : - Members and Alternate Members**

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

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.

## AMENDMENT FORM

### Suggestion for amendment of Article : 234

By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Reinhard Rack,  
Mr Gerhard Tusek

Status : - Members and Alternate Members

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#### Article 234

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Constitution;
- (b) the validity and interpretation of acts of the institutions of the Union;
- (c) the interpretation of the statutes of **agencies or bodies** established by an act of the Union, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

**[If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice shall act with the minimum of delay.]**

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#### Explanation:

Full support for the idea behind the last sentence, but should it not be left to the rules of procedure?

## **AMENDMENT FORM**

### **Suggestion for amendment of Article : 240a**

**By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Reinhard Rack,  
Mr Gerhard Tusek**

**Status :        - Members and Alternate Members**

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#### **Article 240a**

**~~The Court of Justice shall not have jurisdiction with respect to Articles 29 and 30 of  
Part One and the provisions of Chapter I of Part Two concerning the common  
foreign and security policy.~~**

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#### **Explanation:**

We do not see a justification for excluding legal acts under the common foreign and security policy from the jurisdiction of the ECJ.



## AMENDMENT FORM

### Suggestion for amendment of Article : 240b

By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Reinhard Rack,  
Mr Gerhard Tusek

Status : - Members and Alternate Members

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Article 240b

~~In exercising its competences regarding the provisions of Chapters 3 and 4 of Title [...]  
concerning the area of freedom, security and justice, 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 security, **where such action is a mater of national law.**~~

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### Explanation:

See already our comments on Art. 9 of Part two.

## AMENDMENT FORM

### Suggestion for amendment of Article : 241

By Ms Maria Berger, Mr Caspar Einem, Mr Hannes Farnleitner, Mr Reinhard Rack,  
Mr Gerhard Tusek

Status : - Members and Alternate Members

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#### Article 241

Notwithstanding the expiry of the period laid down in the fifth paragraph of Article 230, any party may, in proceedings in which **a European law, a law** or a regulation of the Council, of the Commission, or of the ECB is at issue, plead the grounds specified in the second paragraph of Article 230 in order to invoke before the Court of Justice the inapplicability of that act.

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#### Explanation:

There are no laws of the Council in Part one.

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 225 A (Cour de Justice)

Déposée par Madame ou Monsieur : **M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

Qualité : - Membre - Suppléant

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Au paragraphe 1<sup>er</sup> :

1. ~~Le Parlement européen et le Conseil, conformément à la procédure législative, peuvent adopter des lois européennes créant~~ Des tribunaux spécialisés adjoints au Tribunal de grande instance, chargés de connaître en première instance de certaines catégories de recours formés dans des matières spécifiques **peuvent être créés par une loi européenne**. Ils statuent soit sur proposition de la Commission après consultation de la Cour de justice, soit sur demande de la Cour de justice après consultation de la Commission.
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### Explication éventuelle :

Formulation alignée sur celle de l'article 229. Par souci de sécurité juridique, il convient d'utiliser une même formulation dans l'ensemble de la section D.

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : 234(Cour de Justice)**

**Déposée par Madame ou Monsieur : M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

**Qualité : - Membre - Suppléant**

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**Remplacer le dernier alinéa par :**

Si une telle question ~~est~~, soulevée dans une affaire pendante devant une juridiction nationale, ~~concernant~~ **a trait au titre** (= Espace de liberté, de sécurité et de justice) **et que la juridiction nationale motive d'une urgence particulière liée à la situation personnelle d'une partie au litige une personne détenue**, la Cour de justice statue ~~dans les plus brefs délais en priorité et selon~~ **une procédure d'urgence définie dans le règlement de procédure.**

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**Explication éventuelle :**

Dans le domaine de l'espace de liberté, de sécurité et de justice, une décision préjudicielle urgente s'impose certes lorsqu'elle concerne une personne détenue mais aussi dans d'autres hypothèses (décisions en matière de garde d'enfants, décision en matière d'asile...)

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 230 (Cour de Justice)

Déposée par Madame ou Monsieur : **M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

Qualité : - Membre - Suppléant

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1. La Cour de justice contrôle la légalité des lois européennes et des lois-cadres européennes, des actes du Conseil, de la Commission et de la BCE, autres que les recommandations et les avis, et des actes du Parlement européen destinés à produire des effets juridiques vis-à-vis des tiers. Elle contrôle aussi la légalité des actes des agences et organes de l'Union qui produisent des effets juridiques vis-à-vis de tiers.
2. À cet effet, la Cour est compétente pour se prononcer sur les recours pour incompétence, violation des formes substantielles, violation de la Constitution ou de toute règle de droit relatif à son application, ou détournement de pouvoir, formés par un État membre, le Parlement européen, le Conseil ou la Commission.

**La Cour est également compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par une Région à pouvoirs législatifs pour autant que celle-ci ait été reconnue comme telle par l'État membre concerné et que l'acte faisant l'objet du recours entre dans ses compétences. L'État membre concerné indique, pour l'application de la présente disposition, dans une déclaration quelles sont les Régions à pouvoirs législatifs qu'elle reconnaît et quelles sont leurs compétences.**

3. La Cour de justice est compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par la Cour des comptes, par la Banque centrale européenne et par le Comité des Régions, qui tendent à la sauvegarde des prérogatives de ceux-ci.
4. Toute personne physique ou morale peut former, dans les mêmes conditions, un recours contre les actes dont elle est le destinataire ou qui la concernent directement et individuellement, ainsi que contre les actes **de portée générale** ~~réglementaires~~ qui la concernent directement sans comporter de mesures d'exécution.
5. Les actes créant les organes et agences de l'Union peuvent prévoir des conditions et modalités spécifiques concernant les recours introduits par des personnes physiques ou morales contre des actes de ces organes ou agences destinés à produire des effets juridiques.
6. Les recours prévus au présent article doivent être formés dans un délai de deux mois à compter, suivant le cas, de la publication de l'acte, de sa notification au requérant ou, à défaut, du jour où celui-ci en a eu connaissance.

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Explication éventuelle :

- L'amendement au paragraphe 2 prévoit la possibilité pour les Régions à pouvoir législatif – reconnues comme telles par l'Etat membre concerné -de former des recours contre les actes entrant dans leurs compétences
- L'amendement au paragraphe 4 reprend la proposition soutenue par une majorité des membres du Cercle de réflexion « Cour de Justice »

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : 240bis(Cour de Justice)**

**Déposée par Madame ou Monsieur : M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

**Qualité : - Membre - Suppléant**

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La Cour de justice n'a pas de compétence au regard ~~des articles 29 et 30 de la Partie I et des dispositions~~ du chapitre I de la Partie **III** concernant la politique étrangère et de sécurité commune **que pour contrôler la légalité de l'adoption de mesures restrictives à l'encontre de personnes et des actes de gestion.**

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### **Explication éventuelle :**

Les sanctions prévues dans le cadre de décisions PESC à l'égard de personnes doivent pouvoir faire l'objet d'un contrôle de légalité.

## 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 Maclellan 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.**

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#### **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.



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**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**

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### Article 240a

*Delete*

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### 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**

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#### 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 McCorimick, Mr Adrian Severin, Mr Wim Van Eekelen, Ms Marie Nagy, Mr Alexander Arabadjiev Alternate Members of the Convention**

**Status :Members and Alternates**

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#### Article 240b

*Delete*

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#### **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).*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 20§1 et 2

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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#### Article 20 : La Cour de justice de l'Union européenne

1. La Cour de justice, y compris le Tribunal de grande instance, assure le respect de la Constitution et du droit de l'Union. *Elle est autonome et indépendante de tout autre pouvoir.*

...

*(Le reste est inchangé.)*

2. La Cour de justice est formée d'un juge par État membre et est assistée d'avocats généraux. Le Tribunal de grande instance compte au moins un juge par État membre: le nombre des juges est fixé par le statut de la Cour de justice. Les juges de la Cour de justice et du Tribunal de grande instance, les avocats généraux de la Cour de justice, choisis parmi des personnalités offrant toutes garanties d'indépendance et qui réunissent les conditions requises à l'article [XX] de la Partie II, sont nommés d'un commun accord par les gouvernements des États membres pour un mandat de *neuf ans non renouvelables (8 mots supprimés)*.

*(Le reste est inchangé.)*

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**Explication éventuelle :** Il est paradoxal qu'à l'article 18 on se préoccupe d'affirmer la "pleine indépendance" de la Commission, qu'à l'article 21 on affirme l'indépendance de la Banque centrale européenne, alors que rien n'est dit sur l'indépendance de la Cour de justice! Le mandat non renouvelable garantit au mieux l'indépendance des juges.

**FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : 240 bis**

**Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker**

**Qualité : - Suppléante/Membre**

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**Article 240 bis**  
*Supprimé.*

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**Explication éventuelle :**

*Les exceptions au contrôle de légitimité de la Cour de Justice mettent en danger la légalité des actes de l'Union et le respect des droits des citoyens.*



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 224

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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Il numero dei giudici del Tribunale è stabilito dallo statuto della Corte di giustizia. Lo statuto può prevedere che il Tribunale sia assistito da avvocati generali.

I membri del Tribunale sono scelti tra persone che offrano tutte le garanzie di indipendenza e possiedano la capacità per l'esercizio di alte funzioni giurisdizionali. Essi sono nominati di comune accordo (*tre parole soppresse*) dai governi degli Stati membri, previa consultazione del comitato di cui all'articolo 224bis (*18 parole soppresse*).

I giudici designano fra loro, per tre anni, il presidente del Tribunale. Il loro mandato è rinnovabile.  
(Resto invariato)

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### Explication éventuelle :

*La soppressione è conseguente all'emendamento all'art. 20 della I parte.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 224

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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#### Article 224

Le nombre des juges du Tribunal de grande instance est fixé par le statut de la Cour de justice. Le statut peut prévoir que le Tribunal est assisté d'avocats généraux.

Les membres du Tribunal de grande instance sont choisis parmi les personnes offrant toutes garanties d'indépendance et possédant la capacité requise pour l'exercice de hautes fonctions juridictionnelles. Ils sont nommés d'un commun accord (*trois mots supprimés*) par les gouvernements des États membres, **après consultation du comité prévu à l'article 224 bis. (22 mots supprimés)**

Les juges désignent parmi eux, pour trois ans, le président du Tribunal de grande instance. Son mandat est renouvelable.

*(Le reste est inchangé).*

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#### Explication éventuelle :

*La suppression est une conséquence de l'amendement déposé à l'article 20 de la I partie.*

## **FICHE AMENDEMENT**

### **Proposition d'amendement à l'Article : 223**

**Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker**

**Qualité : - Suppléante/Membre**

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I giudici e gli avvocati generali della Corte di giustizia, scelti tra personalità che offrano tutte le garanzie di indipendenza e che riuniscano le condizioni richieste per l'esercizio, nei rispettivi paesi, delle più alte funzioni giurisdizionali, ovvero che siano giureconsulti di notoria competenza, sono nominati di comune accordo dai governi degli Stati membri, previa consultazione del comitato di cui all'articolo 224 bis.

***(24 parole soppresse)***

I giudici designano fra loro, per tre anni, il Presidente della Corte di giustizia. Il suo mandato è rinnovabile.

(Resto invariato)

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#### **Explication éventuelle :**

*La soppressione della previsione del rinnovo all'unanimità è conseguente all'emendamento presentato all'art. 20 della I parte.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 223

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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#### Article 223

Les juges et les avocats généraux de la Cour de justice, choisis parmi des personnalités offrant toutes garanties d'indépendance et qui réunissent les conditions requises pour l'exercice, dans leurs pays respectifs, des plus hautes fonctions juridictionnelles, ou qui sont des jurisconsultes possédant des compétences notoires, sont nommés d'un commun accord par les gouvernements des États membres, **après consultation du comité prévu à l'article 224 bis.**

*(27 mots supprimés).*

Les juges désignent parmi eux, pour trois ans, le président de la Cour de justice. Son mandat est renouvelable.

*(Le reste est inchangé).*

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#### Explication éventuelle :

*La suppression de la possibilité de renouvellement du mandat est une conséquence de l'amendement déposé à l'article 20 de la I partie.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 222

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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La Corte di giustizia è assistita da *(tre parole soppresse)* **un numero di avvocati generali pari alla metà dei giudici**. Ove ciò sia richiesto dalla corte di giustizia, il Consiglio, deliberando *(due parole soppresse)* **a maggioranza qualificata e col parere conforme del Parlamento europeo** può aumentare il numero degli avvocati generali.

...

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**Explication éventuelle :** *L'aumento del numero dei giudici dovrà portare con sé un aumento proporzionale del numero degli avvocati generali. Con l'emendamento proposto si mantiene la proporzione attuale. L'eventuale adeguamento del numero degli avvocati generali dovrebbe in futuro poter avvenire mediante decisione a maggioranza qualificata e col parere conforme del Parlamento europeo.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 222

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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#### Article 222

La Cour de justice est assistée *d'un nombre d'avocats généraux égal à la moitié des juges (trois mots supprimés)*. Si la Cour de justice le demande, le Conseil, statuant *(trois mots supprimés) à la majorité qualifiée et après avis conforme du Parlement européen*, peut augmenter le nombre des avocats généraux.

*(Le reste est inchangé).*

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#### Explication éventuelle :

*L'augmentation du nombre des juges devra entraîner une augmentation proportionnelle du nombre des avocats généraux. Avec l'amendement proposé on maintient la proportion actuelle. L'éventuel changement du nombre des avocats généraux devrait en futur pouvoir avoir lieu par une décision à la majorité qualifiée et après avis conforme du Parlement européen.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 20

Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker

Qualité : - Suppléante/Membre

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1. La Corte di Giustizia, ivi compreso il Tribunale, assicura il rispetto della Costituzione e del diritto dell'Unione. *Essa è autonoma e indipendente da ogni altro potere.*

...

2. La Corte di giustizia è composta da un giudice per Stato membro ed è assistita da avvocati generali. Il Tribunale è composto da almeno un giudice per Stato membro: il numero dei giudici è stabilito dallo statuto della Corte di giustizia. I giudici della Corte di giustizia e del Tribunale e gli avvocati generali della Corte di giustizia, scelti tra personalità che offrono tutte le garanzie d'indipendenza e che soddisfino le condizioni richieste all'articolo [XX] della parte II, sono nominati di comune accordo dai governi degli Stati membri per un mandato di *nove anni non rinnovabile*. *(Sette parole soppresse)*

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Explication éventuelle : È paradossale che all'articolo 18 ci si preoccupi di affermare la "piena indipendenza" della Commissione, che all'articolo 21 si affermi l'indipendenza della Banca centrale europea, quando niente è detto sull'indipendenza della Corte di giustizia!

Il mandato non rinnovabile garantisce al meglio l'indipendenza dei giudici.

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : 240 bis**

**Déposée par Madame : Elena Paciotti et Madame Anne Van Lancker**

**Qualité : - Suppléante/Membre**

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*(soppresso)*

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**Explication éventuelle :** *Le eccezioni al controllo di legittimità della Corte di Giustizia mettono a rischio la legalità degli atti dell'Unione e il rispetto dei diritti dei cittadini.*



## AMENDMENT FORM

### Suggestion for amendment of Article 222

By Mr. Ján Figel' (Slovakia)

Status : Member

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The Court of Justice shall be assisted by ~~eight~~sixteen Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.

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Explanation (if any) :

**AMENDMENT FORM**

**Suggestion for amendment of Article 224a**

**By Mr. Ján Figel' (Slovakia)**

**Status :      Member**

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Delete the whole article.

## AMENDMENT FORM

### Suggestion for amendment of Article 223

By Mr. Ján Figel' (Slovakia)

Status : Member

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The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States ~~after consulting the panel provided for in Article 224a.~~

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice <sup>1</sup>.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority.

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<sup>1</sup> This provision is a function of the length of the term of office; if the Praesidium were to opt for a renewable term of office, the provision would have to be deleted.

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**Explanation (if any) :**

## AMENDMENT FORM

### Suggestion for amendment of Article 224

By Mr. Ján Figel' (Slovakia)

Status :        Member

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The number of Judges of the High Court shall be determined by the Statute of the Court of Justice. The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years—~~after consulting the panel provided for in Article 224a~~. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of three years. He may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice. It shall act after receiving the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 221

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 221

La Cour de justice siège en chambres, en grande chambre ou, **exceptionnellement**, en assemblée plénière, en conformité avec les règles prévues à cet effet par le statut de la Cour de justice.

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#### Explication éventuelle :

*Dans l'esprit de la réforme adoptée à Nice, les formations de jugement de droit commun sont les chambres et la grande chambre. Certes, il a été admis que certaines affaires puissent être soumises à l'assemblée plénière, mais cette procédure doit garder un caractère exceptionnel : il importe de le préciser.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 240 bis

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 240 bis

La Cour de justice n'a pas de compétence au regard des articles 29 et 30 de la Partie I et des dispositions du chapitre I de la Partie II concernant la politique étrangère et de sécurité commune.

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#### Explication éventuelle :

*Si la Convention en exprime le souhait, les autorités françaises sont disposées à réfléchir aux modalités d'une extension limitée et ponctuelle de la compétence de la Cour à la PESC pour certains types de recours, dès lors qu'elles préserveraient la capacité d'action diplomatique de l'Union et des Etats membres et seraient adaptées aux spécificités de la PESC/PESD.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 234

Déposée par : Dominique de Villepin

Qualité : - Membre      –Suppléant

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#### Article 234

#### **1. Les juges nationaux, juges de droit commun de l'Union, font partie intégrante du système juridictionnel de l'Union.**

**2.** La Cour de justice est compétente pour statuer, à titre préjudiciel:

- a) sur l'interprétation de la Constitution,
- b) sur la validité et l'interprétation des actes des institutions de l'Union,
- c) sur l'interprétation des statuts des agences ou organes créés par un acte de l'Union, lorsque ces statuts le prévoient.

Lorsqu'une telle question est soulevée devant une juridiction d'un des États membres, cette juridiction peut, si elle estime qu'une décision sur ce point est nécessaire pour rendre son jugement, demander à la Cour de justice de statuer sur cette question.

Lorsqu'une telle question est soulevée dans une affaire pendante devant une juridiction nationale dont les décisions ne sont pas susceptibles d'un recours juridictionnel de droit interne, cette juridiction est tenue de saisir la Cour de justice.

Si une telle question est soulevée dans une affaire pendante devant une juridiction nationale concernant une personne détenue, la Cour de justice statue dans les plus brefs délais.

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#### **Explication éventuelle :**

*Le rôle du juge de droit de commun du droit communautaire qui est celui du juge national a été consacré par la jurisprudence de la Cour de justice. Il apparaît souhaitable de le transcrire dans la Constitution.*



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 232

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 232

Dans le cas où, en violation de la Constitution, le Parlement européen, le Conseil, la Commission s'abstiendraient de statuer, les États membres et les autres institutions de l'Union peuvent saisir la Cour de justice en vue de faire constater cette violation. Cette disposition s'applique, dans les mêmes conditions, aux agences et organes de l'Union qui s'abstiennent de statuer.

Ce recours n'est recevable que si l'institution, agence ou organe en cause a été préalablement invitée à agir. Si, à l'expiration d'un délai de deux mois à compter de cette invitation, l'institution, agence ou organe n'a pas pris position, le recours peut être formé dans un nouveau délai de deux mois.

Toute personne physique ou morale peut saisir la Cour de justice dans les conditions fixées aux alinéas précédents pour faire grief à l'une des Institutions, agences ou organes de l'Union d'avoir manqué de lui adresser un acte autre qu'une recommandation ou un avis. **Cette disposition ne s'applique pas aux actes relevant de la coopération judiciaire et policière en matière pénale.**

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#### Explication éventuelle :

*Il n'apparaît pas souhaitable qu'un recours en carence puisse être introduit contre Europol et Eurojust.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 230

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 230

1. La Cour de justice contrôle la légalité des lois européennes et des lois-cadres européennes, des actes du Conseil, de la Commission et de la BCE, autres que les recommandations et les avis, et des actes du Parlement européen destinés à produire des effets juridiques vis-à-vis des tiers. Elle contrôle aussi la légalité des actes des agences et organes de l'Union qui produisent des effets juridiques vis-à-vis de tiers.
2. À cet effet, la Cour est compétente pour se prononcer sur les recours pour incompétence, violation des formes substantielles, violation de la Constitution ou de toute règle de droit relatif à son application, ou détournement de pouvoir, formés par un État membre, le Parlement européen, le Conseil ou la Commission.
3. La Cour de justice est compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par la Cour des comptes, par la Banque centrale européenne et par le Comité des Régions, qui tendent à la sauvegarde des prérogatives de ceux-ci.
4. Toute personne physique ou morale peut former, dans les mêmes conditions, un recours contre les actes dont elle est le destinataire ou qui la concernent directement et individuellement, ainsi que contre les ~~actes réglementaires~~ **règlements** qui la concernent directement sans comporter de mesures d'exécution **nationales**.
5. Les actes créant les organes et agences de l'Union peuvent prévoir des conditions et modalités spécifiques concernant les recours introduits par des personnes physiques ou morales contre des actes de ces organes ou agences destinés à produire des effets juridiques.
6. Les recours prévus au présent article doivent être formés dans un délai de deux mois à compter, suivant le cas, de la publication de l'acte, de sa notification au requérant ou, à défaut, du jour où celui-ci en a eu connaissance.

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**Explication éventuelle :**

*L'extension du droit de recours en annulation des particuliers ne doit pas aboutir à étendre ce droit indistinctement à l'égard de tous les actes réglementaires, en particulier les décisions, qui ne font généralement pas l'objet de mesures d'exécution, mais au sujet desquelles il n'y a pas de raisons de modifier le régime actuel prévu par le traité (droit de recours ouvert pour les particuliers destinataires d'une décision ou concernés directement et individuellement par celle-ci). Il faut donc viser uniquement les règlements au paragraphe 4.*

*Par ailleurs, lorsque des actes réglementaires communautaires font l'objet, pour leur mise en œuvre, de mesures nationales d'exécution, les personnes intéressées peuvent, en contestant les mesures d'exécution nationales devant le juge national, contester la légalité de l'acte communautaire qu'elles mettent en œuvre. Si la contestation est suffisamment sérieuse, le juge national en saisira la Cour de Justice. En revanche, le système actuel comporte une insuffisance lorsque l'acte communautaire ne nécessite aucune mesure nationale pour son exécution, dans la mesure où les personnes concernées ne peuvent se saisir d'aucun acte susceptible d'être déféré au juge national. C'est cette insuffisance qu'il convient de corriger en assouplissant les règles de recevabilité pour les recours dirigés contre les actes réglementaires de l'Union qui ne comportent aucune mesure nationale pour leur exécution.*

## FICHE AMENDEMENT

Proposition d'amendement à l'Article 230 bis

Déposée par Monsieur de Villepin

Qualité : - Membre

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### Article 230 bis

L'État membre concerné par une constatation par le Conseil européen ou par le Conseil en vertu de l'article 45 peut ~~s'adresser~~ **adresser un recours** à la Cour de justice, dans un délai d'un mois à compter de la date de ladite constatation, ~~pour~~ **sur le seul fondement de la** violation des ~~seules~~ prescriptions de procédure prévues dans cette disposition.

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Explication éventuelle :

*Amendement rédactionnel*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 229

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 229

Les lois européennes, ~~lois-cadres européennes~~ et les lois ou règlements du Conseil, adoptés en vertu de la Constitution, peuvent attribuer à la Cour de justice une compétence de pleine juridiction pour les sanctions qu'elles prévoient.

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#### Explication éventuelle :

*Les directives ne sont pas mentionnées actuellement à l'article 229 car elles ne peuvent prévoir de sanctions directement applicables.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 228

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 228

1. Si la Cour de justice reconnaît qu'un État membre a manqué à une des obligations qui lui incombent en vertu de la Constitution, cet État est tenu de prendre les dispositions que comporte l'exécution de l'arrêt de la Cour de justice.
2. Si la Commission estime que l'État membre concerné n'a pas pris ~~des~~ mesures ~~que comporte~~ l'exécution de l'arrêt de la Cour, **elle émet, après avoir donné à cet Etat la possibilité de présenter ses observations, un avis motivé précisant les points sur lesquels l'Etat membre concerné ne s'est pas conformé à l'arrêt de la Cour.**

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**Si l'Etat membre concerné n'a pris les mesures que comporte l'exécution de l'arrêt de la Cour dans le délai fixé par la Commission, celle-ci** elle peut saisir la Cour de justice, après avoir mis cet État en mesure de présenter ses observations. Elle indique le montant de la somme forfaitaire ou de l'astreinte à payer par l'État membre concerné qu'elle estime adapté aux circonstances.

Si la Cour de justice reconnaît que l'État membre concerné ne s'est pas conformé à son arrêt, elle peut lui infliger le paiement d'une somme forfaitaire ou d'une astreinte.

Cette procédure est sans préjudice de l'article 227.

3. ~~Lorsque la Commission saisit la Cour de justice d'un recours en vertu de l'article 226 estimant que l'État concerné a manqué à son obligation de communiquer des mesures de transposition d'une loi cadre, elle peut, lorsqu'elle le considère approprié, demander à la Cour de justice à ce qu'elle inflige, dans le même recours, le paiement d'une somme forfaitaire ou d'une astreinte dans le cas où la Cour constaterait un manquement. Si la Cour de justice fait droit à la demande de la Commission, le paiement en question prend effet dans le délai imparti par la Cour de justice dans son arrêt.~~

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**Explication éventuelle :**

*Il importe de maintenir le texte de l'actuel article 228.*

*S'agissant du paragraphe 2, la phase pré-contentieuse est essentielle pour permettre un véritable dialogue entre la Commission et l'Etat membre concerné et cerner le champ exact du litige. A cet égard, il faut tenir compte que les recours pour non-exécution d'un arrêt de la Cour portent souvent sur une exécution prétendument incomplète ou non conforme à l'arrêt de la Cour. Il faut donc préserver l'ensemble des garanties procédurales prévues par l'actuel article 228. Il convient au demeurant de rappeler que plusieurs possibilités existent d'ores et déjà pour accélérer les procédures :*

- la Commission peut renoncer à sa réplique et ainsi mettre fin à la procédure écrite devant la Cour après un seul échange de mémoires ;*
- la Cour peut décider de se passer de procédure orale ;*
- enfin, depuis le traité de Nice, elle peut également rendre son arrêt sans conclusions de l'avocat général.*

*En ce qui concerne le paragraphe 3, l'idée consistant à permettre l'imposition d'une amende ou d'une astreinte pour les cas de non-communication d'une directive n'a guère de sens. Les cas de non-communication ne constituent pas forcément les infractions les plus graves. La disposition proposée pourrait en outre facilement être contournée par les Etats membres en communiquant des mesures de transposition manifestement inadaptées ou insuffisantes. A cet égard, il convient également de rappeler que la jurisprudence de la Cour permet déjà, sous certaines conditions, à un particulier affecté par une transposition inexistante, insuffisante ou incorrecte de mettre en jeu la responsabilité de l'Etat membre concerné.*

## **FICHE AMENDEMENT**

### **Proposition d'amendement à l'Article 224 bis**

**Déposée par Monsieur de Villepin**

**Qualité : - Membre**

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#### **Article 224 bis**

Un comité est institué afin de donner un avis **motivé** sur l'adéquation des candidats à l'exercice des fonctions de juge et d'avocat général de la Cour de justice et du Tribunal de grande instance préalablement à la décision des gouvernements des États membres conformément aux articles 223 et 224.

Le comité est composé de sept personnalités parmi d'anciens membres de la Cour de justice et du Tribunal de grande instance, des membres des juridictions nationales suprêmes et des juristes possédant des compétences notoires, dont un est proposé par le Parlement européen. La désignation des membres de ce comité et ses règles de fonctionnement sont décidées par le Conseil, statuant à la majorité qualifiée, sur proposition du président de la Cour de justice.

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**Explication éventuelle :**



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 240 ter

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article 240 ter

Dans l'exercice de ses compétences concernant les dispositions des chapitres 3 et 4 du Titre [...] concernant l'espace de liberté, sécurité et justice, la Cour de justice n'a pas de compétence pour contrôler la validité ou la proportionnalité d'opérations menées par la police ou d'autres services répressifs dans un État membre, ni pour statuer sur l'exercice des responsabilités qui incombent aux États membres pour le maintien de l'ordre public et la sauvegarde de la sécurité intérieure, **lorsque ces actes relèvent du droit interne.**

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#### Explication éventuelle :

*La mention « lorsque ces actes relèvent du droit interne » est superfétatoire. Il est évident que la Cour de justice n'est compétente que pour statuer sur des actes qui relèvent du droit communautaire. De plus, cet article étant le corollaire de l'article 6 du titre concernant l'espace de liberté, de sécurité et de justice de la IIème partie, il convient qu'il en respecte la formulation.*

## AMENDMENT FORM

### Suggestion for amendment of : Article 224a (Judicial Appointments Panel)

By Mr Roche

Status : - Member

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A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the High Court before the governments of the Member States take the decisions referred to in Articles 223 and 224.

~~The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament.~~ **Arrangements in relation to t**  
**composition of the panel, the** appointment of **its** members ~~of the panel~~ and ~~the panel's~~ **its** operating rules shall be decided by the Council, acting by a qualified majority, on a proposal from the President of the Court of Justice.

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**Explanation (if any) :** I do not believe that it is necessary in the Constitutional Treaty to enter into the level of detail proposed in regard to the composition of the panel. This is a matter which can be left to the Council., acting on a proposal from the President of the Court of Justice.

## AMENDMENT FORM

### Suggestion for amendment of Article : 20

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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### Artikel 20: Der Gerichtshof der Europäischen Union

(1) Der Gerichtshof, einschließlich des Hochinstanzlichen Gerichts, sichert die Wahrung der Verfassung und des Rechts der Union.

*Ergänzend dazu schaffen die* Mitgliedstaaten die erforderlichen Rechtsbehelfe, damit ein wirksamer Rechtsschutz auf dem Gebiet des Unionsrechts gewährleistet ist.

(2) Der Gerichtshof besteht aus einem Richter je Mitgliedstaat und wird von Generalanwälten unterstützt. Das Hochinstanzliche Gericht besteht aus mindestens einem Richter je Mitgliedstaat; die Zahl der Richter wird in der Satzung des Gerichtshofs festgelegt. Zu Richtern des Gerichtshofs und des Hochinstanzlichen Gerichts sowie Generalanwälten des Gerichtshofs sind Personen auszuwählen, die jede Gewähr für Unabhängigkeit bieten und die in Artikel [XX] des Teils II verlangten Voraussetzungen erfüllen; sie werden von den Regierungen der Mitgliedstaaten im gegenseitigen Einvernehmen für eine Amtszeit von sechs Jahren ernannt. Die Wiederernennung ausscheidender Mitglieder ist zulässig.

(3) Der Gerichtshof entscheidet

- über Klagen der Kommission *oder* eines Mitgliedstaats *gegen einen Mitgliedstaat*;
- *über Klagen* eines Organs *der Union, eines Mitgliedstaats* oder juristischer oder natürlicher Personen *gegen Organe, Ämter, Agenturen oder Einrichtungen der Union* ~~in den Fällen und nach den Modalitäten, die in den Artikeln [YY] des Teils II vorgesehen sind~~;
- im Wege der Vorabentscheidung auf Antrag der einzelstaatlichen Gerichte über die Auslegung des Unionsrechts oder über die Gültigkeit der von den Organen, *Ämtern, Agenturen oder Einrichtungen* erlassenen Rechtsakte;
- über Rechtsmittel gegen die Entscheidungen des Hochinstanzlichen Gerichts oder überprüft in Ausnahmefällen diese Entscheidungen nach Maßgabe der Bedingungen, die in der Satzung des Gerichtshofs vorgesehen sind.

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**Explanation (if any) :**

***Absatz 1:***

Klarstellung des Verhältnisses zwischen Rechtsbehelfen der Mitgliedstaaten und der Union.

***Absatz 3:***

Der Formulierungsvorschlag des Präsidiums ist so verknappt, dass er nicht mehr verständlich ist.

## AMENDMENT FORM

### Suggestion for amendment of Article : 223 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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#### Artikel 223

Zu Richtern und Generalanwälten des Gerichtshofs sind Persönlichkeiten auszuwählen, die jede Gewähr für Unabhängigkeit bieten und in ihrem Staat die für die höchsten richterlichen Ämter erforderlichen Voraussetzungen erfüllen oder Juristen von anerkannt hervorragender Befähigung sind; sie werden von den Regierungen der Mitgliedstaaten im gegenseitigen Einvernehmen nach Anhörung des in Artikel 224a vorgesehenen Ausschusses ernannt.

Alle drei Jahre findet nach Maßgabe der Satzung des Gerichtshofs eine teilweise Neubesetzung der Stellen der Richter und Generalanwälte statt.

Die Richter wählen aus ihrer Mitte den Präsidenten des Gerichtshofs für die Dauer von drei Jahren. Wiederwahl ist zulässig.

Der Gerichtshof erlässt seine Verfahrensordnung. Sie bedarf der Genehmigung des Rates, ~~der darüber mit qualifizierter Mehrheit entscheidet~~ **und des Europäischen Parlaments. Sie erhält den Rang eines Organaktes.**

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Explanation (if any) :

## AMENDMENT FORM

### Suggestion for amendment of Article : 224 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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#### Artikel 224

Die Zahl der Richter des Hochinstanzlichen Gerichts wird in der Satzung des Gerichtshofs festgelegt. In der Satzung kann vorgesehen werden, dass das Gericht von Generalanwälten unterstützt wird.

Zu Mitgliedern des Hochinstanzlichen Gerichts sind Personen auszuwählen, die jede Gewähr für Unabhängigkeit bieten und über die Befähigung zur Ausübung hoher richterlicher Tätigkeiten verfügen. Sie werden von den Regierungen der Mitgliedstaaten im gegenseitigen Einvernehmen nach Anhörung des in Artikel 224a vorgesehenen Ausschusses für sechs Jahre ernannt. Alle drei Jahre wird das Hochinstanzliche Gericht teilweise neu besetzt. Die Wiederernennung ausscheidender Mitglieder ist zulässig.

Die Richter wählen aus ihrer Mitte den Präsidenten des Hochinstanzlichen Gerichts für die Dauer von drei Jahren. Wiederwahl ist zulässig.

Das Hochinstanzliche Gericht nimmt seine Verfahrensordnung im Einvernehmen mit dem Gerichtshof an. ~~Es beschließt darüber nach Zustimmung des Rates, der mit qualifizierter Mehrheit entscheidet.~~ *Sie bedarf der Genehmigung des Rates und des Europäischen Parlaments. Sie erhält den Rang eines Organaktes.*

Soweit die Satzung des Gerichtshofs nichts anderes vorsieht, finden die den Gerichtshof betreffenden Bestimmungen der Verfassung auf das Hochinstanzliche Gericht Anwendung.

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#### Explanation (if any) :

##### **Absatz 4:**

Die vom Präsidium vorgenommene Änderung des Wortlautes des Artikel 224 Absatz 5 ist (zumindest in der deutschen Version) missverständlich.

## AMENDMENT FORM

### Suggestion for amendment of Article : 225a of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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#### Artikel 225a

(1) Das Europäische Parlament und der Rat können nach dem Gesetzgebungsverfahren ~~europäische-Gesetze~~ **Organakte** zur Einrichtung von dem Hochinstanzlichen Gericht beigeordneten Fachgerichten annehmen, die für Entscheidungen im ersten Rechtszug über bestimmte Kategorien von Klagen zuständig sind, die in besonderen Sachgebieten erhoben werden. Sie beschließen entweder auf Vorschlag der Kommission und nach Anhörung des Gerichtshofs oder auf Antrag des Gerichtshofs und nach Anhörung der Kommission.

(2) In dem ~~europäischen-Gesetz~~ **Organakt** über die Einrichtung eines Fachgerichts werden die Regeln für die Zusammensetzung dieses Gerichts und der ihm übertragene Zuständigkeitsbereich festgelegt.

(3) Gegen die Entscheidungen der Fachgerichte kann vor dem Hochinstanzlichen Gericht ein auf Rechtsfragen beschränktes Rechtsmittel oder, wenn ~~das europäische-Gesetz~~ **der Organakt** über die Einrichtung des Fachgerichts dies vorsieht, ein auch Sachfragen betreffendes Rechtsmittel eingelegt werden.

(4) Zu Mitgliedern der Fachgerichte sind Personen auszuwählen, die jede Gewähr für Unabhängigkeit bieten und über die Befähigung zur Ausübung richterlicher Tätigkeiten verfügen. Sie werden vom Rat ernannt, der einstimmig beschließt.

(5) Die Fachgerichte nehmen ihre Verfahrensordnung im Einvernehmen mit dem Gerichtshof an. ~~Sie beschließen darüber nach Zustimmung des Rates, der mit qualifizierter Mehrheit entscheidet.~~ **Sie bedarf der Genehmigung des Rates und des Europäischen Parlaments. Sie erhält den Rang eines Organaktes.**

(6) Soweit ~~das europäische Gesetz~~ *der Organakt* über die Einrichtung des Fachgerichts nichts anderes vorsieht, finden die den Gerichtshof betreffenden Bestimmungen der Verfassung und die Satzung des Gerichtshofs auf die Fachgerichte Anwendung.

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**Explanation (if any) :**

***Absatz 5:***

Die vom Präsidium vorgenommene Änderung des Wortlautes des Artikel 225a Absatz 5 ist (zumindest in der deutschen Version) missverständlich.



## AMENDMENT FORM

### Suggestion for amendment of Article : 228 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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#### Artikel 228

(1) Stellt der Gerichtshof fest, dass ein Mitgliedstaat gegen eine Verpflichtung aus der Verfassung verstoßen hat, so hat dieser Staat die Maßnahmen zu ergreifen, die sich aus dem Urteil des Gerichtshofes ergeben.

(2) Hat nach Auffassung der Kommission der betreffende Mitgliedstaat die Maßnahmen, die sich aus dem Urteil des Gerichtshofs ergeben, nicht getroffen, so kann die Kommission den Gerichtshof anrufen, nachdem sie diesem Staat zuvor Gelegenheit zur Äußerung gegeben hat. Hierbei benennt sie die Höhe des von dem betreffenden Mitgliedstaat zu zahlenden Pauschalbetrags oder Zwangsgelds, die sie den Umständen nach für angemessen hält.

Stellt der Gerichtshof fest, dass der betreffende Mitgliedstaat seinem Urteil nicht nachgekommen ist, so kann er die Zahlung eines Pauschalbetrags oder Zwangsgelds verhängen.

Dieses Verfahren lässt den Artikel 227 unberührt.

(3) Erhebt die Kommission beim Gerichtshof Klage gemäß Artikel 226, da sie der Auffassung ist, dass der betreffende Staat gegen seine Verpflichtung verstoßen hat, Maßnahmen zur Umsetzung eines Rahmengesetzes mitzuteilen, so kann sie, wenn sie dies für angemessen hält, den Gerichtshof in demselben Verfahren ersuchen, gegen den betreffenden Mitgliedstaat die Zahlung eines Pauschalbetrags oder Zwangsgelds zu verhängen, wenn der Gerichtshof einen Verstoß feststellen sollte. Gibt der Gerichtshof dem Antrag der Kommission statt, so ~~wird die fragliche Zahlung~~ **ist der fragliche Betrag** innerhalb der vom Gerichtshof in seinem Urteil festgelegten Frist ~~rechtswirksam zahlbar~~.

---

#### Explanation (if any) :

##### **Absatz 3:**

Eine Regelung, wonach die Zahlung innerhalb einer im Urteil festgelegten Frist rechtswirksam werden soll, ergibt keinen Sinn.

## AMENDMENT FORM

**Suggestion for amendment of Article : 229 of Part III**

**By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann**

**Status :    - Member            -~~Alternate~~**

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### **Artikel 229**

In den europäischen Gesetzen und Rahmengesetzen und *in* den ~~Gesetzen und~~ Verordnungen des Rates, die gemäß der Verfassung angenommen worden sind, kann dem Gerichtshof eine Zuständigkeit übertragen werden, die die Befugnis zu uneingeschränkter Ermessensnachprüfung und zur Änderung oder Verhängung der in ihnen vorgesehenen Sanktionen umfasst.

---

### **Explanation (if any) :**

Der Präsidiumsentwurf stellt die Kategorie "Gesetze des Rates" neben die Kategorie "europäische Gesetze". Gemäß Artikel 24 Absatz 1 des Präsidiumsentwurfs zu Teil I der Verfassung gibt es insoweit jedoch nur die Kategorie des europäischen Gesetzes.

## AMENDMENT FORM

Suggestion for amendment of Article : 229a of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            -~~Alternate~~

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### Artikel 229a

Unbeschadet der sonstigen Bestimmungen der Verfassung wird dem Gerichtshof in einem ~~europäi-~~  
~~sehen-Gesetz~~ **Organakt** in dem darin festgelegten Umfang die Zuständigkeit übertragen, über  
Rechtsstreitigkeiten im Zusammenhang mit der Anwendung von aufgrund der Verfassung ange-  
nommenen Rechtsakten, mit denen Titel für den gewerblichen Rechtsschutz geschaffen werden, zu  
entscheiden.

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**Explanation (if any) :**

## AMENDMENT FORM

### Suggestion for amendment of Article : 230 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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#### Artikel 230

(1) Der Gerichtshof überwacht die Rechtmäßigkeit der ~~europäischen Gesetze und Rahmengesetze sowie der Rechtsakte des Rates, der Kommission und der EZB, soweit es sich nicht um Empfehlungen oder Stellungnahmen handelt, und der Rechtsakte des Europäischen Parlaments mit Rechtswirkung gegenüber Dritten. Er überwacht ebenfalls die Rechtmäßigkeit der~~ **Rechtsakte der Organe der Union** sowie der Ämter, Agenturen und Einrichtungen der Union, die Rechtswirkung gegenüber Dritten haben.

(2) Zu diesem Zweck ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat, das Europäische Parlament, der Rat oder die Kommission wegen Unzuständigkeit, Verletzung wesentlicher Formvorschriften, Verletzung der Verfassung oder einer bei seiner Durchführung anzuwendenden Rechtsnorm oder wegen Ermessensmissbrauchs erhebt.

(3) Der Gerichtshof ist unter den gleichen Voraussetzungen zuständig für Klagen ~~des Rechnungshofs, der Europäischen Zentralbank und des Ausschusses der Regionen~~ **der anderen Organe der Union sowie der Ämter, Agenturen und Einrichtungen der Union**, die auf die Wahrung ihrer Rechte abzielen.

(4) Jede natürliche oder juristische Person kann unter den gleichen Voraussetzungen gegen die an sie ergangenen oder sie unmittelbar und individuell betreffenden Rechtsakte sowie gegen ~~Durchführungsrechtsakte~~ **sonstige Rechtsakte**, die sie unmittelbar betreffen, ~~ohne Durchführungsmaßnahmen zu umfassen~~ **und keine Durchführungsmaßnahmen erfordern**, Klage erheben.

(5) In den ~~Rechtsakten~~ **Organakten** zur Gründung von Einrichtungen, Ämtern und Agenturen der Union können besondere Bedingungen und Modalitäten für die Klageerhebung von natürlichen oder juristischen Personen gegen ~~die mit einer Rechtswirkung verbundenen~~ Rechtsakte dieser Einrichtungen, Ämter und Agenturen vorgesehen werden.

(6) Die in diesem Artikel vorgesehenen Klagen sind binnen zwei Monaten zu erheben; diese Frist läuft je nach Lage des Falles von der Bekanntgabe des betreffenden Rechtsakts, seiner Mitteilung an den Kläger oder in Ermangelung dessen von dem Zeitpunkt an, zu dem der Kläger von diesem Rechtsakt Kenntnis erlangt hat.

---

**Explanation (if any) :**

***Absatz 1:***

Vorschlag zur Vereinfachung.

***Absatz 3:***

Nur in dieser weiten Fassung wird Artikel 230 Absatz 3 den Anforderungen des Prinzips des institutionellen Gleichgewichts und des Prinzips des effektiven Rechtsschutzes gerecht (vgl. Artikel 232 Absatz 1).

***Absatz 4:***

Ein umfassendes Individualklagerecht entspricht der mehrheitlichen Auffassung des Arbeitskreises über die Arbeitsweise des Gerichtshofs (vgl. Dokument Conv 636/03, Seite 7).

## AMENDMENT FORM

Suggestion for amendment of Article : 230a of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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### ~~Artikel 230a~~

~~Der von einer Feststellung des Europäischen Rates oder des Rates gemäß Artikel 45 betroffene Mitgliedstaat kann binnen eines Monats nach der fraglichen Feststellung den Gerichtshof wegen Verstoßes gegen die in dieser Bestimmung vorgesehenen reinen Verfahrensvorschriften anrufen.~~

---

**Explanation (if any) :**

**Streichen.** Diese Sonderregelung ist nach Verschmelzung der Union mit der Gemeinschaft nicht mehr notwendig, da der Rechtsschutz der Mitgliedstaaten gegen Entscheidungen des Rates wie des Europäischen Rates umfassend durch Art. 230 Absatz 2 zu gewährleisten ist.

## AMENDMENT FORM

### Suggestion for amendment of Article : 232 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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#### Artikel 232

Unterlässt es das Europäische Parlament, der Rat oder die Kommission unter Verletzung dieser Verfassung, einen Beschluss zu fassen, so können die Mitgliedstaaten und die anderen Organe der Union beim Gerichtshof Klage auf Feststellung dieser Verfassungsverletzung erheben. Diese Bestimmung gilt entsprechend für die Ämter, Agenturen und Einrichtungen der Union, die es unterlassen, einen Beschluss zu fassen.

Diese Klage ist nur zulässig, wenn die in Frage stehenden Organe, Ämter, Agenturen oder Einrichtungen zuvor aufgefordert worden sind, tätig zu werden. Haben sie binnen zwei Monaten nach dieser Aufforderung nicht Stellung genommen, so kann die Klage innerhalb einer weiteren Frist von zwei Monaten erhoben werden.

Jede natürliche oder juristische Person kann nach Maßgabe der Absätze 1 und 2 vor dem Gerichtshof Beschwerde darüber führen, dass ein Organ, ein Amt, eine Agentur oder eine Einrichtung es unterlassen hat, einen ~~anderen Akt als eine Empfehlung oder eine Stellungnahme~~ **Rechtsakt** an sie zu richten.

---

#### Explanation (if any) :

Ein "anderer Akt als eine Empfehlung oder eine Stellungnahme" ist nach der Systematik des Artikel 24 Absatz 1 des Präsidiumsentwurfs für Teil I der Verfassung ein "Rechtsakt".

## AMENDMENT FORM

### Suggestion for amendment of Article : 234 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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#### Artikel 234

Der Gerichtshof entscheidet im Wege der Vorabentscheidung

- a) über die Auslegung der Verfassung,
- b) über die Gültigkeit und die Auslegung der Handlungen der Organe der Union,
- c) ~~über die Auslegung der Satzungen der durch die Union geschaffenen Einrichtungen, Ämter und Agenturen, soweit diese Satzungen dies vorsehen.~~

Wird eine derartige Frage einem Gericht eines Mitgliedstaats gestellt und hält dieses Gericht eine Entscheidung darüber zum Erlass seines Urteils für erforderlich, so kann es diese Frage dem Gerichtshof zur Entscheidung vorlegen.

Wird eine derartige Frage in einem schwebenden Verfahren bei einem einzelstaatlichen Gericht gestellt, dessen Entscheidungen selbst nicht mehr mit Rechtsmitteln des innerstaatlichen Rechts angefochten werden können, so ist dieses Gericht zur Anrufung des Gerichtshofes verpflichtet.

Wird eine derartige Frage in einem schwebenden Verfahren, das eine inhaftierte Person betrifft, bei einem einzelstaatlichen Gericht gestellt, so entscheidet der Gerichtshof innerhalb kürzester Zeit.

---

#### Explanation (if any) :

##### *Absatz 1 Buchstabe c:*

**Streichen.** Diese Bestimmung gefährdet, wenn sie zur Anwendung gelangt, die einheitliche Anwendung des Unionsrechts.



## AMENDMENT FORM

Suggestion for amendment of Article : 240a of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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### ~~Artikel 240a~~

~~Der Gerichtshof ist nicht zuständig in Bezug auf die Artikel 29 und 30 des Teils I und in Bezug auf die Bestimmungen von Kapitel I des Teils II betreffend die Gemeinsame Außen- und Sicherheitspolitik.~~

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Explanation (if any) :

Streichen.

## AMENDMENT FORM

Suggestion for amendment of Article : 240b of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member - ~~Alternate~~

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### ~~Artikel 240b~~

~~Bei der Ausübung seiner Zuständigkeiten im Rahmen der Kapitel 3 und 4 des Titels [...] betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.~~

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Explanation (if any) :

Streichen.

## AMENDMENT FORM

Suggestion for amendment of Article : 241 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member -~~Alternate~~

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### Artikel 241

Ungeachtet des Ablaufs der in Artikel 230 Absatz 5 genannten Frist kann jede Partei in einem Rechtsstreit, bei dem es auf die Geltung eines ~~europäischen Gesetzes, eines Gesetzes oder einer Verordnung des Rates, der Kommission oder der EZB~~ **Rechtsaktes von allgemeiner Geltung** ankommt, vor dem Gerichtshof die Unanwendbarkeit dieses Rechtsakts aus den in Artikel 230 Absatz 2 genannten Gründen geltend machen.

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**Explanation (if any) :**

## AMENDMENT FORM

Suggestion for amendment of Article : 245 of Part III

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member -~~Alternate~~

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### Artikel 245

Die Satzung des Gerichtshofs ~~wird in einem Protokoll festgelegt~~ gilt als *Organakt fort*.

Die Satzung ~~mit Ausnahme ihres Titels I und des Artikels 64~~ kann ~~in einem Gesetz~~ **im Gesetzgebungsverfahren** geändert werden. Das Europäische Parlament und der Rat beschließen entweder auf ~~Antrag~~ **Vorschlag** des Gerichtshofs und nach Anhörung der Kommission oder auf ~~Antrag~~ **Vorschlag** der Kommission und nach Anhörung des Gerichtshofs.

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### Explanation (if any) :

Der Präsidiumsvorschlag schafft Rechtsunklarheit. Als Protokoll hätte die Satzung wie bisher Verfassungsrang. Erfolgte die Änderung der Satzung "in einem Gesetz", so würde damit eine Zweistufigkeit der Satzung des Gerichtshofs begründet, die aus den alten Bestimmungen (Verfassungsrang) und den neuen Bestimmungen (Gesetzesrang) besteht. Diese verwirrende Konstruktion kann dadurch beseitigt werden, dass der Satzung des Gerichtshofs von vornherein kein Verfassungsrang verliehen wird.

## **FICHE AMENDEMENT 1**

**Proposition d'amendement à l'Article : Artículo 222**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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**Artículo 222 (Modificar párrafo 1º).-**

Situar en, al menos, 10 el número de abogados generales

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**Explication éventuelle :**

Teniendo en cuenta el aumento que va a experimentar el volumen de trabajo del TJCE (como consecuencia de la ampliación a 25 Estados miembros y de la extensión plena de su competencia a las cuestiones hoy reguladas por el título VI del TUE y el título IV del Tratado CE) conviene aumentar el número de abogados generales.

## **FICHE AMENDEMENT 2**

### **Proposition d'amendement à l'Article : Artículo 223**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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#### **Artículo 223 (párrafo 1º).-**

Modificar la parte final de este párrafo 1º, para que sea lea “(...) serán designados *por el Consejo a propuesta de los gobiernos de los Estados miembros*, previa consulta del comité previsto en el artículo 224 bis. *La propuesta conjunta deberá ser ratificada por el Parlamento Europeo*”.

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#### **Explication éventuelle :**

Artículo 223 (párrafo 1º).- En concordancia con la enmienda que presentamos al art. 20 de la Parte I, según la cual es el Consejo, a propuesta de los Estados miembros, quien designa a los jueces y abogados generales del TJCE y el PE ha de ratificar la propuesta conjunta.

## **FICHE AMENDEMENT 3**

### **Proposition d'amendement à l'Article : Artículo 224**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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#### **Artículo 224 (Modificar párrafo 1º).-**

Cambiar la 2ª frase de este párrafo 2º, en el siguiente sentido: “Será designados *por el Consejo a propuesta de los Gobiernos de los Estados miembros*, previa consulta al comité previsto en el artículo 224 bis”.

---

#### **Explication éventuelle :**

En concordancia con la enmienda que presentamos al artículo 20 de la Parte I.

## **FICHE AMENDEMENT 4**

**Proposition d'amendement à l'Article : Artículo 224bis**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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**Artículo 224 bis (Modificar párrafos 1º y 2º).-**

**Artículo 224 bis (párrafo 1º).-**

Párrafo 1º debería terminar del siguiente modo: “, antes de la decisión *del Consejo* con arreglo a los artículos 223 y 224”.

**Artículo 224 bis (párrafo 2º).-**

Modificar la última frase de párrafo 2º en el siguiente sentido: “El Consejo decidirá por mayoría cualificada, a propuesta del Presidente del Tribunal de Justicia, la designación de los *restantes seis* miembros de dicho comité y sus normas de funcionamiento”.

---

### **Explication éventuelle :**

P1º : A la vista de la enmienda que presentamos al artículo 20 de la Parte I, hay que alterar la redacción de la parte final de este párrafo.

P2º : Si es verdad que 1 de los 7 miembros del comité contemplado en este precepto va a ser designado por el Parlamento Europeo, entonces el Consejo sólo puede nombrar a los 6 miembros restantes.



## **FICHE AMENDEMENT 5**

**Proposition d'amendement à l'Article : Artículo 225A**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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**Artículo 225 A (Modificar apartado 1).-**

Modificar la redacción de la última frase del apartado 1 de manera que comience : “*El Parlamento Europeo y el Consejo* decidirán (...)”.

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**Explication éventuelle :**

Citando expresamente a sus sujetos, se mejora la redacción de la última frase de este apartado 1.

## **FICHE AMENDEMENT 6**

### **Proposition d'amendement à l'Article : Artículo 228**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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#### **Artículo 228 (Modificar apartado 1).-**

Introducir en el apartado 1 las palabras que figuran en cursiva “(...) dicho Estado estará obligado a adoptar *de forma inmediata* las disposiciones (...)”.

---

#### **Explication éventuelle :**

Debe introducirse una referencia al plazo del que disponen los Estados para dar cumplimiento a las sentencias del TJCE condenándoles por violación del Derecho de la UE, de acuerdo con la jurisprudencia actual del TJCE.

## **FICHE AMENDEMENT 7**

### **Proposition d'amendement à l'Article : Artículo 230**

**Déposée par Messieurs : Borrell (miembro), Carnero y López Garrido (suplentes)**

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#### **Artículo 230 (Modificar apartados 1, 3 y 4).-**

**Apartado 1:** “El Tribunal de Justicia controlará la legalidad *de los actos que produzcan efectos jurídicos frente a terceros adoptados por el Parlamento Europeo y el Consejo, el Consejo, la Comisión, el Parlamento Europeo, el BCE o las agencias y organismos de la Unión*”.

**Apartado 3:** Introducir en este apartado 3 una referencia al Comité Económico y Social. “El Tribunal de Justicia será competente en las mismas condiciones para pronunciarse sobre los recursos interpuestos por el Tribunal de Cuentas, el Banco Central Europeo, el Comité de las Regiones y *el Comité Económico y Social*, con el fin de salvaguardar prerrogativas de éstos”.

**Apartado 4:** “Toda persona física o jurídica podrá interponer, en las mismas condiciones, recurso *contra las decisiones de las que sea destinataria, contra los actos no legislativos de alcance general que le afecten directamente sin medida de ejecución y contra cualquier otro tipo de acto que le afecte directa e individualmente*”.

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#### **Explication éventuelle :**

Apdo. 1 : La redacción propuesta en la presente enmienda es más sencilla.

Apdo. 2 : Por el paralelismo que existe entre el Comité de las Regiones y el Comité Económico y Social, creo que si en el marco del artículo 230 se reconoce legitimación activa al primero, debe también reconocérsele, en los mismos términos, al segundo.

Apdo. 3 : En el texto que propone el Praesidium se hace referencia a los “actos reglamentarios”, categoría no contemplada como tal en los artículos 24 ss. El objetivo que persigue el Praesidium, tal y como se explica en el comentario, se refleja mejor con la nueva redacción propuesta.

## AMENDMENT FORM

### Suggestion for amendment of Article : 20

By Mr : Joschka Fischer

Status : - Member

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#### Artikel 20: Der Gerichtshof der Europäischen Union

(1) Der Gerichtshof, einschließlich des ~~Hochinstanzlichen~~ Gerichts, sichert die Wahrung der Verfassung und des Rechts der Union.

~~Die Mitgliedstaaten schaffen die erforderlichen Rechtsbehelfe, damit ein wirksamer Rechtsschutz auf dem Gebiet des Unionsrechts gewährleistet ist.~~

(2) Der Gerichtshof besteht aus einem Richter je Mitgliedstaat und wird von Generalanwälten unterstützt. Das ~~Hochinstanzliche~~ Gericht besteht aus mindestens einem Richter je Mitgliedstaat; die Zahl der Richter wird in der Satzung des Gerichtshofs festgelegt. Zu Richtern des Gerichtshofs und des ~~Hochinstanzlichen~~ Gerichts sowie Generalanwälten des Gerichtshofs sind Personen auszuwählen, die jede Gewähr für Unabhängigkeit bieten und die in Artikel [XX] des Teils II verlangten Voraussetzungen erfüllen; sie werden von den Regierungen der Mitgliedstaaten im gegenseitigen Einvernehmen für eine Amtszeit von sechs Jahren ernannt. Die Wiederernennung ausscheidender Mitglieder ist zulässig.

(3) Die europäische Gerichtsbarkeit~~Der Gerichtshof~~ entscheidet

- über Klagen der Kommission, eines Mitgliedstaats, eines Organs oder juristischer oder natürlicher Personen in den Fällen und nach den Modalitäten, die in den Artikeln [YY] des Teils II vorgesehen sind;
- im Wege der Vorabentscheidung auf Antrag der einzelstaatlichen Gerichte über die Auslegung des Unionsrechts oder über die Gültigkeit der von den Organen erlassenen Rechtsakte;

~~über Rechtsmittel gegen die Entscheidungen des Hochinstanzlichen Gerichts oder überprüft in Ausnahmefällen diese Entscheidungen nach Maßgabe der Bedingungen, die in der Satzung des Gerichtshofs vorgesehen sind.~~

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### **Explanation:**

Zu Abs. 1: Die Bezeichnung "Hochinstanzlich" ist im Deutschen sprachlich unglücklich und würde in der Öffentlichkeit entsprechende Reaktionen auslösen. Es genügt, entsprechend der bisher schon teilweise geübten Praxis von "Gericht" zu sprechen. In den meisten Sprachen ist eine entsprechende Differenzierung möglich und üblich (ex. "cour"/"tribunal"). Das Problem stellt sich nur in wenigen Sprachen und sollte dort jeweils angemessen gelöst werden.

Der Unterabsatz 2 sollte gestrichen werden, vgl. Änderungsantrag des Konventsmitglieds Joschka Fischer zu CONV 691/03.

Zu Abs. 3: Der Begriff "Gerichtshof" wird in den Anstrichen 1 und 2 für Gerichtshof und Gericht, also die Europäische Gerichtsbarkeit insgesamt gebraucht. Nur der dritte Anstrich bezieht sich ausschließlich auf den Gerichtshof. Dieser Anstrich ist entbehrlich: die Rechtsmittelfunktion ergibt sich aus Art. 225 im Teil II.

### **Ergänzender Hinweis:**

Als Folgeänderung sollte in den Artikeln 224 und 225 jeweils der Begriff "Hochinstanzliche" gestrichen werden.

## AMENDMENT FORM

Suggestion for amendment of Article : 224a

By Mr : Joschka Fischer

Status : - Member

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### ~~Artikel 224a~~

~~Es wird ein Ausschuss eingerichtet, der die Aufgabe hat, vor der Entscheidung der Regierungen der Mitgliedstaaten gemäß den Artikeln 223 und 224 ein Gutachten über die Eignung der Bewerber für die Ausübung des Amts eines Richters oder Generalanwalts beim Gerichtshof oder beim Hochinstanzlichen Gericht zu erstellen.~~

~~Der Ausschuss setzt sich aus sieben Persönlichkeiten zusammen, die aus dem Kreis ehemaliger Mitglieder des Gerichtshofs und des Hochinstanzlichen Gerichts, der Mitglieder der höchsten einzelstaatlichen Gerichte und der Juristen von anerkannt hervorragender Befähigung stammen, von denen einer vom Europäischen Parlament vorgeschlagen wird. Die Ernennung der Mitglieder dieses Ausschusses und die Vorschriften für seine Arbeitsweise werden vom Rat auf Vorschlag des Präsidenten des Gerichtshofs mit qualifizierter Mehrheit beschlossen.~~

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### Explanation:

Der Artikel ist zu streichen. Der vorgesehene Begutachtungsausschuss führt nicht zu einem transparenteren Verfahren. Ein Bedürfnis für einen solchen Ausschuss ist auf der Grundlage der bisherigen Erfahrungen nicht zu erkennen. Das in Absatz 1 vorgesehene umfangreiche Gutachten über die Eignung der Bewerber greift zu stark in die Zuständigkeit der Mitgliedstaaten für die Beurteilung der fachlichen Eignung von Richterinnen und Richtern ein. Die in Absatz 2 vorgesehene Zusammensetzung des Gremiums aus sieben Personen würde zu Streitigkeiten wegen der Staatsangehörigkeit der Mitglieder führen. Außerdem ist problematisch, dass das Vorschlagsrecht dem Präsidenten des EuGH zukommen soll, da in Verbindung mit der Zusammensetzung des Ausschusses, der in erster Linie aus früheren Angehörigen der europäischen Gerichtsbarkeit bestehen soll, die europäischen Richter einen zu großen Einfluss auf ihre Nachfolger erhalten würden.

**Ergänzender Hinweis:**

Als Folgeänderung sollten in den Artikeln 223 und 224 die Bezugnahmen auf Artikel 224a entfallen.

## AMENDMENT FORM

### Suggestion for amendment of Article : 228

By Mr : Joschka Fischer

Status : - Member

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#### Artikel 228

(1) Stellt der Gerichtshof fest, dass ein Mitgliedstaat gegen eine Verpflichtung aus der Verfassung verstoßen hat, so hat dieser Staat die Maßnahmen zu ergreifen, die sich aus dem Urteil des Gerichtshofes ergeben.

(2) **Hat nach Auffassung der Kommission der betreffende Mitgliedstaat die Maßnahmen, die sich aus dem Urteil des Gerichtshofs ergeben, nicht getroffen, so kann die Kommission den Gerichtshof anrufen, nachdem sie diesem Staat zuvor Gelegenheit zur Äußerung gegeben hat.** Hierbei benennt sie die Höhe des von dem betreffenden Mitgliedstaat zu zahlenden Pauschalbetrags oder Zwangsgelds, die sie den Umständen nach für angemessen hält.

Stellt der Gerichtshof fest, dass der betreffende Mitgliedstaat seinem Urteil nicht nachgekommen ist, so kann er die Zahlung eines Pauschalbetrags oder Zwangsgelds verhängen.

Dieses Verfahren lässt den Artikel 227 unberührt.

~~(3) Erhebt die Kommission beim Gerichtshof Klage gemäß Artikel 226, da sie der Auffassung ist, dass der betreffende Staat gegen seine Verpflichtung verstoßen hat, Maßnahmen zur Umsetzung eines Rahmengesetzes mitzuteilen, so kann sie, wenn sie dies für angemessen hält, den Gerichtshof in demselben Verfahren ersuchen, gegen den betreffenden Mitgliedstaat die Zahlung eines Pauschalbetrags oder Zwangsgelds zu verhängen, wenn der Gerichtshof einen Verstoß feststellen sollte. Gibt der Gerichtshof dem Antrag der Kommission statt, so wird die fragliche Zahlung innerhalb der vom Gerichtshof in seinem Urteil festgelegten Frist rechtswirksam.~~



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**Explanation:**

Absatz 3 ist zu streichen. Wenn in ein und demselben Verfahren die Vertragsverletzung und das Zwangsgeld festgelegt werden können, so birgt dies angesichts der nötigen parlamentarischen Verfahren insbesondere in föderalen Staaten die Gefahr, dass trotz redlichen Bemühens um Abhilfe ein Mitgliedstaat hohe finanzielle Sanktionen zahlen muss.

## AMENDMENT FORM

### Suggestion for amendment of Article : 230

By Mr : Joschka Fischer

Status : - Member

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#### Artikel 230

(1) Der Gerichtshof überwacht die Rechtmäßigkeit der **europäischen Gesetze und Rahmengesetze** sowie der Rechtsakte des Rates, der Kommission und der EZB, soweit es sich nicht um Empfehlungen oder Stellungnahmen handelt, und der Rechtsakte des Europäischen Parlaments mit Rechtswirkung gegenüber Dritten. **Er überwacht ebenfalls die Rechtmäßigkeit der Rechtsakte der Ämter, Agenturen und Einrichtungen der Union, die Rechtswirkung gegenüber Dritten haben.**

(2) Zu diesem Zweck ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat, das Europäische Parlament, der Rat oder die Kommission wegen Unzuständigkeit, Verletzung wesentlicher Formvorschriften, Verletzung der Verfassung oder einer bei seiner Durchführung anzuwendenden Rechtsnorm oder wegen Ermessensmissbrauchs erhebt.

(3) Der Gerichtshof ist unter den gleichen Voraussetzungen zuständig für Klagen des Rechnungshofs, der Europäischen Zentralbank **und des Ausschusses der Regionen**, die auf die Wahrung ihrer Rechte abzielen.

(4) Jede natürliche oder juristische Person kann unter den gleichen Voraussetzungen gegen **die an sie ergangenen oder sie unmittelbar und individuell betreffenden Rechtsakte sowie gegen ~~Durchführungsrechtsakte~~ Rechtsakte mit allgemeiner Geltung, die sie unmittelbar betreffen, ohne Durchführungsmaßnahmen zu umfassen, Klage erheben.**

(5) **In den Rechtsakten zur Gründung von Einrichtungen, Ämtern und Agenturen der Union können besondere Bedingungen und Modalitäten für die Klageerhebung von natürlichen oder juristischen Personen gegen die mit einer Rechtswirkung verbundenen Rechtsakte dieser Einrichtungen, Ämter und Agenturen vorgesehen werden.**

(6) Die in diesem Artikel vorgesehenen Klagen sind binnen zwei Monaten zu erheben; diese Frist läuft je nach Lage des Falles von der Bekanntgabe des betreffenden Rechtsakts, seiner Mitteilung an den Kläger oder in Ermangelung dessen von dem Zeitpunkt an, zu dem der Kläger von diesem Rechtsakt Kenntnis erlangt hat.

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**Explanation:**

Zu Absatz 2: Von zentraler politischer Bedeutung ist für Deutschland, dass ein Klagerecht beider Kammern nationaler Parlamente in Subsidiaritätsfragen vorgesehen wird. Dies ist an geeigneter Stelle der Verfassung zu regeln.

In Absatz 4 ist das Wort „Durchführungsakte“ durch das Wort „Rechtsakte mit allgemeiner Geltung“ zu ersetzen. Nicht zuletzt zur Gewährleistung der Grundrechte besteht auch ein Bedürfnis nach Rechtsschutz gegen Gesetze. Dieser Änderungsvorschlag entspricht der Auffassung der Mehrheit im Arbeitskreis I "Gerichtshof" und den dort eingebrachten deutschen Forderungen.

## AMENDMENT FORM

Suggestion for amendment of Article : 240a

By Mr : Joschka Fischer

Status : - Member

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### Artikel 240a

~~Der Gerichtshof ist nicht zuständig.~~ **In Bezug auf die Artikel 29 und 30 des Teils I und in Bezug auf die Bestimmungen von Kapitel I des Teils II betreffend die Gemeinsame Außen- und Sicherheitspolitik, ist der Gerichtshof nur für Verfahren gemäß Art. 230 Abs. 4 und Art. 234 zuständig, wenn Einzelne unmittelbar und individuell betroffen sind.**

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### Explanation:

Ein vollständiger Ausschluss der Gerichtsbarkeit im GASP-Bereich ist nicht gerechtfertigt. Vielmehr muss im Hinblick auf Durchführungsmaßnahmen, die Einzelne unmittelbar und individuell betreffen, der Rechtsschutz gesichert sein. Dies ist ein Erfordernis der Rechtsstaatlichkeit.

## AMENDMENT FORM

Suggestion for amendment of Article : 240b

By Mr : Joschka Fischer

Status : - Member

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### Artikel 240b

~~Bei der Ausübung seiner Zuständigkeiten im Rahmen der Kapitel 3 und 4 des Titels [...] betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, **wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.**~~

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### Explanation:

Der Artikel sollte gestrichen werden. Gemäß dem Bericht der Arbeitsgruppe Freiheit, Sicherheit und Recht sollte die Rechtskontrolle durch den EuGH im Bereich Justiz und Inneres nicht eingeschränkt werden. Der Änderungsvorschlag entspricht dem Änderungsantrag, den Konventsmitglied Joschka Fischer zu CONV 614/03 (Art. 9) vorgelegt hat.

## AMENDMENT FORM

### Suggestion for amendment of Article : 224

By Mr Hannes Farnleitner, Mr Gerhard Tusek

Status : - Member and Alternate Member

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#### Article 224

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice.

**The Council shall act unanimously.**

The Statute may provide for the High Court to be assisted by Advocates-General.

This provision is a function of the length of the term of office; if the Praesidium were to opt for a renewable term of office, the provision would have to be deleted.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office.

They shall be appointed by common accord of the governments of the Member States for a term of six years after consulting the panel provided for in Article 224a. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of three years. He may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice.

It shall act after receiving the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.

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#### Explanation :

As a constitutional issue the number of judges shall be determined unanimously.

## AMENDMENT FORM

### Suggestion for amendment of Article : 225a

By Mr Hannes Farnleitner, Mr Gerhard Tusek

Status : - Member and Alternate Member

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#### Article 225a

1. The European Parliament and the Council, in accordance with the legislative procedure, **the Council, however, acting unanimously**, may adopt European laws establishing specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall act either on a proposal from the Commission after consulting the Court of Justice or at the request of the Court of Justice after consulting the Commission.
2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.
4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.
5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. They shall act after receiving the approval of the Council, acting by a qualified majority.
6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the specialised courts.

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#### Explanation :

The establishment of new institutions merits, as a consitutional issue, the voting of the Council by unanimity.

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : Artigo 20.º - O Tribunal de Justiça da União Europeia

Déposée par Monsieur Queiró

Qualité - Suppléant

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1. No âmbito das respectivas competências, o Tribunal de Justiça e o Tribunal de Grande Instância garantem o respeito do direito na interpretação e aplicação do presente Tratado e da legislação adoptada em sua aplicação.

A União e os Estados-Membros estabelecem as vias de recurso necessárias para assegurar uma protecção jurisdicional efectiva no domínio do direito da União.

2. O Tribunal de Justiça é composto por um juiz de cada Estado-Membro e é assistido por advogados-gerais. O Tribunal de Grande Instância é constituído, no mínimo, por um juiz de cada Estado-Membro, sendo o número de juizes fixado no Estatuto do Tribunal de Justiça. Os juizes do Tribunal de Justiça e do Tribunal de Grande Instância, bem como os advogados-gerais do Tribunal de Justiça, escolhidos entre personalidades que ofereçam todas as garantias de independência e reúnam as condições exigidas no artigo [XX] da Parte II, são nomeados de comum acordo pelos Governos dos Estados-Membros, por um mandato de **nove** anos. (8 palavras suprimidas)

3. O Tribunal de Justiça é competente para:

- decidir **os recursos interpostos ou** (1 palavra suprimida) as acções propostas **por qualquer das Instituições,** (2 palavras suprimidas) por um Estado-Membro, (3 palavras suprimidas) ou por pessoas singulares e colectivas nos casos referidos e segundo as modalidades previstas no artigo [YY] da Parte II;

- decidir a título prejudicial, a pedido dos órgãos jurisdicionais nacionais, sobre a interpretação do direito da União ou sobre a validade dos actos aprovados pelas Instituições;

- decidir sobre os recursos contra decisões proferidas pelo Tribunal de Grande Instância ou, excepcionalmente, reapreciar essas decisões, nas condições previstas no Estatuto do Tribunal de Justiça.

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### Explication éventuelle :

Quanto ao n.º 1, segue-se a redacção em vigor – adaptada – do primeiro parágrafo do artigo 220.º



*CE. O nome dado ao actual Tribunal de Primeira Instância é um claro recurso ao sistema jurisdicional francês.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 242.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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**Os recursos** (2 palavras suprimidas) perante o Tribunal de Justiça (1 palavras suprimida) têm efeito (1 palavra suprimida) **devolutivo, salvo o disposto no artigo seguinte.** (21 palavras suprimidas)

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**Explication éventuelle :**

*Prefere-se uma versão simplificada do artigo 242.º CE, embora combinado com o artigo 243.º CE.*

*Na verdade, julga-se que a suspensão da execução do acto é uma das medidas cobertas pelo disposto na redacção agora proposta.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 241.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Mesmo depois de decorrido o prazo previsto no quinto parágrafo do artigo 230.º, qualquer parte pode, em caso de litígio que ponha em causa **um acto normativo emanado de qualquer das instituições da União ou pelo** (14 palavras suprimidas) BCE, recorrer aos meios previstos no segundo parágrafo do artigo 230.º para arguir, no Tribunal de Justiça, a inaplicabilidade desse acto.

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**Explication éventuelle :**

*Prefere-se apenas uma redacção mais genérica.*

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 240.º - B**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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**Suprimir a totalidade do Artigo 240.º - B**

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**Explication éventuelle :**

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 240.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Sem prejuízo da competência atribuída ao Tribunal de Justiça **pelo presente Tratado** (2 palavras suprimidas), os litígios em que a União seja parte não ficam, por este motivo, subtraídos à competência dos órgãos jurisdicionais nacionais.

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**Explication éventuelle :**

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 240.º - C**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Os Estados-Membros comprometem-se a não submeter qualquer diferendo relativo à interpretação ou aplicação **do presente Tratado** (2 palavras surpimidas) a um modo de resolução diverso dos que nela estão previstos.

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**Explication éventuelle :**

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 240.º- A**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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O Tribunal de Justiça não é competente em relação aos artigos 29.º e 30.º da Parte I nem em relação às disposições do Capítulo I da Parte II, respeitantes à política externa e de segurança comum.

**No domínio do espaço de liberdade, segurança e justiça, a competência do Tribunal de Justiça exerce-se nos casos e com os limites previstos no artigo 9.º [...] da Parte II.»**

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### **Explication éventuelle :**

*Inserir-se uma remissão ao carácter específico e limitado da intervenção do Tribunal de Justiça no domínio do “Espaço de Liberdade, Segurança e Justiça”. É adequada a supressão do projecto de artigo 240.º-B, juntando num único artigo os domínios de não intervenção ou de intervenção mitigada do Tribunal de Justiça.*

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 239.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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O Tribunal de Justiça é competente para decidir sobre qualquer diferendo entre os Estados-Membros, relacionado com o objecto **do presente Tratado** (2 palavras suprimidas), se esse diferendo lhe for submetido por compromisso.

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**Explication éventuelle :**



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : Artigo 237.º

Déposée par Monsieur Queiró

Qualité - Suppléant

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Nos limites a seguir indicados, o Tribunal de Justiça é competente para conhecer dos litígios respeitantes:

- a) À execução das obrigações dos Estados-Membros, decorrentes dos Estatutos do Banco Europeu de Investimento. O Conselho de Administração do Banco dispõe, para o efeito, dos poderes atribuídos à Comissão no [artigo 226.º];
  - b) Às deliberações do Conselho de Governadores do Banco Europeu de Investimento. Qualquer Estado-Membro, a Comissão e o Conselho de Administração do Banco podem propor uma acção nesta matéria, nos termos do [artigo 230.º];
  - c) Às deliberações do Conselho de Administração do Banco Europeu de Investimento. As acções contra estas deliberações só podem ser propostas, nos termos do [artigo 230.º], pelos Estados-Membros ou pela Comissão e apenas por violação das formalidades previstas nos n.ºs 2 e 5 a 7, inclusive, do artigo 21.º dos Estatutos do Banco;
  - d) À execução das obrigações resultantes **do presente Tratado** (2 palavras suprimidas) e dos Estatutos do SEBC pelos bancos centrais nacionais. O Conselho do BCE disporá, neste contexto, em relação aos bancos centrais nacionais, dos poderes atribuídos à Comissão no [artigo 226.º] em relação aos Estados-Membros. Se o Tribunal de Justiça declarar verificado que um banco central nacional não cumpriu qualquer das obrigações que lhe incumbem por força **do presente Tratado** (2 palavras suprimidas), esse banco central deve tomar as disposições necessárias à execução do acórdão do Tribunal de Justiça.
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Explication éventuelle :

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 234.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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O Tribunal de Justiça é competente para decidir, a título prejudicial, sobre:

- a) A interpretação **do presente Tratado** (2 palavras suprimidas);
- b) A validade e a interpretação dos actos das Instituições da União;
- c) A interpretação dos estatutos das agências, **organismos** ou órgãos criados por acto da União, desde que estes estatutos o prevejam.

Sempre que uma questão desta natureza seja suscitada perante qualquer órgão jurisdicional de um dos Estados-Membros, esse órgão pode, se considerar que uma decisão sobre essa questão é necessária ao julgamento da causa, pedir ao Tribunal de Justiça que sobre ela se pronuncie.

Sempre que uma questão desta natureza seja suscitada em processo pendente perante um órgão jurisdicional nacional cujas decisões não sejam susceptíveis de recurso judicial previsto no direito interno, esse órgão é obrigado a submeter a questão ao Tribunal de Justiça.

Sempre que uma questão desta natureza seja suscitada em processo pendente perante um órgão jurisdicional nacional relativamente a uma pessoa que se encontre detida, o Tribunal de Justiça pronuncia-se com a maior brevidade possível, **no respeito pelo prazo fixado no Estatuto.**

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### **Explication éventuelle :**

*Concorda-se em geral com a manutenção inalterada deste importante instituto. Por razões de harmonia, procura apenas aperfeiçoar-se a redacção, mantendo também aqui a referência aos “organismos”, aliás hoje referidos no mesmo artigo 234.º CE.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 233.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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A **instituição** ou as **instituições**, a agência, **organismo** ou o órgão de que emane o acto anulado, ou cuja abstenção tenha sido declarada contrária **ao presente Tratado** (2 palavras suprimidas), devem tomar as medidas necessárias à execução do acórdão do Tribunal de Justiça.

Esta obrigação não prejudica aquela que decorra da aplicação do segundo parágrafo do artigo 288.º.

**O presente artigo aplica-se igualmente ao BCE.**

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### **Explication éventuelle :**

*Pelas razões aduzidas nas propostas de alteração feitas em relação ao artigo que define as “Instituições”, deve ser reposta a referência ao BCE neste artigo.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 232.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Se, em violação **do presente Tratado** (2 palavras suprimidas), o Parlamento Europeu, o Conselho ou a Comissão se abstiverem de se pronunciar, os Estados membros e as outras Instituições da União podem recorrer ao Tribunal de Justiça para que declare verificada essa violação. A presente disposição é aplicável, nas mesmas condições, às agências, **organismos** e órgãos da União que se abstenham de se pronunciar.

Esta acção só é admissível se a Instituição, agência, **organismo** ou órgão em causa tiver sido previamente convidado a agir. Se, decorrido um prazo de dois meses a contar da data do convite, a Instituição, agência ou órgão não tiver tomado posição, a acção pode ser proposta num novo prazo de dois meses.

Qualquer pessoa singular ou colectiva pode recorrer para o Tribunal de Justiça, nos termos dos parágrafos anteriores, para acusar uma das Instituições, agências, **organismos** ou órgãos da União de não lhe ter dirigido um acto que não seja recomendação ou parecer.

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### **Explication éventuelle :**

*Apoiam-se as alterações propostas. Aperfeiçoa-se apenas o artigo.*

## FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 230.º

Déposée par Monsieur Queiró

Qualité - Suppléant

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1. O Tribunal de Justiça fiscaliza a legalidade **dos actos adoptados em conjunto por Parlamento Europeu e Conselho**, (7 palavras suprimidas) dos actos do Conselho, da Comissão e do BCE, que não sejam recomendações ou pareceres, e dos actos do Parlamento Europeu e (19 palavras suprimidas) dos **demais órgãos, agências ou organismos da União ou por esta criados, com excepção das instâncias jurisdicionais, no exercício das respectivas funções jurisdicionais**, (6 palavras suprimidas) **susceptíveis de produzir** (2 palavras suprimidas) efeitos jurídicos em relação a terceiros.
2. Para o efeito, o Tribunal de Justiça é competente para conhecer das acções com fundamento em incompetência, violação de formalidades essenciais, violação **do Tratado** (2 palavras suprimidas) ou de qualquer norma jurídica relativa à sua aplicação, ou em desvio de poder, propostas por um Estado-Membro, pelo Parlamento Europeu, pelo Conselho ou pela Comissão.
3. O Tribunal de Justiça é competente, nas mesmas condições, para conhecer das acções propostas pelo Tribunal de Contas, pelo Banco Central Europeu, **pelo Comité Económico e Social** e pelo Comité das Regiões com o objectivo de salvaguardar as respectivas prerrogativas.
4. Qualquer pessoa singular ou colectiva pode intentar, nas mesmas condições, uma acção contra os actos **que afectem, de forma certa e actual, a sua situação jurídica**, (12 palavras suprimidas) bem como contra os actos **de alcance geral** (1 palavra suprimida) que lhe digam directamente respeito, sem implicar medidas de execução.
5. Os actos que criam os órgãos, (1 palavra suprimida) agências **ou organismos** da União podem prever condições e modalidades específicas relativas às acções propostas por pessoas singulares ou colectivas contra os actos **dessas entidades** (4 palavras suprimidas) destinados a produzir efeitos jurídicos **externos**.
6. As acções previstas no presente artigo devem ser propostas no prazo de dois meses a contar,

conforme o caso, da publicação do acto, da sua notificação ao recorrente ou, na falta desta, do dia em que o recorrente tenha tomado conhecimento do acto.

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**Explication éventuelle :**

*Procurou-se, no n.º 1, respeitar a actual lógica do Tratado, acolhendo e desenvolvendo as boas sugestões constantes do projecto do Praesidium, Harmonizou-se ainda a terminologia utilizada com aquela anteriormente proposta por nós para o artigo 34.º da Parte I.*

*No n.º 2 houve apenas uma modificação de alcance menor.*

*No n.º 3 inseriu-se referência ao Comité Económico e Social.*

*No n.º 4, seguiu-se a jurisprudência mais recente do TPI, no que toca à legitimidade dos particulares para o recurso de anulação, designadamente o acórdão Jégo-quére, de 3.5.2002, bem como dar resposta à advertência do Tribunal de Justiça no acórdão Union de Pequeños Agricultores, de 25.7.2002, quanto à necessidade de uma modificação do tratado para uma alteração do sistema de fiscalização da legalidade dos actos comunitários.*

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 229.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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As leis europeias, as leis-quadro europeias e as leis ou regulamentos do Conselho, aprovados por força **do presente Tratado** (2 palavras suprimidas), podem atribuir plena jurisdição ao Tribunal de Justiça para as sanções neles previstas.

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**Explication éventuelle :**

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 229.º - A**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Sem prejuízo das restantes disposições do presente Tratado, o Conselho, deliberando por unanimidade, sob proposta da Comissão e após consulta ao Parlamento Europeu, pode aprovar disposições destinadas a atribuir ao Tribunal de Justiça, na medida determinada pelo Conselho, competência para decidir sobre litígios ligados à aplicação dos actos adoptados com base no presente Tratado que criem títulos comunitários de propriedade industrial. O Conselho recomendará a adopção dessas disposições pelos Estados-Membros, de acordo com as respectivas normas constitucionais.

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### **Explication éventuelle :**

*Pese embora as conclusões do Círculo, não se vê razão para temer o exercício da soberania pelos Estados. Por outro lado, a solução actual é a mais conforme com o estatuto jurídico da propriedade no ordenamento jurídico comunitário. Deste modo, propõe-se a manutenção, inalterado, do actual artigo 229.º-A, introduzido pelo Tratado de Nice, que já em si mesmo representou um avanço significativo.*



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : Artigo 228.º

Déposée par Monsieur Queiró

Qualité - Suppléant

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1. Se o Tribunal de Justiça declarar verificado que um Estado **membro** não cumpriu qualquer das obrigações que lhe incumbem por força **do presente Tratado** (2 palavras suprimidas), esse Estado deve tomar as disposições necessárias à execução do acórdão do Tribunal de Justiça.

2. Se a Comissão considerar que o Estado-Membro em causa não tomou as medidas necessárias à execução do acórdão(2 palavras suprimidas), pode submeter (1 palavra suprimida) o caso **ao Tribunal de Justiça, após ter dirigido ao Estado membro em causa um parecer fundamentado, no qual especificará os pontos em que o Estado membro não executou o acórdão do Tribunal de Justiça e dará ao Estado membro um prazo razoável para se pronunciar e para dar cumprimento ao acórdão do Tribunal de Justiça** (13 palavras suprimidas). **Na sua petição, a Comissão propõe** (1 palavra suprimida) o montante da quantia fixa ou da sanção pecuniária compulsória; a pagar pelo Estado-Membro, que considerar adequado às circunstâncias.

Se o Tribunal de Justiça declarar verificado que o Estado-Membro em causa não deu cumprimento ao seu acórdão, pode condená-lo ao pagamento de uma quantia fixa ou de uma sanção pecuniária compulsória.

Este procedimento não prejudica o artigo 227.º.

3. Sempre que propuser uma acção no Tribunal de Justiça nos termos do artigo 226.º, por considerar que o Estado em causa não cumpriu a obrigação de comunicar as medidas de transposição de uma lei-quadro, a Comissão, se o considerar necessário, pode solicitar ao Tribunal de Justiça que, no mesmo acórdão, lhe seja imposto o pagamento de uma quantia fixa ou de uma sanção pecuniária compulsória, caso o Tribunal de Justiça declare verificado um incumprimento. Se o Tribunal de Justiça der provimento ao pedido da Comissão, o pagamento em questão produz efeitos no prazo determinado pelo Tribunal de Justiça no seu acórdão, **mas nunca antes da data da prolação do acórdão.**

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**Explication éventuelle :**

*Recusa-se a simplificação excessiva perfilhada no Círculo, conquanto se aceitem as soluções fundamentais aí explanadas. Prefere-se que, na hipótese do n.º 2, se obriga a Comissão a dirigir ao Estado inadimplente um parecer fundamentado, que delimitará de modo mais completo o objecto do processo e conferirá ao Estado um prazo razoável para se pronunciar ou cumprir, findo o qual a Comissão poderá interpor a acção.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 227.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Um Estado-Membro pode recorrer ao Tribunal de Justiça, se considerar que outro Estado-Membro não cumpriu qualquer das obrigações que lhe incumbem por força **do presente Tratado** (2 palavras suprimidas).

Antes de um Estado-Membro propor uma acção contra outro Estado-Membro, com fundamento em pretenso incumprimento das obrigações que a este incumbem por força **do presente Tratado** (2 palavras suprimidas), deve submeter o assunto à apreciação da Comissão.

A Comissão formulará um parecer fundamentado, depois de os Estados interessados terem tido oportunidade de apresentar, em processo contraditório, as suas observações escritas e orais.

Se a Comissão não tiver formulado parecer no prazo de três meses a contar da data do pedido, a falta de parecer não impede o recurso ao Tribunal de Justiça.

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**Explication éventuelle :**

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Artigo 226.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Se a Comissão considerar que um Estado-Membro não cumpriu qualquer das obrigações que lhe incumbem por força **do presente Tratado** (2 palavras suprimidas), formulará um parecer fundamentado sobre o assunto, após ter dado a esse Estado oportunidade de apresentar as suas observações.

Se o Estado em causa não proceder em conformidade com esse parecer no prazo fixado pela Comissão, esta pode recorrer ao Tribunal de Justiça.

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**Explication éventuelle :**

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 225.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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1. O Tribunal de Grande Instância (3 palavras suprimidas) é competente para conhecer em primeira instância das acções referidas nos [artigos 230.º, 232.º, 235.º, 236.º e 238.º], com excepção das atribuídas a um tribunal especializado e dos que o Estatuto reservar para o Tribunal de Justiça. O Estatuto pode prever que o Tribunal de Grande Instância (3 palavras suprimidas) seja competente para outras categorias de acções.

**Das** decisões proferidas pelo Tribunal de Grande Instância (3 palavras suprimidas) ao abrigo do presente número **cabe** (4 palavras suprimidas) recurso para o Tribunal de Justiça, limitado às questões de direito, nas condições e limites previstos no Estatuto.

2. O Tribunal de Grande Instância (3 palavras suprimidas) é competente para conhecer dos recursos interpostos das decisões dos tribunais especializados criados nos termos do artigo 225.º-A.

(57 palavras suprimidas - a totalidade do parágrafo)

3. O Tribunal de Grande Instância (3 palavras suprimidas) é competente para conhecer das questões prejudiciais, submetidas por força do artigo 234.º, em matérias específicas determinadas pelo Estatuto.

Quando o Tribunal de Grande Instância (3 palavras suprimidas) considerar que a causa exige uma decisão de princípio susceptível de afectar a unidade ou a coerência do direito da União, pode **declinar a sua competência e remeter o processo** (3 palavras suprimidas) ao Tribunal de Justiça, para que este **se pronuncie** (3 palavras suprimidas).

4. As decisões proferidas pelo Tribunal de Grande Instância (38 palavras suprimidas) **ao abrigo dos n.ºs 2 e 3 do presente artigo podem ser reapreciadas a título excepcional pelo Tribunal de Justiça, nas condições e limites previstos no Estatuto, caso exista risco grave de lesão da unidade ou da coerência do direito da União ou violação dos direitos fundamentais de**

**qualquer das Partes, tal como previstos no artigo 5.º do presente Tratado.**

**5. O disposto no número anterior não prejudica o eventual direito de recurso para as instâncias jurisdicionais previstas em instrumentos internacionais a que a União haja aderido, nos casos e condições previstos nos respectivos tratados.**

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**Explication éventuelle :**

*O Praesidium diz que o artigo é inalterado, face ao actual artigo 225.º, embora seja certo que não o é. São propostas várias alterações, algumas de cariz formal, mas outras de alcance bastante significativo, procurando reforçar a vinculação deste Tribunal e do sistema jurisdicional comunitário pela obrigação de respeito pelos direitos fundamentais, de modo compatível com a prevista (no artigo 5.º da Parte I) possibilidade de adesão à vulgarmente conhecida Convenção Europeia dos Direitos do Homem.*

## FICHE AMENDEMENT

Proposition d'amendement à l'Article : Artigo 225.º - A

Déposée par Monsieur Queiró

Qualité - Suppléant

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1. O Parlamento Europeu e o Conselho podem aprovar (6 palavras suprimidas) leis europeias que criem tribunais especializados, adstritos ao Tribunal de Grande Instância (3 palavras suprimidas) encarregados de conhecer em primeira instância de certas categorias de acções em matérias específicas. O Parlamento Europeu e o Conselho deliberam (1 palavra suprimida) sob proposta da Comissão **ou a pedido do Tribunal de Justiça, após parecer da Comissão ou do Tribunal de Justiça, conforme os casos** (17 palavras suprimidas). **Ao longo do processo legislativo, o Conselho delibera sempre por unanimidade.**
2. A lei europeia que crie um tribunal especializado fixará as regras relativas à composição desse tribunal e especificará o âmbito das competências que lhe forem conferidas. **Em qualquer caso, o tribunal especializado deverá ser composto por, no mínimo, um juiz por Estado membro ou, caso não se justifique, a sua composição deve assegurar a rotação dos juízes no estrito respeito pelo princípio da igualdade dos Estados.**
3. Das decisões dos tribunais especializados **cabe** (4 palavras suprimidas) recurso para o Tribunal de Grande Instância (3 palavras suprimidas) limitado às questões de direito ou, quando tal estiver previsto na **respectiva** lei europeia **institutiva**, (7 palavras suprimidas) **abrangendo igualmente** (2 palavras suprimidas) as questões de facto.
4. Os membros dos tribunais especializados serão escolhidos de entre pessoas que ofereçam todas as garantias de independência e possuam a capacidade requerida para o exercício de funções jurisdicionais. São nomeados pelo Conselho, deliberando por unanimidade.
5. Os tribunais especializados aprovam o respectivo regulamento de processo, de comum acordo com o Tribunal de Justiça. Os tribunais especializados deliberam após aprovação do Conselho, deliberando por maioria qualificada.
6. Salvo disposição em contrário da lei europeia **institutiva**, (5 palavras suprimidas) aplicam-se aos

tribunais especializados as disposições **do Tratado** (2 palavras suprimidas) relativas ao Tribunal de Justiça e as disposições do seu Estatuto.

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**Explication éventuelle :**

*Admite-se, como «a maioria» do círculo propõe, a utilização do processo legislativo comum, envolvendo-se assim o Parlamento Europeu. Contudo, o Conselho deverá agir sempre por unanimidade, dada a enorme relevância e implicações das deliberações que prevêem a criação de tribunais especializados, hoje designados (no Tratado de Nice) por «câmaras jurisdicionais».*



## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 224.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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**O Tribunal de Grande Instância é composto por, pelo menos, um juiz por Estado membro.** O número de juízes (8 palavras suprimidas) é fixado pelo Estatuto do Tribunal de Justiça. O Estatuto pode prever que o Tribunal seja assistido por advogados-gerais.

Os membros do Tribunal de Grande Instância (3 palavras suprimidas) **e os advogados-gerais, se os houver,** serão escolhidos de entre pessoas que ofereçam todas as garantias de independência e possuam a capacidade requerida para o exercício de altas funções jurisdicionais.

**Os juízes e advogados-gerais** são nomeados de comum acordo, por seis anos, pelos Governos dos Estados-Membros (9 palavras suprimidas).

De três em três anos, proceder-se-á à sua substituição parcial. Os membros cessantes podem ser nomeados de novo, **uma única vez.**

Os juízes designam de entre si, por um período de três anos, o Presidente do Tribunal de Grande Instância (3 palavras suprimidas), que pode ser reeleito.

**Os juízes nomeiam o secretário do Tribunal e estabelecem o respectivo estatuto.**

O Tribunal de Grande Instância (3 palavras suprimidas) aprova o seu regulamento de processo, de comum acordo com o Tribunal de Justiça. O Tribunal de Grande Instância (3palavras suprimidas) delibera após aprovação do Conselho, deliberando por **unanimidade** (2 palavras suprimidas).

Salvo disposição em contrário do Estatuto do Tribunal de Justiça, são aplicáveis ao Tribunal de Grande Instância (3 palavras suprimidas) as disposições **do Tratado** (2 palavras suprimidas) relativas ao Tribunal de Justiça.

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**Explication éventuelle :**

*Convém deixar explícito no Tratado que este Tribunal será composto, no mínimo, por um juiz por Estado membro. São propostos alguns aperfeiçoamentos à redacção do artigo, Por razões de coerência e de asseguramento da respectiva independência, prevê-se a possibilidade de uma única renovação do mandato, mantendo-se o actual sistema de renovação trienal dos mandatos. Com isso, parece que se conseguirá que nenhum juiz ultrapasse os nove anos enquanto juiz.*

*Mais uma vez, exclui-se a intervenção do comité consultivo que será apreciado no artigo seguinte.*

*Mantém-se o actual sistema, exigindo a aprovação unanimitária no Conselho relativamente ao regulamento processual do Tribunal Tem funcionado, na medida do possível, contribuindo para a credibilidade dos tribunais comunitários.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 224.º - A**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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**Suprimir o Artigo 224.º - A**

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### **Explication éventuelle :**

*Constitui uma característica estruturante e genética da construção comunitária – com bons resultados, em geral, diga-se – a desingação directa dos juízes por comum acordo dos Estados. Cria as maiores reservas a proposta criação desta órgão. O que fará ? Apreciações curriculares ? Apreciações sobre as orientações ideológicas ou, no mínimo, doutriniais dos juízes a nomear? Parece que o objectivo de aperfeiçoamento das qualificações dos magistrados comunitários não deverá passar por aqui. Cada Estado poderá e, porventura, deverá institucionalizar mecanismos internos de controlo democrático da escolha dos juízes que indica, sem prejuízo para a sua necessária independência.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 223.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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Os juízes e os advogados-gerais do Tribunal de Justiça, escolhidos de entre personalidades que ofereçam todas as garantias de independência e reúnam as condições exigidas, nos respectivos países, para o exercício das mais altas funções jurisdicionais, ou que sejam jurisconsultos de reconhecida competência, são nomeados de comum acordo pelos Governos dos Estados membros (8 palavras suprimidas).

(25 palavras suprimidas - a totalidade do parágrafo)

Os juízes designam de entre si, por um período de três anos, o Presidente do Tribunal de Justiça, que pode ser reeleito.

**Os juízes designam o secretário e estabelecem o respectivo estatuto.**

O Tribunal de Justiça estabelece o seu regulamento de processo. Esse regulamento é submetido à aprovação do Conselho, deliberando por **unanimidade** (2 palavras suprimidas).

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### **Explication éventuelle :**

*Não se concorda com a intervenção do comité consultivo, pelas razões aduzidas na apreciação que se fará ao proposto artigo 224.º-a. Além disso, a redacção proposta reflecte a preferência já antes manifestada pela não renovação do mandato dos juízes, ligada a uma maior duração do mesmo, como garantia de independência..*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article : Artigo 245.º**

**Déposée par Monsieur Queiró**

**Qualité - Suppléant**

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O Estatuto do Tribunal de Justiça é fixado **em** Protocolo.

De acordo com o processo legislativo, a lei pode alterar as disposições do Estatuto, com excepção do Título I e do artigo 64.º. O Parlamento Europeu e o Conselho deliberam, quer a pedido do Tribunal de Justiça após consulta à Comissão, quer a pedido da Comissão após consulta ao Tribunal de Justiça. **O Conselho delibera por unanimidade, ao longo do processo legislativo.**

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**Explication éventuelle :**

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article:** **III-266 (ex 230)**

**Déposée par Monsieur:** **Erwin Teufel**

**Qualité:** **Membre**

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*Texte du Praesidium*

*Amendement proposé*

**(4a) Weitere Klagerechte ergeben sich aus dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit.**

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### **Begründung:**

Um die Aufzählung der Klagemöglichkeiten vor dem Europäischen Gerichtshof in Artikel III-266 (ex-Artikel 230) vollständig zu machen, sollte auf die Klagerechte verwiesen werden, die sich aus dem Subsidiaritätsprotokoll ergeben.

## AMENDMENT FORM

**Suggestion for amendment of: PART III OF THE CONSTITUTION:  
Article III-278**

**By BROK, AZEVEDO, AKCAM, ALTMAIER, BREJC, DEMETRIOU, FIGEL, FOGLER, FREND, GIANNAKOU, KAUPPI, KELAM, LENNMARKER, LIEPINA, MAIJ-WEGGEN, PIKS, RACK, SANTER, SZAJER, VAN DER LINDEN, VILEN, KAUPPI, VAN DIJK, WITTBRODT, WUERMEILING**

**On behalf of the EPP Convention Group**

**Status :    - Member            - Alternate**

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### **Suggestion**

#### **Article III-278 (ex Article 240a)**

~~The Court of Justice shall not have jurisdiction with respect to Articles I-39 and I-40 of Part One and the provisions of Chapter II of Title V of Part Three concerning the common foreign and security policy.~~

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### **Explanation (if any) :**

*The rule of law is an integral part of the Union's values (Article I-2 of the Constitution). Under the rule of law, no field of policy can be exempt a priori from judicial control. The Union's Constitution must therefore be entirely subject to the jurisdiction of the ECJ. This must also apply in CFSP matters if one really intends to end the "pillar structure" of the Union. Otherwise, also the procedural rights and duties under the CFSP provisions (e.g. consultation of the European Parliament) would not be enforceable. The vagueness of the substantive provisions on CFSP will in any event prevent a judicial scrutiny of the substance CFSP decisions. In this respect, the situation will not be different to that in all Member States.*

## FICHE AMENDEMENT

<b>Proposition d'amendement à l'Article:</b>	<b>III-279 (ex 9)</b>
<b>Déposée par Monsieur:</b>	<b>Erwin Teufel</b>
<b>Qualité:</b>	<b>Membre</b>

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### *Texte du Praesidium*

Bei der Ausübung seiner Zuständigkeiten im Rahmen der Bestimmungen von Titel III Kapitel IV Abschnitte 3 und 4 betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.

### *Amendement proposé*

Bei der Ausübung seiner Zuständigkeiten im Rahmen der Bestimmungen von Titel III Kapitel IV Abschnitte **4** und **5** betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, ~~wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.~~

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### **Begründung:**

Entsprechende Handlungen fallen, soweit Behörden der Mitgliedstaaten agieren, stets unter das innerstaatliche Recht.



## AMENDMENT FORM

**Suggestion for amendment of Article: Art. III-256, Title VI, Chapter I, Section 1, Subsection 5**

**By: Mr. Ernâni Lopes, Mr. Manuel Lobo Antunes.**

**Status: Government - Member and Alternate**

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### Article III- 256

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States, **for a term of nine years non renewable, after consulting the panel provided for in [ex Article 224a].**

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

The Judges shall elect the President of the Court of Justice from among their number for a term of ~~three~~ **four and an half** years. He may be re-elected.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority.

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**Explanation: The elimination of the sentence is due to the suppression of article III-258 (ex 224a.**

## AMENDMENT FORM

**Suggestion for amendment of Article: Art. III-257, Title VI, Chapter I, Section 1, Subsection 5**

**By: Mr. Ernâni Lopes, Mr. Manuel Lobo Antunes.**

**Status: Government - Member and Alternate**

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### Article III-257

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice.  
The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of **nine years non renewable**. ~~six years after consulting the panel provided for in [ex Article 224a]~~. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of ~~three~~ **four and an half** years. He may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice.  
It shall act after receiving the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.

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**Explanation: The elimination of the sentence is due to the suppression of article III-258 (ex 224<sup>a</sup>); the extension of the mandates is in line with previous proposal.**



## AMENDMENT FORM

**Suggestion for amendment of Article: III-258, Title VI, Chapter I, Section 1, Subsection 5**

**By: Mr. Ernâni Lopes, Mr. Manuel Lobo Antunes.**

**Status: Government - Member and Alternate**

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### ~~Article III-258~~

~~A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate General of the Court of Justice and the High Court before the governments of the Member States take the decisions referred to in [ex Articles 223 and 224].~~

~~The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The appointment of members of the panel and the panel's operating rules shall be decided by the Council, acting by a qualified majority, on a proposal from the President of the Court of Justice.~~

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**Explanation: The suppression of this article is based on the opposition to the creation of aforementioned panel, once it will most probably originate numerous political difficulties.**

## AMENDMENT FORM

**Suggestion for amendment of Article: III-263, Title VI, Chapter I, Section 1, Subsection 5**

**By: Mr. Ernâni Lopes, Mr. Manuel Lobo Antunes.**

**Status: Government - Member and Alternate**

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### Article III-263

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

2. ~~If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgment, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations.~~ It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [ex Article 227].

3. ~~When the Commission brings a case before the Court of Justice pursuant to [ex Article 226] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgment.~~

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**Explanation:** The rejection of the proposed changes is based on the conviction that rules in force provide the European Commission with appropriate means of intervention.

## AMENDMENT FORM

**Suggestion for amendment of Article : III-285 (ex 245)**

**By Mr Hain**

**Status : Member**

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The Statute of the European Court of Justice shall be laid down in a Protocol.

The law may amend the provisions of the Statute, with the exception of Title I and Article 64. It shall be adopted by the Council either at the request of the European Court of Justice and after consultation of the Commission, or at the request of the Commission and after consultation of the European Court of Justice, in either case after consulting the European Parliament.

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### **Explanation (if any) :**

*We support a change to QMV (the default voting procedure). But we do not support use of the legislative procedure. Co-decision is inappropriate in relation to provisions determining the jurisdiction and functioning of the Courts.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-280**

**By Ms / Mr : Mr Bonde**

**Status :    ☒ - Member                      - Alternate**

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Article III-280 (ex Article 240c)

Member States undertake not to submit a dispute concerning the interpretation or application of the Constitution to any method of settlement other than those provided for therein.

**MEMBER STATES' PARLIAMENTS, HIGH COURTS OR CONSTITUTIONAL COURTS  
DECIDE IN CASES OF DOUBT CONCERNING COMPETENCE BETWEEN THE EU  
AND THE MEMBER STATES.**

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**Explanation (if any):**

**AMENDMENT FORM**

**Suggestion for amendment of Article 279**

**Suggestion for Part: III**

**By Ms / Mr :**                **G.M. de Vries**  
                                      **T.J.A.M. de Bruijn**

**Status :**            **Member**                    **Alternate**

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~~In exercising its competences regarding the provisions of [Section 3 and 4 of Chapter IV of Titel III] concerning the area of freedom, security and justice, the European 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 exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, where such action is a matter of national law.~~

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**Explanation (if any):**

In line with an amendment by M. Villepin, the Netherlands suggest replacing this Article by the complete current text of Article 35 (5) TEU.



## AMENDMENT FORM

**Suggestion for amendment of Article : III-279**

**By Ms / Mr : Voggenhuber, Wagener, Lichtenberger, Nagy**

**Status :    - Member            - Alternate**

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### **Artikel III-279**

Article III-279 (ex Article 240b)

~~In exercising its competences regarding the provisions of [Sections 3 and 4 of Chapter IV of Title III] concerning the area of freedom, security and justice, the European 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 security, where such action is a matter of national law.~~

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#### **Explanation (if any) :**

The restriction of the supervisory scope of the European Court of Justice over matters so sensitive to the citizens is not acceptable.

## AMENDMENT FORM

**Suggestion for amendment of Article : 279 (ex Article 240b), part III of the Constitution**

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :       Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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### **Article III-279 (ex Article 240b)**

In exercising its competences regarding the provisions of Sections 3 and 4 of Chapter IV of Title III concerning the area of freedom, security and justice, 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 security, ~~where such action is a matter of national law.~~

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#### **Explanation (if any):**

*Some limitation on the Court's jurisdiction remains appropriate in the area of justice and home affairs corresponding to the current third pillar. The proposed draft Article III-279 takes over the wording of the current Article 35, paragraph 5, of the TEU, save for the phrase "where such action is a matter of national law". The meaning of this new phrase is not clear. If the intention is to exclude from the Court's jurisdiction situations where no Union law is involved, the phrase is superfluous as the Court's jurisdiction does not, in any field, extend to matters belonging solely to national law. If something else is intended, that intention is not adequately disclosed by the Praesidium's text. That being the case, the phrase should be deleted.*

## FICHE AMENDEMENT

<b>Proposition d'amendement à l'Article:</b>	<b>III-279 (ex 9)</b>
<b>Déposée par Monsieur:</b>	<b>Erwin Teufel</b>
<b>Qualité:</b>	<b>Membre</b>

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### *Texte du Praesidium*

Bei der Ausübung seiner Zuständigkeiten im Rahmen der Bestimmungen von Titel III Kapitel IV Abschnitte 4 und 5 betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.

### *Amendement proposé*

Bei der Ausübung seiner Zuständigkeiten im Rahmen der Bestimmungen von Titel III Kapitel IV Abschnitte 4 und 5 betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, ~~wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.~~

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### **Begründung:**

Entsprechende Handlungen fallen, soweit Behörden der Mitgliedstaaten agieren, stets unter das innerstaatliche Recht.

**FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : III-279**

**Proposition d'amendement au protocole:**

**Déposée par: Elena Paciotti, Pervenche Berès, Maria Berger, Helle Thorning-Schmidt, Olivier Duhamel, Luis Marinho, Carlos Carnero, Anne Van Lancker, Caspar Einem, Vytenis Andriukaitis, Adrian Severin, Jürgen Meyer, Ben Fayot, Claudio Martini, Proinsias De Rossa**

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Article III-279

*Delete*

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**Explication éventuelle :**

The scope of the European Court of Justice to be extended across the whole constitution.

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : 279, Partie III, Titre III**

**Déposée par Messieurs : Ernâni Lopes et Manuel Lobo Antunes**

**Qualité : - Membre et suppléant**

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Dans l'exercice de ses compétences concernant les dispositions des sections 4 et 5 du chapitre IV du Titre III concernant l'espace de liberté, sécurité et justice, la Cour de justice n'a pas de compétence pour contrôler la validité ou la proportionnalité d'opérations menées par la police ou d'autres services répressifs dans un État membre, ni pour statuer sur l'exercice des responsabilités qui incombent aux États membres pour le maintien de l'ordre public et la sauvegarde de la sécurité intérieure, ~~lorsque ces actes relèvent du droit interne.~~

---

### **Explication :**

**L'objectif de cet amendement est de ne pas étendre la compétence de la Cour de Justice au contrôle de la validité et proportionnalité des opérations effectuées par les services de police, ni à l'exercice du maintien de l'ordre public et de garantie de sécurité intérieure quand ces actes sont adoptés par rapport à une loi ou loi-cadre européenne.**

## AMENDMENT FORM

Suggestion for amendment of Article : III-279

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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~~Artikel III-279 (ex Artikel 240b)~~

~~Bei der Ausübung seiner Zuständigkeiten im Rahmen der Bestimmungen von Titel III Kapitel IV Abschnitte 4 und 5 betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.~~

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Explanation (if any) :

## **AMENDMENT FORM**

**Suggestion for amendment of Article : III-279**

**By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, national parliament representative.**

**Status : - Member: Hjelm-Wallén and Lekberg  
- Alternate: Petersson**

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In exercising its competences regarding the provisions of Sections 3 and 4 of Chapter IV of Title III concerning the area of freedom, security and justice, 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 security, ~~where such action is a matter of national law~~<sup>1</sup>.

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<sup>1</sup> The Court of Justice should have limited jurisdiction to rule on measures with regard to the area of maintenance of law, order and internal security. Furthermore, the competence of the Court of Justice must be considered with regard to the full picture of the Constitutional Treaty as it will result from the work of the Convention.

## AMENDMENT FORM

**Suggestion for amendment of Article : III-279 (ex 240b)**

**By Mr Hain**

**Status : Member**

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In exercising its competences regarding the provisions of [~~Sections 3 and 4 of~~ Chapter IV of Title III] concerning the area of freedom, security and justice, the European 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~~.

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**Explanation (if any) :**

*The addition of the words “where such action is a matter of national law” must be deleted. It would mean that where the Union has legislated even in the establishment of minimum rules for substantive criminal law (e.g. terrorism, trafficking in people) acts carried in the protection of national security in those fields would fall under ECJ jurisdiction. The increasing amount of legislation in this field would render the article ineffective.*



## AMENDMENT FORM

**Suggestion for amendment of Article : III-279**

**By Mr : Joschka Fischer**

**Status : - Member**

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### ~~Artikel III 279 (ex Artikel 240b)~~

~~Bei der Ausübung seiner Zuständigkeiten im Rahmen der Bestimmungen von Titel III Kapitel IV Abschnitte 4 und 5 betreffend den Raum der Freiheit, der Sicherheit und des Rechts ist der Gerichtshof nicht zuständig für die Überprüfung der Gültigkeit oder Verhältnismäßigkeit von Maßnahmen der Polizei oder anderer Strafverfolgungsbehörden eines Mitgliedstaats oder der Wahrnehmung der Zuständigkeiten der Mitgliedstaaten für die Aufrechterhaltung der öffentlichen Ordnung und den Schutz der inneren Sicherheit, wenn die entsprechenden Handlungen unter das innerstaatliche Recht fallen.~~

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### **Explanation:**

Der Artikel sollte gestrichen werden. Gemäß dem Bericht der Arbeitsgruppe Freiheit, Sicherheit und Recht sollte die Rechtskontrolle durch den EuGH im Bereich Justiz und Inneres nicht eingeschränkt werden. Der Änderungsvorschlag entspricht dem Änderungsantrag, der bereits zu CONV 614/03 (Art. 9) vorgelegt wurde.

**AMENDMENT FORM**

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

**Suggestion for amendment of Article : III-279**

**By Members: Mr Andrew Duff**

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Article III-279 (ex Article 240b)

***DELETE***

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**Explanation:**

*The merger of the pillars implies that there shall be no a priori areas where the supervision of the Court does not apply.*

*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, and together comprise an adequate safeguard.*

*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?*

*See our contribution CONV 758/03.*

## AMENDMENT FORM

### Suggestion for amendment of Article III-279:

**By: BROK, AZEVEDO, AKCAM, ALTMAIER, BREJC, DEMETRIOU, FIGEL, FOLLER, FRENDON, GIANNAKOU, KAUPPI, KELAM, LAMASSOURE, LENNMARKER, LIEPINA, MAIJ-WEGGEN, PIKS, RACK, SANTER, STOCKTON, SZAJER, VAN DER LINDEN, VILEN, VAN DIJK, WITTBRODT, WUERMELING**

**on behalf of the EPP Convention Group**

**Status :        Member / Alternate**

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### **~~Article III-279 (ex Article 240b)~~**

~~In exercising its competences regarding the provisions of [Sections 3 and 4 of Chapter IV of Title III] concerning the area of freedom, security and justice, the European 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 security, where such action is a matter of national law.~~

#### **Explanation:**

*The Article should be deleted in order not to reintroduce the pillar structure again.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-278**

**By Ms / Mr : Voggenhuber, MacCormick, Wagener, Lichtenberger, Nagy**

**Status :    - Member            - Alternate**

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### **Artikel III-278(ex Article 240a)**

~~The European Court of Justice shall not have jurisdiction with respect to Articles [I-39 and I-40] and the provisions of [Chapter II of Title V of Part Three] concerning the common foreign and security policy.~~

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### **Explanation (if any) :**

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.

## AMENDMENT FORM

**Suggestion for amendment of Article : 278 (ex Article 240), part III of the Constitution**

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :       Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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### **Article III-278(ex Article 240a)**

~~The European Court of Justice shall not have jurisdiction with respect to Articles [I-39 and I-40] and the provisions of [Chapter II of Title V of Part Three] concerning the common foreign and security policy.~~

- 1. The European Court of Justice shall not have jurisdiction with regard to Articles I-39 and I-40 and the provisions under Chapter II of Title V of Part Three on common foreign and security policy.**
  - 2. By way of derogation from paragraph 1, the European Court of Justice shall have jurisdiction to:**
    - review the legality of decisions on implementation of actions and positions affecting directly the rights and obligations of natural and legal persons, subject to conditions and in accordance with the procedures set out in Articles III-266 and III-268;**
    - give preliminary rulings on the validity and interpretation of decisions on implementation of actions and positions affecting directly the rights and obligations of natural and legal persons, subject to conditions and in accordance with the procedures set out in Article III-271.**
- 

### **Explanation (if any) :**

*The complete exclusion of the Court's jurisdiction in the field of the common foreign and security policy is not justified. Due account of the rule of law principles require that the legality of certain CFSP decisions and acts be reviewed by the Court. This applies to decisions on implementation of actions and positions directly affecting the rights and obligations of natural and legal persons.*

*Efficiency and homogeneity of the EU law implementation require that the validity and interpretation of foreign and security policy decisions on implementation of actions and positions directly affecting the rights and obligations of natural and legal persons be reviewed by the Court in preliminary rulings if requested by a court or tribunal of a Member State.*

**FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : III-278**

**Proposition d'amendement au protocole:**

**Déposée par: Elena Paciotti, Pervenche Berès, Maria Berger, Helle Thorning-Schmidt, Olivier Duhamel, Luis Marinho, Carlos Carnero, Anne Van Lancker, Caspar Einem, Vytenis Andriukaitis, Adrian Severin, Jürgen Meyer, Ben Fayot, Claudio Martini, Proinsias De Rossa**

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Article III-278 (ex article 240bis)

*Delete*

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**Explication éventuelle :**

The scope of the European Court of Justice to be extended across the whole constitution.

## AMENDMENT FORM

Suggestion for amendment of Article : III-278

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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~~Artikel III-278 (ex Artikel 240a)~~

~~Der Gerichtshof ist nicht zuständig in Bezug auf die Artikel [I-39 und I-40] und in Bezug auf die Bestimmungen von [Teil III Titel V Kapitel II] betreffend die Gemeinsame Außen- und Sicherheitspolitik.~~

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Explanation (if any) :

## AMENDMENT FORM

**Suggestion for amendment of Article : III-278**

**By Mr : Joschka Fischer**

**Status : - Member**

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Artikel III-278 (ex-Artikel 240a)

~~Der Gerichtshof ist nicht zuständig.~~ In Bezug auf die Artikel [I-39 und I-40] und in Bezug auf die Bestimmungen von [Teil III Titel V Kapitel II] betreffend die Gemeinsame Außen- und Sicherheitspolitik ist der Gerichtshof nur für Verfahren gemäß Art. III-266 Abs. 4 und Art. III-271 zuständig, wenn Einzelne unmittelbar und individuell betroffen sind.

---

### **Explanation:**

Ein vollständiger Ausschluss der Gerichtsbarkeit im GASP-Bereich ist nicht gerechtfertigt. Vielmehr muss im Hinblick auf Durchführungsmaßnahmen, die Einzelne unmittelbar und individuell betreffen, der Rechtsschutz gesichert sein. Dies ist ein Erfordernis der Rechtsstaatlichkeit.



**AMENDMENT FORM**

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

**Suggestion for amendment of Article : III-278**

**By Members: Mr Andrew Duff**

---

Article III-278 (ex Article 240a)

***DELETE***

---

**Explanation:**

*The merger of the pillars implies that there are no a priori areas where the supervision of the Court cannot apply. 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 provide an adequate safeguard.*

*The powers of the Court are clearly not the same in CFSP as they are in the old first pillar, but the constitutionalisation of the Union requires the potential for judicial review over the whole spectrum of the Union's activities.*

*The citizen will not understand why CFSP is excluded.*

*See our contribution CONV 758/03.*

**AMENDMENT FORM**

**Suggestion for amendement of Article III – 278**

**By Mr Proinsias De Rossa**

**Status : - Member**

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**Delete Article III – 278**

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**Explanation (if any) :**

To extend the remit of the ECJ across the whole Constitution including CFSP.

## AMENDMENT FORM

**Suggestion for amendment of: PART III OF THE CONSTITUTION:  
Article III-278**

**By BROK, AZEVEDO, AKCAM, ALTMAIER, BREJC, DEMETRIOU, FIGEL, FOGLER, FREND, GIANNAKOU, KAUPPI, KELAM, LENNMARKER, LIEPINA, MAIJEWEGGEN, PIKS, RACK, SANTER, SZAJER, VAN DER LINDEN, VAN DIJK, WITTBRODT, WUERMELING**

**On behalf of the EPP Convention Group**

**Status :    - Member            - Alternate**

---

### **Suggestion**

#### **Article III-278 (ex Article 240a)**

~~The Court of Justice shall not have jurisdiction with respect to Articles I-39 and I-40 of Part One and the provisions of Chapter II of Title V of Part Three concerning the common foreign and security policy.~~

---

### **Explanation (if any) :**

*The rule of law is an integral part of the Union's values (Article I-2 of the Constitution). Under the rule of law, no field of policy can be exempt a priori from judicial control. The Union's Constitution must therefore be entirely subject to the jurisdiction of the ECJ. This must also apply in CFSP matters if one really intends to end the "pillar structure" of the Union. Otherwise, also the procedural rights and duties under the CFSP provisions (e.g. consultation of the European Parliament) would not be enforceable. The vagueness of the substantive provisions on CFSP will in any event prevent a judicial scrutiny of the substance CFSP decisions. In this respect, the situation will not be different to that in all Member States.*

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article III-278

Déposée par MM. Barnier, Vitorino, O'Sullivan et Ponzano

Qualité :      Membres      et Suppléants

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#### Article III-278

(compétence de la Cour de justice dans la Pesc)

**Sans préjudice de l'article III-222, paragraphe 12**, la Cour de justice n'a pas de compétence au regard des articles I-39 et I-40] et des dispositions du [chapitre II du titre V de la Partie III ]concernant la politique étrangère et de sécurité commune, **à l'exception des recours formés en vertu :**

- de l'article III-262
  - de l'article III-266, pour ce qui concerne les seuls recours formés par un Etat membre ou le Ministre des affaires étrangères
  - de l'article III-272
  - de l'article III-275
  - de l'article III-276
- 

#### **Explication :**

La Commission s'est prononcée en faveur de la compétence intégrale de la Cour de justice en matière de Pesc, et elle soutient tous les amendements allant en ce sens.

Compte tenu, toutefois, de la réticence de certains membres de Conventionnels, nous soumettons à l'attention de la Convention une formule de compromis, qui se limite à prévoir la Cour de justice compétente dans les seuls cas absolument nécessaires (a) pour que l'Union respecte, comme l'affirme l'article I-2, le principe de l'état de droit et (b) pour éviter que les Etats membres, en cas de litige, se voient obligés à soumettre un différend devant la Cour internationale de La Haye. En effet, le fait que certaines décisions peuvent être adoptées à la majorité qualifiée, qui sont obligatoires pour tous les Etats membres, rend nécessaire de prévoir la compétence de la Cour pour les recours à former par les Etats membres.

Il s'agit des recours suivants :

a) Article III-272 : les litiges relatifs à la réparation des dommages causés par la faute d'une institution ou de ses agents (responsabilité extracontractuelle) ; les questions à couvrir essentiellement sont les recours en réparation de dommages causés lors d'une action dans un pays tiers.

En ce qui concerne le contrôle de légalité des actes de l'Union par les particuliers (article III-266, paragraphe 4), on peut estimer qu'en règle générale aucun acte adopté

en matière de Pesc ne devrait concerner directement et individuellement les particuliers. Il ne semble donc pas strictement nécessaire d'étendre la compétence de la Cour en matière Pesc à l'article III-266, paragraphe 4. Il en serait autrement au cas où des décisions interdisant l'entrée de personnes physiques sur le territoire de l'Union ne seraient pas prises en vertu de l'art. II-219 (sur les mesures restrictives), mais directement sur la base d'une disposition Pesc. Si cela était envisagé, il faudra, pour maintenir l'état de droit soit de libeller autrement l'article III-219 (qui n'est pas soustrait à la juridiction de la Cour), soit étendre expressément la compétence de la Cour à ce cas.

b) Article III-266 : les recours en annulation des actes adoptés dans le cadre Pesc, formés par un Etat membre ou le Ministre des affaires étrangères. Il est, en effet, imaginable qu'un acte en matière de Pesc a été adopté en violation de la Constitution ou en violation de formes substantielles.

Article III-262 : les recours en manquement aux obligations, intentés par un Etat membre. Il convient en effet, en l'absence de tout autre mécanisme de contrôle, de permettre aux autres Etats membres de laisser la Cour de justice constater qu'un Etat membre a manqué à ses obligations découlant d'une disposition de la Constitution ou d'un acte adopté par le Conseil dans le domaine de la Pesc.

Articles III-275 et III-276 : les recours fondés sur une clause compromissoire dans un contrat de droit privé ou public ainsi que les recours formés en vertu d'un compromis entre des Etats membres qui souhaitent soumettre leur différend à la Cour.

**AMENDMENT FORM**

**Suggestion for amendment of Article 271**

**Suggestion for Part: III**

**By Ms / Mr :**            **G.M. de Vries**  
                                 **T.J.A.M. de Bruijn**

**Status :**            **Member**                    **Alternate**

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If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the European Court of Justice shall act ~~with the minimum delay~~ within a period of three months.

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**Explanation (if any):**

The Netherlands would like to again submit their original proposal that the European Court of Justice decide within a period of three months in this situation, given the serious consequences for the person concerned and the eventual knock-on effect on similar cases.

## AMENDMENT FORM

Suggestion for amendment of Article : III-271 (ex 234)

By Mr Hain

Status : Member

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(a) OK.

(b) OK.

*Add new additional paragraph:*

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 this Article concerning the validity or interpretation of acts of the institutions of the Union based on Chapter IV of Part Three. This Article shall apply in accordance with any such declaration unless it is withdrawn by the Member State concerned.

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### Explanation (if any) :

*This article resembles the amendment we submitted for the original Article 9 in Title X on an area of freedom, security and justice.*

*The additional paragraph 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 Chapter IV of Title III. 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 the title. The UK 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 States; 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.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-271**

**By Mr : Emilio GABAGLIO**

**Status : Observer**

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### **Part III**

**Amendment : Art. III-271 para. 1**

**Insert at the end of lit. (b):**

**“including agreements referred to in Article III-101 paragraph 2. Before exercising its jurisdiction the European Court of Justice should refer the matter to the signatory parties inviting them to give an opinion.”**

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### **Explanation (if any) :**

Promoting the role of social partners (Article I-47) is particularly important in respect of preliminary rulings concerning agreements concluded between them (see Article III-101 para. 2). The role of the Social Partners in respect of opinions is specifically mentioned in Clause 4(6) of the Parental Leave Agreement.<sup>1</sup>

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<sup>1</sup> “Without prejudice to the respective role of the Commission, national courts and the Court of Justice, any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties who will give an opinion.”



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article III-269

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article III-269 (ex-article 232)

Dans le cas où, en violation de la Constitution, le Parlement européen, le Conseil, la Commission s'abstiendraient de statuer, les États membres et les autres institutions de l'Union peuvent saisir la Cour de justice en vue de faire constater cette violation. Cette disposition s'applique, dans les mêmes conditions, aux agences et organes de l'Union qui s'abstiennent de statuer.

Ce recours n'est recevable que si l'institution, agence ou organe en cause a été préalablement invitée à agir. Si, à l'expiration d'un délai de deux mois à compter de cette invitation, l'institution, agence ou organe n'a pas pris position, le recours peut être formé dans un nouveau délai de deux mois.

Toute personne physique ou morale peut saisir la Cour de justice dans les conditions fixées aux alinéas précédents pour faire grief à l'une des Institutions, agences ou organes de l'Union d'avoir manqué de lui adresser un acte autre qu'une recommandation ou un avis. **Cette disposition ne s'applique pas aux actes relevant de la coopération judiciaire et policière en matière pénale.**

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#### Explication éventuelle :

Il n'apparaît pas souhaitable qu'un recours en carence puisse être introduit contre Europol et Eurojust, compte tenu de la spécificité des tâches confiées à ces organes.

## AMENDMENT FORM

### Suggestion for amendment of Article III-269:

By: on behalf of the EPP Convention Group

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### Article III-269:

#### Article III-269 (ex Article 232)

Should the European Parliament, the Council, ~~or~~ the Commission *the European Council or the ECB*, in infringement of the Constitution, fail to act, the Member States and the other Institutions of the Union may bring an action before the European Court of Justice to have the infringement established. This provision shall apply, under the same conditions, to agencies and bodies of the Union which fail to act.

The action shall be admissible only if the Institution, agency or body concerned has first been called upon to act. If, within two months of being so called upon, the Institution, agency or body concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the European Court of Justice that an Institution, agency or body of the Union has failed to address to that person any act other than a recommendation or an opinion.

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Explanation (if any):

## AMENDMENT FORM

Suggestion for amendment of Article : III-267

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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~~Artikel III-267 (ex Artikel 46e EUV)~~

~~Der von einer Feststellung des Europäischen Rates oder des Rates gemäß [Artikel I-58] betroffene Mitgliedstaat kann Klage beim Europäischen Gerichtshof ausschließlich aus dem Grund erheben, dass ein Verstoß gegen die in dieser Bestimmung vorgesehenen Verfahrensvorschriften vorliegt. Der Gerichtshof entscheidet binnen eines Monats nach der fraglichen Feststellung.~~

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Explanation (if any) :

Diese Einschränkung zu Artikel III-266 stellt eine unbegründbare Beeinträchtigung des Rechtsstaatsprinzips dar.

## AMENDMENT FORM

### Suggestion for amendment of Article : III-266

By Ms / Mr : Voggenhuber, Wagener, Lichtenberger, Nagy

Status :    - Member            - Alternate

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#### Artikel III-266

##### Article III- 266 (ex Article 230)

1. The European Court of Justice shall review the legality of European laws and European framework laws, 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.
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 European 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 which is of direct ~~and individual~~ concern to him, and ~~against a regulatory act which is of direct concern to him without entailing implementing measures~~ **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 (if any) :

Access to the Court of Justice is an essential element of participatory democracy as it provides for accountability of decisions reached at the European level to the citizens.

## AMENDMENT FORM

### Suggestion for amendment of Article : 266 (ex Article 230), part III of the Constitution

By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle

Status :      **Tiilikainen, Kiljunen, Vilén - Members**  
                 **Peltomäki, Takkula and Helle - Alternates**

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#### Article III- 266 (ex Article 230)

1.            The European Court of Justice shall review the legality of European laws and European framework laws, 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.
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 European 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 and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures~~ **or against any other act having similar legal effects on the person concerned.**
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 (if any) :

*The wording of the proposal as to the extension of the right of action of private individuals is hard to interpret and still contains such terms as are used in the existing provision which has led to the restrictive interpretation of the present Article 230 TEC.*

## FICHE AMENDEMENT

**Proposition d'amendement à l'Article:** **III-266 (ex 230)**

**Déposée par Monsieur:** **Erwin Teufel**

**Qualité:** **Membre**

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*Texte du Praesidium*

*Amendement proposé*

**(4a) Weitere Klagerechte ergeben sich aus dem Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit.**

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### **Begründung:**

Um die Aufzählung der Klagemöglichkeiten vor dem Europäischen Gerichtshof in Artikel III-266 (ex-Artikel 230) vollständig zu machen, sollte auf die Klagerechte verwiesen werden, die sich aus dem Subsidiaritätsprotokoll ergeben.

## AMENDMENT FORM

**Suggestion for amendment of Article : III-266 – paragraph 4**

**Suggestion for protocol :**

**By : Elena Paciotti, Pervenche Berès, Maria Berger, Helle Thorning-Schmidt, Olivier Duhamel, Linda McAvan, Luis Marinho, Carlos Carnero, Anne Van Lancker, Caspar Einem, Vytenis Andriukaitis, Adrian Severin, Jürgen Meyer, Claudio Martini, Proinsias De Rossa**

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Article III-266 (ex article 230) – paragraph 4

(4) Toute personne physique ou morale peut former, dans les mêmes conditions, un recours contre les actes dont elle est le destinataire ou qui la concernent directement et individuellement, ainsi que contre les actes ( ***1 mot supprimé*** ) qui la concernent directement sans comporter de mesures d'exécution.

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**Explanation (if any) :**

L'accès des citoyens à la Cour ne doit pas se limiter à certains actes juridiques.

## AMENDMENT FORM

Suggestion for amendment of Article : III-266

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status :    - Member            - ~~Alternate~~

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### Artikel III-266 (ex-Artikel 230)

(1) Der Gerichtshof überwacht die Rechtmäßigkeit der ~~Europäischen Gesetze und Rahmengesetze sowie der Handlungen des Rates, der Kommission und der EZB, soweit es sich nicht um Empfehlungen oder Stellungnahmen handelt, und der Handlungen des Europäischen Parlaments mit Rechtswirkung gegenüber Dritten. Er überwacht ebenfalls die Rechtmäßigkeit der~~ Handlungen **der Organe der Union** sowie der Ämter, Agenturen und Einrichtungen der Union, die Rechtswirkung gegenüber Dritten haben.

(2) ...

(3) Der Europäische Gerichtshof ist unter den gleichen Voraussetzungen zuständig für Klagen ~~des Rechnungshofs, der Europäischen Zentralbank und des Ausschusses der Regionen der~~ **anderen Organe der Union sowie der Ämter, Agenturen und Einrichtungen der Union**, die auf die Wahrung ihrer Rechte abzielen.

(4) Jede natürliche oder juristische Person kann unter den gleichen Voraussetzungen gegen die an sie ergangenen oder sie unmittelbar und individuell betreffenden Handlungen sowie gegen **alle sonstigen** Rechtsakte ~~mit Verordnungscharakter~~, die sie unmittelbar betreffen und keine Durchführungsmaßnahmen ~~nach sich ziehen~~ **erfordern**, Klage erheben.

(5) ...

(6) ...



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**Explanation (if any) :**

***Absatz 1:***

Vereinfachung dieser Bestimmung.

***Absatz 3:***

Vereinfachung dieser Bestimmung in Anpassung an Artikel I-28 Absatz 3 der Verfassung.

***Absatz 4:***

Auch gegen Rechtsakte ohne Verordnungscharakter sollte eine natürliche oder juristische Person Klage erheben dürfen, wenn sie hiervon unmittelbar betroffen ist und der Rechtsakt keine Durchführungsmaßnahmen erfordert. Dies betrifft insbesondere an Dritte gerichtete Europäische Beschlüsse, Europäische Beschlüsse, die an keinen bestimmten Adressaten gerichtet sind, sowie Europäische Gesetze.

## AMENDMENT FORM

Suggestion for amendment of Article : III-266 (ex 230)

By Mr Hain

Status : Member

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1. OK.
  2. OK.
  3. OK.
  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 a regulatory act (other than an act adopted under Chapter IV of Part Three) which is of direct concern to him without entailing implementing measures.
  5. OK.
  6. OK.
- 

Explanation (if any) :

### 266.4

*We can accept this, provided that a “regulatory act” is clarified and that there is a specific exemption for the JHA chapter from the extension of the scope of paragraph 3.*

*In line with the principle of excluding ECJ jurisdiction over CFSP, we need to give effect to the Circle’s view that this provision should exclude “Second Pillar” agencies/bodies, as reflected in the original commentary. We also need to be clear that this should not create ECJ jurisdiction over Member States’ investigations (e.g. through Europol and Eurojust).*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-266**

**By Mr : Emilio GABAGLIO**

**Status : Observer**

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### **Part III**

**Amendment : Art. III-266 para. 4a**

**Insert after para. 4 a new para. 4a:**

**“Social partners may institute proceedings to review the validity of and interpret agreements and European framework laws referred to in Article III-101 paragraph 2. Before exercising its jurisdiction the European Court of Justice should refer the matter to the signatory parties inviting them to give an opinion.”**

[Note: In respect of Article III-101 para. 2 an amendment has been tabled aimed at replacing ‘a European decision’ by “a European framework law”.]

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### **Explanation (if any) :**

Promoting the role of social partners (Article I-47) is particularly important in the context of access to the European Court of Justice in the specific fields of agreements concluded between the social partners and its implementing measures, the European framework laws (see Article III-101 para. 2 following the amendment to replace ‘a European decision’ with “a European framework law”). The role of the Social Partners in respect of opinions is specifically mentioned in Clause 4(6) of the Parental Leave Agreement.<sup>1</sup>

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<sup>1</sup> “Without prejudice to the respective role of the Commission, national courts and the Court of Justice, any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties who will give an opinion.”

## AMENDMENT FORM

### Suggestion for amendment of Article : III-266

By Mr : Joschka Fischer

Status : - Member

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#### Artikel III-266 (ex-Artikel 230)

- (1) Der Gerichtshof überwacht die Rechtmäßigkeit der Europäischen Gesetze und Rahmengesetze sowie der Handlungen des Rates, der Kommission und der EZB, soweit es sich nicht um Empfehlungen oder Stellungnahmen handelt, und der Handlungen des Europäischen Parlaments mit Rechtswirkung gegenüber Dritten. Er überwacht ebenfalls die Rechtmäßigkeit der Handlungen der Ämter, Agenturen und Einrichtungen der Union, die Rechtswirkung gegenüber Dritten haben.
- (2) Zu diesem Zweck ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat, das Europäische Parlament, der Rat oder die Kommission wegen Unzuständigkeit, Verletzung wesentlicher Formvorschriften, Verletzung der Verfassung oder einer bei ihrer Durchführung anzuwendenden Rechtsnorm oder wegen Ermessensmissbrauchs erhebt.
- (3) Der Europäische Gerichtshof ist unter den gleichen Voraussetzungen zuständig für Klagen des Rechnungshofs, der Europäischen Zentralbank und des Ausschusses der Regionen, die auf die Wahrung ihrer Rechte abzielen.
- (4) Jede natürliche oder juristische Person kann unter den gleichen Voraussetzungen gegen die an sie ergangenen oder sie unmittelbar und individuell betreffenden Handlungen sowie gegen Rechtsakte ~~mit Verordnungscharakter~~ allgemeiner Geltung, die sie unmittelbar betreffen und keine Durchführungsmaßnahmen nach sich ziehen, Klage erheben.
- (5) In den Rechtsakten zur Gründung von Einrichtungen, Ämtern und Agenturen der Union können besondere Bedingungen und Modalitäten für die Klageerhebung von natürlichen oder juristischen Personen gegen die mit einer Rechtswirkung verbundenen Handlungen dieser Einrichtungen, Ämter und Agenturen vorgesehen werden.
- (6) Die in diesem Artikel vorgesehenen Klagen sind binnen zwei Monaten zu erheben; diese Frist läuft je nach Lage des Falles von der Veröffentlichung der betreffenden Handlung, ihrer Bekanntgabe an den Kläger oder in Ermangelung dessen von dem Zeitpunkt an, zu dem der Kläger von dieser Handlung Kenntnis erlangt hat.

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**Explanation:**

In Absatz 4 ist das Wort „Durchführungsakte“ durch das Wort „Rechtsakte mit allgemeiner Geltung“ zu ersetzen. Nicht zuletzt zur Gewährleistung der Grundrechte besteht auch ein Bedürfnis nach Rechtsschutz gegen Gesetze. Dieser Änderungsvorschlag entspricht der Auffassung der Mehrheit im Arbeitskreis I "Gerichtshof" und den dort eingebrachten deutschen Forderungen.

## FICHE AMENDEMENT

### Proposition d'amendement à l'article III - 266

Déposée par Monsieur Ben Fayot (Chambre des Députés, Luxembourg)

Qualité : - Membre

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#### Article III-266: The Court of Justice

Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures has, or is likely to have, a substantial adverse effect on his interests.

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#### Explication éventuelle :

The proposal seeks to facilitate access to justice. Access to the Court of Justice is an essential element of participatory democracy as it provides for accountability of decisions reached at the European level to the citizens.

## AMENDMENT FORM

### Suggestion for amendment of Article : III-266

By Mr : Farnleitner

Status : - Member

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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.

...

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### 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.



## 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

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#### 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.

## AMENDMENT FORM

### Suggestion for amendment of Article III-266:

**By: BROK, AZEVEDO, AKCAM, ALMEIDA GARRETT, ALTMAIER, BREJC, DEMETRIOU, FIGEL, FOGLER, FREND, GIANNAKOU, KAUPPI, KELAM, LENNMARKER, LIEPINA, MAIJ-WEGGEN, PIKS, SANTER, STOCKTON, SZAJER, TEUFEL, VAN DER LINDEN, VILEN, VAN DIJK, WITTBRODT, WUERMEILING**

**on behalf of the EPP Convention Group**

**Status: Member / Alternate**

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### Article III-266 :

1. The European 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 European 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 and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures.
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 (if any):

## AMENDMENT FORM

Suggestion for amendment of Article : III-266

Suggestion for protocol :

By Ms / Mr : Maria Berger  
Caspar Einem  
Reinhard Rack  
Gerhard Tusek

Status :    - x Member                      -x Alternate

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(4) Jede natürliche oder juristische Person kann unter den gleichen Voraussetzungen gegen die an sie ergangenen oder sie unmittelbar und individuell betreffenden Rechtsakte sowie gegen *generelle* Rechtsakte ~~mit Verordnungscharakter~~, die sie unmittelbar betreffen und keine Durchführungsmaßnahmen nach sich ziehen, Klage erheben.

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Explanation (if any) :

Der Zugang der Bürger zum Gerichtshof darf nicht auf bestimmte Rechtsakte beschränkt werden.

## AMENDMENT FORM

**Suggestion for amendment of Article : 265 (ex Article 229a), part III of the Constitution**

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :       Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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### **Article III-265 (ex Article 229a)**

Without prejudice to the other provisions of the Constitution, a European law **of the Council** shall confer on the European Court of Justice, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create intellectual property rights. **The Council shall act unanimously after consulting the European Parliament.**

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#### **Explanation (if any) :**

*Decisions on the establishment, composition and powers of specialised courts should be made unanimously by the Council because of the constitutional nature of the issue (see Article III-260). As for the 'Community Patent Court', the decision further entails transfer of new competence to the Community.*

## AMENDMENT FORM

Suggestion for amendment of Article : III-265 (ex 229a)

By Mr Hain

Status : Member

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Without prejudice to the other provisions of the Constitution, a European law shall confer on the European Court of Justice, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create Union-wide intellectual property rights. The Council shall act after consulting the European Parliament.

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**Explanation (if any) :**

*The concept of Community intellectual property rights has been lost from the new draft. We do not support use of the legislative procedure. Co-decision is inappropriate in relation to provisions determining the jurisdiction and functioning of the Courts.*

## AMENDMENT FORM

### Suggestion for amendment of Article 263

#### Suggestion for Part: III

By Ms / Mr :           G.M. de Vries  
                              T.J.A.M. de Bruijn

Status :           Member                   Alternate

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~~1. If the European Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the European Court of Justice.~~

~~If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the European Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.~~

~~If the European Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.~~

~~This procedure shall be without prejudice to [Article III-262 (ex 227)].~~

~~When the Commission brings a case before the European Court of Justice pursuant to [Article III-261 (ex 226)] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the European Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the European Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the European Court of Justice in its judgement.~~

1. If a Member State has not brought an action against a Commission decision establishing a failure to fulfil its obligation, or if the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the Commission's decision or the judgement of the Court of Justice. The Court of Justice may set a reasonable time period in its judgement for the Member State to comply with the judgement.

2. If the Commission considers that the Member State concerned has not taken the measures referred to in paragraph 1, it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion, specifying the points on which the Member State concerned has not complied with the Commission's decision or the judgment of the Court of Justice.



If the Member State concerned fails to take the measures referred to in paragraph 1 within the time limit laid down by the Commission in that reasoned opinion, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not taken the measures referred to in paragraph 1, it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [Article III-262].

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**Explanation (if any):**

This provision is in line with the relevant provisions of the Penelope-document of the Commission (Additional Act to the Constitution no. 4, supplementary institutional provisions, articles 21-22) and in line with the Spanish-Dutch proposal (CONV 620/03), in article Y (2), the last sentence is added (“This action shall have suspensory effect.”) and in article X (1), the last sentence is added (“The Court of Justice may set a reasonable time period in its judgment for the Member State to comply with the judgment.”).

## AMENDMENT FORM

### Suggestion for amendment of Article : 263 (ex Article 228), part III of the Constitution

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :       Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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#### **Article III-263 (ex Article 228)**

1.               If the European Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the European Court of Justice.

~~2. ————— If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the European Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.~~

**2.               If the Commission considers that the Member State concerned has not taken such measures it shall issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgement of the Court of Justice.**

**If the Member State concerned fails to take the necessary measures to comply with the Court's judgement within the time limit laid down by the Commission, the latter may bring the case before the Court of Justice. In so doing it shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.**

If the European Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [Article III-262 (ex 227)].

~~3. ————— When the Commission brings a case before the European Court of Justice pursuant to [Article III 261 (ex 226)] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the European Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the European Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the European Court of Justice in its judgement.~~

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**Explanation (if any) :**

*Paragraph 2: We are in favour of strengthening the sanctions machinery. However, we consider that the stage of reasoned opinion should be preserved for the reason that it is not always clear what kind of measures are needed for the implementation of a judgment of the Court. We find it important to set a clear deadline for the Member States to fulfil their obligations at the initial stage, after which, in case of a failure to do so, the case may be referred to the Court for the implementation of sanctions.*

*Paragraph 3: We do not find this provision necessary. The question whether a Member State has implemented a certain framework law or not, is not always simple. The proposed procedure can cause situations that are open to differing interpretations. On the other hand, the provision does not have much significance if the Article is interpreted in a way that the threat is eliminated simply by sending a notification.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-263 (ex Article 228)**

**By Ms: Linda McAvan**

**Status : - Member**

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations. ***These observations must be submitted within three months.*** It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. ***The Court of Justice must deliberate the case within six months of it's referral.***

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose ***either*** a lump sum or penalty payment, ***or both a lump sum and penalty payment*** on it.

This procedure shall be without prejudice to [ex Article 227].

3. When the Commission brings a case before the Court of Justice pursuant to [ex Article 226] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of ***either*** a lump sum or penalty, ***or both a lump sum and a penalty payment***, if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgement. ***The Court of Justice must deliberate the case within six months of it's referral.***

**Explanation (if any):** After account has been taken of the nature of the infringement, a Member State should pay a lump sum for not complying with EU legislation as well as a penalty payment in order to encourage compliance.

## AMENDMENT FORM

### Suggestion for amendment of Article: III-263 (ex Article 228)

By: **Danuta Hübner**

Status: **Member**

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#### *Text of the Praesidium*

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [ex Article 227].

3. When the Commission brings a case before the Court of Justice pursuant to [ex Article 226] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its

#### *Proposed Amendments*

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it shall, after giving that State the opportunity to submit its observations, issue a reasoned opinion specifying the points on which the Member State concerned has not complied with the judgement of the Court of Justice.

If the Member State concerned fails to take the necessary measures to comply with the Court's judgement within the time limit laid down by the Commission, the latter ~~it~~ may bring the case before the Court of Justice. ~~after giving that State the opportunity to submit its observations.~~ In so doing ~~it~~ shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [ex Article 227].

~~3. When the Commission brings a case before the Court of Justice pursuant to [ex Article 226] on the grounds that the State concerned has failed to fulfil its obligations to~~

judgement.

~~notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgement.~~

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***Explanation:***

The current provisions of the article 228 TEC should be maintained.

It seems inappropriate to impose financial penalties on Member States for the mere fact of non-notification measures transposing a framework law.

## AMENDMENT FORM

### Suggestion for amendment of Article : III-263

By Mr : Joschka Fischer

Status : - Member

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#### Artikel III-263 (ex-Artikel 228)

(1) Stellt der Europäische Gerichtshof fest, dass ein Mitgliedstaat gegen eine Verpflichtung aus der Verfassung verstoßen hat, so hat dieser Staat die Maßnahmen zu ergreifen, die sich aus dem Urteil des Gerichtshofes ergeben.

(2) Hat nach Auffassung der Kommission der betreffende Mitgliedstaat die Maßnahmen, die sich aus dem Urteil des Europäischen Gerichtshofs ergeben, nicht getroffen, so kann die Kommission den Gerichtshof anrufen, nachdem sie diesem Staat zuvor Gelegenheit zur Äußerung gegeben hat. Hierbei benennt sie die Höhe des von dem betreffenden Mitgliedstaat zu zahlenden Pauschalbetrags oder Zwangsgelds, die sie den Umständen nach für angemessen hält.

Stellt der Europäische Gerichtshof fest, dass der betreffende Mitgliedstaat seinem Urteil nicht nachgekommen ist, so kann er die Zahlung eines Pauschalbetrags oder Zwangsgelds verhängen.

Dieses Verfahren lässt den [Artikel III-262 (ex-227)] unberührt.

~~(3) ——— Erhebt die Kommission beim Europäischen Gerichtshof Klage gemäß [Artikel III 261 (ex 226)], da sie der Auffassung ist, dass der betreffende Staat gegen seine Verpflichtung verstoßen hat, Maßnahmen zur Umsetzung eines Rahmengesetzes mitzuteilen, so kann sie, wenn sie dies für angemessen hält, den Europäischen Gerichtshof in demselben Verfahren ersuchen, gegen den betreffenden Mitgliedstaat die Zahlung eines Pauschalbetrags oder Zwangsgelds zu verhängen, wenn der Europäische Gerichtshof einen Verstoß feststellen sollte. Gibt der Europäische Gerichtshof dem Antrag der Kommission statt, so wird die fragliche Zahlung innerhalb der vom Europäischen Gerichtshof in seinem Urteil festgelegten Frist rechtswirksam.~~

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#### Explanation:

Absatz 3 ist zu streichen. Wenn in ein und demselben Verfahren die Vertragsverletzung und das Zwangsgeld festgelegt werden können, so birgt dies angesichts der nötigen parlamentarischen Verfahren insbesondere in föderalen Staaten die Gefahr, dass trotz redlichen Bemühens um Abhilfe ein Mitgliedstaat hohe finanzielle Sanktionen zahlen muss.





## FICHE AMENDEMENT

### Proposition d'amendement à l'Article III-263

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### Article III-263 (ex-article 228)

1. Si la Cour de justice européenne reconnaît qu'un État membre a manqué à une des obligations qui lui incombent en vertu de la Constitution, cet État est tenu de prendre les dispositions que comporte l'exécution de l'arrêt de la Cour de justice européenne.
2. Si la Commission estime que l'État membre concerné n'a pas pris les mesures que comporte l'exécution de l'arrêt de la Cour, elle peut saisir la Cour de justice européenne, après avoir mis cet État en mesure de présenter ses observations. Elle indique le montant de la somme forfaitaire ou de l'astreinte à payer par l'État membre concerné qu'elle estime adapté aux circonstances.

Si la Cour de justice européenne reconnaît que l'État membre concerné ne s'est pas conformé à son arrêt, elle peut lui infliger le paiement d'une somme forfaitaire ou d'une astreinte.

Cette procédure est sans préjudice de l'[article III-262 (ex-227)].

3. ~~Lorsque la Commission saisit la Cour de justice européenne d'un recours en vertu de l'[article III-261 (ex-226)] estimant que l'État concerné a manqué à son obligation de communiquer des mesures de transposition d'une loi-cadre, elle peut, lorsqu'elle le considère approprié, demander à la Cour de justice européenne à ce qu'elle inflige, dans le même recours, le paiement d'une somme forfaitaire ou d'une astreinte dans le cas où la Cour constaterait un manquement. Si la Cour de justice européenne fait droit à la demande de la Commission, le paiement en question prend effet dans le délai imparti par la Cour de justice européenne dans son arrêt.~~

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#### Explication éventuelle :

L'idée consistant à permettre l'imposition d'une amende ou d'une astreinte pour les cas de non-communication d'une directive n'a guère de sens. Les cas de non-communication ne constituent pas forcément les infractions les plus graves. La disposition proposée pourrait en outre facilement être contournée par les Etats membres en communiquant des mesures de transposition manifestement inadaptées ou insuffisantes. A cet égard, il convient également de rappeler que la jurisprudence de la Cour permet déjà, sous certaines conditions, à un particulier affecté par une transposition inexistante, insuffisante ou incorrecte de mettre en jeu la responsabilité de l'Etat membre concerné.

## AMENDMENT FORM

**Suggestion for amendment of Article : III-262 (ex Article 227)**

**By Ms : Linda McAvan**

**Status : - Member**

A Member State which considers that another Member State has failed to fulfil an obligation under the Constitution may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Constitution, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing. ***These observations must be submitted within three months***

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice. ***The Court of Justice must deliberate the case within six months of it's referral.***

**Explanation (if any) :** The aim of this amendment is to give a uniform and fixed time span for the infringement procedure within the Commission, the Member States and the Court of Justice.

## AMENDMENT FORM

**Suggestion for amendment of Article : III-262**

**By Ms / Mr : Mr Bonde**

**Status :    X - Member                      - Alternate**

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### Article III-262 (ex Article 227)

A Member State which considers that another Member State has failed to fulfil an obligation under the Constitution may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Constitution, it shall bring the matter before the Commission.

**SPECIAL COURTS CANNOT BE ESTABLISHED FOR CASES THAT ARE IN PROCESS.**

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**Explanation (if any) :**

## AMENDMENT FORM

### Suggestion for amendment of Article 261

#### Suggestion for Part: III

By Ms / Mr :            **G.M. de Vries**  
                                 **T.J.A.M. de Bruijn**

Status :            **Member**                    **Alternate**

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1. If the Commission considers that a Member State has failed to fulfil an obligation under the Constitution, it shall ~~deliver a reasoned opinion on the matter~~ establish such failure by reasoned decision, after giving the State concerned the opportunity to submit its observations. It shall set for the State in question a time limit for the fulfilment of its obligation.

~~2. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the European Court of Justice. This State may, within two months of the notification of the decision, bring an action before the Court of Justice in which the latter has unlimited jurisdiction. This action shall have suspensory effect.~~

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#### **Explanation (if any):**

This provision is in line with the relevant provisions of the Penelope-document of the Commission (Additional Act to the Constitution no. 4, supplementary institutional provisions, articles 21-22) and the Spanish-Dutch proposal (CONV 620/03), in article Y (2), the last sentence is added (“This action shall have suspensory effect.”) and in article X (1), the last sentence is added (“The Court of Justice may set a reasonable time period in its judgment for the Member State to comply with the judgment.”).

## AMENDMENT FORM

**Suggestion for amendment of Article : III-261 (ex Article 226)**

**By Ms: Linda McAvan MEP**

**Status : - Member**

**Modify text as follows:**

*The failure to fulfil an obligation under the Constitution may be reported to the Commission by a Member State, an organisation, body, or individual.*

If the Commission considers that a Member State has failed to fulfil an obligation under the Constitution, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. *These observations must be submitted within three months.*

*The relevant Committees within the European Parliament shall be regularly informed by the Commission, about Member States who fail to fulfil their responsibilities under the Constitution and the action being taken against them.*

If the State concerned does not comply with the opinion within the period laid down by the Commission the latter may bring the matter before the Court of Justice.

**Explanation (if any) :** It is crucial to encourage the efficiency of the infringement procedure by including fixed times for action within the Treaty. Three months seems to be a time limit set at other points in the procedure and so has been used here as well.

## AMENDMENT FORM

### Suggestion for amendment of Article : 260 (ex Article 225a), part III of the Constitution

By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle

Status :      **Tiilikainen, Kiljunen, Vilén - Members**  
                 **Peltomäki, Takkula and Helle - Alternates**

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#### Article III-260 (ex Article 225a)

1.            A European law, **adopted by the Council acting unanimously and after consulting the European Parliament**, may establish specialised courts attached to the ~~High-General~~ Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. It shall be adopted either on a proposal from the Commission after consultation of the European Court of Justice or at the request of the European Court of Justice after consultation of the Commission.
  2.            The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
  3.            Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the ~~High-General~~ Court.
  4.            The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.
  5.            The specialised courts shall establish their Rules of Procedure in agreement with the European Court of Justice. They shall act after receiving the approval of the Council, acting by a qualified majority.
  6.            Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the European Court of Justice and the provisions of the Statute of the European Court of Justice shall apply to the specialised courts.
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#### Explanation (if any) :

*Decisions on the establishment, composition and powers of specialised courts should be made unanimously by the Council because of the constitutional nature of the issue.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-260**

**By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann**

**Status :    - Member            - ~~Alternate~~**

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### **Artikel III-260 (ex-Artikel 225a)**

(1) ...

(2) ...

(3) ...

(4) ...

(5) Die Fachgerichte nehmen ihre Verfahrensordnung im Einvernehmen mit dem Gerichtshof an. ~~Sie beschließen darüber nach Zustimmung des Rates, der mit qualifizierter Mehrheit entscheidet.~~ **Sie bedarf der Genehmigung des Rates und des Europäischen Parlaments.**

(6) ...

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**Explanation (if any) :**

## AMENDMENT FORM

Suggestion for amendment of Article : **III-260**

By Mr Hain

Status : Member

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1. A European law may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. It shall be adopted by the Council, either on a proposal from the Commission after consultation of the European Court of Justice or at the request of the European Court of Justice after consultation of the Commission, in either case after consulting the European Parliament.

2. *OK.*

3. *OK.*

4. *OK.*

5. *OK.*

6. *OK.*

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**Explanation (if any) :**

### **260.1**

*We support a change to QMV (the default voting procedure) throughout the ECJ articles (III-260, III-265 and III-285). But we do not support use of the legislative procedure for these articles. Co-decision is inappropriate in relation to provisions determining the jurisdiction and functioning of the Courts.*



## AMENDMENT FORM

### Suggestion for amendment of Article III-260:

**By: BROK, AZEVEDO, AKCAM, ALMEIDA GARRETT, ALTMAIER, BREJC, DEMETRIOU, FIGEL, FOGLER, FREND, GIANNAKOU, KAUPPI, KELAM, LENNMARKER, LIEPINA, MAIJ-WEGGEN, PIKS, RACK, SANTER, STOCKTON, SZAJER, VAN DER LINDEN, VILEN, VAN DIJK, WITTBRODT, WUERMELING**

**on behalf of the EPP Convention Group**

**Status: Member / Alternate**

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### Article III-260 (ex Article 225a)

1. A European law may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. It shall be adopted either on a proposal from the Commission after consultation of the European Court of Justice or at the request of the European Court of Justice after consultation of the Commission.
  2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
  3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.
  4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting ~~unanimously~~ **by qualified majority**.
  5. The specialised courts shall establish their Rules of Procedure in agreement with the European Court of Justice. They shall act after receiving the approval of the Council, acting by a qualified majority.
  6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the European Court of Justice and the provisions of the Statute of the European Court of Justice shall apply to the specialised courts.
- 

Explanation (if any):



## AMENDMENT FORM

### Suggestion for amendment of Article : 259 (ex Article 225), part III of the Constitution

By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle

Status :      **Tiilikainen, Kiljunen, Vilén - Members**  
                 **Peltomäki, Takkula and Helle - Alternates**

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#### Article III-259 (ex Article 225)

1.            The ~~High~~ **General** Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [Articles III-266, III-269, III-272, III-273 and III-275 (ex 230, 232, 235, 236 and 238)], with the exception of those assigned to a judicial panel and those reserved in the Statute for the European Court of Justice. The Statute may provide for the ~~High~~ **General** Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the ~~High~~ **General** Court under this paragraph may be subject to a right of appeal to the European Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2.            The ~~High~~ **General** Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under [Article III-260 (ex 225(a))].

Decisions given by the ~~High~~ **General** Court under this paragraph may exceptionally be subject to review by the European Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

3.            The ~~High~~ **General** Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under [Article III-271 (ex 234)], in specific areas laid down by the Statute.

Where the ~~High~~ **General** Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the European Court of Justice for a ruling.

Decisions given by the ~~High~~ **General** Court on questions referred for a preliminary ruling may exceptionally be subject to review by the European Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

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**Explanation (if any) :**

*Translations of the names of courts into different languages must not create any danger of confusion. Such a danger exists with the proposed 'High Court'. The other alternative, 'the General Court', also reflects better the role of the Court of First Instance as agreed in Nice.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-259**

**By Ms / Mr : Mr Bonde**

**Status :    X - Member                      - Alternate**

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### Article III-259 (ex Article 225)

1.     The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [ex Articles 230, 232, 235, 236 and 238], with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2.     The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under [ex Article 225a].

Decisions given by the High Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

3.     The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under [ex Article 234], in specific areas laid down by the Statute.

**THE COURT RESPECTS THE DECISIONS OF NATIONAL CONSTITUTIONAL COURTS, NATIONAL HIGH COURTS AND THE EUROPEAN HUMAN RIGHTS COURT.**

Where the High Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

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**Explanation (if any) :**

## AMENDMENT FORM

### Suggestion for amendment of Article : 258 (ex Article 224), part III of the Constitution

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :       Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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#### **~~Article III-258 (ex Article 224a)~~**

~~A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate General of the European Court of Justice and the High Court before the governments of the Member States take the decisions referred to in [Articles III-256 and III-257 (ex-223 and 224)].~~

~~The panel shall comprise seven persons chosen from among former members of the European Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall appoint the members of the panel and establish its operating rules pursuant to a European decision adopted on a proposal from the President of the European Court of Justice.~~

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#### **Explanation (if any) :**

We do not find it necessary to set up an 'advisory panel' (see Article III-256).

In any case, nor do we support a provision according to which the appointment of members of the panel and the panel's operating rules shall be decided on a proposal from the President of the Court of Justice. The President is a member of the Court of Justice. The independence of the Court of Justice would be compromised if he could have an effect on the activity of the panel.

*Furthermore, we do not find it appropriate that one of the members of the panel should be proposed by the European Parliament.*

## AMENDMENT FORM

### Suggestion for amendment of Article : III-258

By Mr : Joschka Fischer

Status : - Member

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#### Artikel III 258 (ex Artikel 224a)

~~Es wird ein Ausschuss eingerichtet, der die Aufgabe hat, vor der Entscheidung der Regierungen der Mitgliedstaaten gemäß den [Artikeln III 256 und III 257 (ex 223 und 224)] eine Stellungnahme über die Eignung der Bewerber für die Ausübung des Amts eines Richters oder Generalanwalts beim Europäischen Gerichtshof oder beim Gericht abzugeben.~~

~~Der Ausschuss setzt sich aus sieben Persönlichkeiten zusammen, die aus dem Kreis ehemaliger Mitglieder des Europäischen Gerichtshofs und des Gerichts, der Mitglieder der höchsten einzelstaatlichen Gerichte und der Juristen von anerkannt hervorragender Befähigung stammen, von denen einer vom Europäischen Parlament vorgeschlagen wird. Der Rat ernennt die Mitglieder dieses Ausschusses und legt die Vorschriften für seine Arbeitsweise durch einen auf Vorschlag des Präsidenten des Europäischen Gerichtshofs erlassenen Europäischen Beschluss fest.~~

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#### Explanation:

Der Artikel ist zu streichen. Der vorgesehene Begutachtungsausschuss führt nicht zu einem transparenteren Verfahren. Ein Bedürfnis für einen solchen Ausschuss ist auf der Grundlage der bisherigen Erfahrungen nicht zu erkennen. Das in Absatz 1 vorgesehene umfangreiche Gutachten über die Eignung der Bewerber greift zu stark in die Zuständigkeit der Mitgliedstaaten für die Beurteilung der fachlichen Eignung von Richterinnen und Richtern ein. Die in Absatz 2 vorgesehene Zusammensetzung des Gremiums aus sieben Personen würde zu Streitigkeiten wegen der Staatsangehörigkeit der Mitglieder führen. Außerdem ist problematisch, dass das Vorschlagsrecht dem Präsidenten des EuGH zukommen soll, da in Verbindung mit der Zusammensetzung des Ausschusses, der in erster Linie aus früheren Angehörigen der europäischen Gerichtsbarkeit bestehen soll, die europäischen Richter einen zu großen Einfluss auf ihre Nachfolger erhalten würden.

#### Ergänzender Hinweis:

Als Folgeänderung sollten in den Artikeln III-256 und III-257 die Bezugnahmen auf Artikel III-258 entfallen.





## AMENDMENT FORM

### Suggestion for amendment of Article : 257 (ex Article 224), part III of the Constitution

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :        Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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#### Article III-257 (ex Article 224)

~~The number of Judges of the High Court shall be determined by the Statute of the European Court of Justice. The Statute may provide for the High Court to be assisted by Advocates General.~~

The members of the **High General** Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years ~~after consultation of the panel provided for in [Article III 258 (ex 224(a))]~~. The membership of the **High General** Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the **High General** Court from among their number for a term of three years. He may be re-elected.

The **High General** Court shall establish its Rules of Procedure in agreement with the European Court of Justice. The Rules shall be subject to the approval of the Council.

Unless the Statute of the European Court of Justice provides otherwise, the provisions of the Constitution relating to the European Court of Justice shall apply to the **High General** Court.

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#### Explanation (if any) :

*The question concerning the number of Judges and the Court's Statute respectively is already addressed in Article I-28 paragraph 2, and there is no need to repeat them here.*

*Translations of the names of courts into different languages must not create any danger of confusion. Such a danger exists with the proposed 'High Court'. The other alternative, 'the General Court', also reflects better the role of the Court of First Instance as agreed in Nice.*

*We do not find it necessary to set up an 'advisory panel' (see Article III-256).*



# **AMENDMENTS**

**titre vi – subsection 5**

**EUROPEAN COURT OF JUSTICE**

**ART. III-257 (EX ART. 224)**

## AMENDMENT FORM

Suggestion for amendment of Article : III-257

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne KaufmannStatus :    - Member            - ~~Alternate~~

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Artikel III-257 (ex-Artikel 224)

Die Zahl der Richter des Gerichts wird in der Satzung des Europäischen Gerichtshofs festgelegt. In der Satzung kann vorgesehen werden, dass das Gericht von Generalanwälten unterstützt wird.

Zu Mitgliedern des Gerichts sind Personen auszuwählen, die jede Gewähr für Unabhängigkeit bieten und über die Befähigung zur Ausübung hoher richterlicher Tätigkeiten verfügen. Sie werden von den Regierungen der Mitgliedstaaten im gegenseitigen Einvernehmen nach Anhörung des in [Artikel III-258 (ex-224a)] vorgesehenen Ausschusses für sechs Jahre ernannt. Alle drei Jahre wird das Gericht teilweise neu besetzt. Die Wiederernennung ausscheidender Mitglieder ist zulässig.

Die Richter wählen aus ihrer Mitte den Präsidenten des Gerichts für die Dauer von drei Jahren. Wiederwahl ist zulässig.

Das Gericht erlässt seine Verfahrensordnung im Einvernehmen mit dem Europäischen Gerichtshof. Sie bedarf der Genehmigung des Rates *und des Europäischen Parlaments*.

Soweit die Satzung des Europäischen Gerichtshofs nichts anderes vorsieht, finden die den Europäischen Gerichtshof betreffenden Bestimmungen der Verfassung auf das Gericht Anwendung.

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Explanation (if any) :

## AMENDMENT FORM

**Suggestion for amendment of Article: Art. III-257, Title VI, Chapter I, Section 1, Subsection 5**

**By: Mr. Ernâni Lopes, Mr. Manuel Lobo Antunes.**

**Status: Government - Member and Alternate**

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## Article III-257

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice.  
The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of **nine years non renewable**.~~six years after consulting the panel provided for in [ex Article 224a]~~. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of ~~three~~ **four and an half** years. He may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice.  
It shall act after receiving the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.

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**Explanation: The elimination of the sentence is due to the suppression of article III-258 (ex 224<sup>a</sup>); the extension of the mandates is in line with previous proposal.**



## AMENDMENT FORM

**Suggestion for amendment of Article : 257 (ex Article 224), part III of the Constitution**

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :   Tiilikainen, Kiljunen, Vilén - Members**  
**Peltomäki, Takkula and Helle - Alternates**

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**Article III-257 (ex Article 224)**

~~The number of Judges of the High Court shall be determined by the Statute of the European Court of Justice. The Statute may provide for the High Court to be assisted by Advocates General.~~

The members of the ~~High~~ **General** Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years ~~after consultation of the panel provided for in [Article III-258 (ex 224(a))].~~ The membership of the ~~High~~ **General** Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the ~~High~~ **General** Court from among their number for a term of three years. He may be re-elected.

The ~~High~~ **General** Court shall establish its Rules of Procedure in agreement with the European Court of Justice. The Rules shall be subject to the approval of the Council.

Unless the Statute of the European Court of Justice provides otherwise, the provisions of the Constitution relating to the European Court of Justice shall apply to the ~~High~~ **General** Court.

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**Explanation (if any) :**

*The question concerning the number of Judges and the Court's Statute respectively is already addressed in Article I-28 paragraph 2, and there is no need to repeat them here.*

*Translations of the names of courts into different languages must not create any danger of confusion. Such a danger exists with the proposed 'High Court'. The other alternative, 'the General Court', also reflects better the role of the Court of First Instance as agreed in Nice.*

*We do not find it necessary to set up an 'advisory panel' (see Article III-256).*



## AMENDMENT FORM

### Suggestion for amendment of Article : 256 (ex Article 223), part III of the Constitution

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :      Tiilikainen, Kiljunen, Vilén - Members  
                 Peltomäki, Takkula and Helle - Alternates**

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#### **Article III-256 (ex Article 223)**

The Judges and Advocates-General of the European Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States ~~after consulting the panel provided for in [Article III-258 (ex 224(a))].~~

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the European Court of Justice.

The Judges shall elect the President of the European Court of Justice from among their number for a term of three years. He may be re-elected.

The European Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council.

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#### **Explanation (if any) :**

*We do not find it necessary to set up an 'advisory panel'. The usefulness of such a panel may be questioned. Should the panel find that a candidate put forward by a Member State does not have the required qualifications, this would create no more than political pressure on the said Member State to name a new candidate, given that each Member State would only put forward one candidate. In any case, such situations would most likely be rare. A decision to set up an advisory panel would also make it necessary to carefully consider the question of who may be elected to the panel, in view of the requirements of independence and representation.*

## AMENDMENT FORM

**Suggestion for amendment of Article : III-256**

**By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann**

**Status :    - Member            - ~~Alternate~~**

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### **Artikel III-256 (ex-Artikel 223)**

Zu Richtern und Generalanwälten des Europäischen Gerichtshofs sind Persönlichkeiten auszuwählen, die jede Gewähr für Unabhängigkeit bieten und in ihrem Staat die für die höchsten richterlichen Ämter erforderlichen Voraussetzungen erfüllen oder Juristen von anerkannt hervorragender Befähigung sind; sie werden von den Regierungen der Mitgliedstaaten im gegenseitigen Einvernehmen nach Anhörung des in [Artikel III-258 (ex-224a)] vorgesehenen Ausschusses ernannt.

Alle drei Jahre findet nach Maßgabe der Satzung des Europäischen Gerichtshofs eine teilweise Neubesetzung der Stellen der Richter und Generalanwälte statt.

Die Richter wählen aus ihrer Mitte den Präsidenten des Europäischen Gerichtshofs für die Dauer von drei Jahren. Wiederwahl ist zulässig.

Der Europäische Gerichtshof erlässt seine Verfahrensordnung. Sie bedarf der Genehmigung des Rates *und des Europäischen Parlaments*.

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**Explanation (if any) :**

## AMENDMENT FORM

**Suggestion for amendment of Article : 255 (ex Article 222), part III of the Constitution**

**By Ms / Mr : Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle**

**Status :       Tiilikainen, Kiljunen, Vilén - Members  
                  Peltomäki, Takkula and Helle - Alternates**

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### **Article III-255 (ex Article 222)**

~~The European Court of Justice shall be assisted by eight Advocates General. Should the European Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates General.~~

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the European Court of Justice, require his involvement.

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### **Explanation (if any) :**

*This provision is better placed in the Part I (Article I-28(2)).*

## AMENDMENT FORM

### Suggestion for amendment of Article III-255:

**By: BROK, AZEVEDO, AKCAM, ALMEIDA GARRETT, ALTMAIER, BREJC, DEMETRIOU, FIGEL, FOGLER, FRENDON, GIANNAKOU, KAUPPI, KELAM, LENNMARKER, LIEPINA, MAIJ-WEGGEN, PIKS, SANTER, STOCKTON, SZAJER, VAN DER LINDEN, VILEN, VAN DIJK, WITTBRODT, WUERMELING**  
**on behalf of the EPP Convention Group**

**Status: Member / Alternate**

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### Article III-255 (ex Article 222)

The European Court of Justice shall be assisted by eight Advocates-General. Should the European Court of Justice so request, the Council, acting ~~unanimously~~ **by qualified majority**, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the European Court of Justice, require his involvement.

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Explanation (if any):

## AMENDMENT FORM

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

#### **Suggestion for amendment of Article : III-278**

**By Members: Mr Giuliano Amato, Mr Elmar Brok and Mr Andrew Duff**

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#### Article III-278 (ex Article 240a)

1. The Court of Justice shall not have jurisdiction with respect to Articles [I-39 and I-40] and the provisions of [Chapter II of Title V of Part III] concerning the common foreign and security policy.
  2. *By way of derogation from paragraph 1, proceedings may be instituted according to the provisions of Article III-266.2 solely in cases brought by a Member State, and according to the provisions of Article III-266.4, Article III-268 and Article III-272.*
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#### **Explanation:**

*The merger of the pillars implies that there are no a priori areas where the supervision of the Court cannot apply. 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 provide an adequate safeguard.*

*The powers of the Court are clearly not the same in CFSP as they are in the former first and third pillars, but the constitutionalisation of the Union requires the potential for judicial review over the whole spectrum of the Union's activities. The citizen will not understand why CFSP is excluded.*

*Due to the special nature of the Court's role in CFSP, we have limited the extent of its purview to four aspects similar to the role of national courts with regard to national foreign policy in most Member States. These are Article III-266.2 (actions brought by member states challenging the legality of CFSP acts), Article 266.4 (actions brought by individuals directly concerned), Article 268 (procedures) and Article 272 (damages).*