

CERCLE I

Working Document 10

**NOTE**

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from :	Secretariat
to :	Discussion circle on the Court of Justice
Subject :	<b>Judicial control relating to the common foreign and security policy</b>

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**I. Current situation**

Under Article 46 of the Treaty on European Union, the Court does not have jurisdiction in actions against CFSP acts, including those on the conclusion of international agreements in the CFSP field. Such acts cannot therefore be annulled by the Court pursuant to Article 230 of the EC Treaty.

Article 47 of the TEU, however, states that no provision of that Treaty shall affect the provisions of the EC Treaty. Under Article 46 of the TEU, the provisions of the EC Treaty concerning the powers of the Court and the exercise of those powers apply to Article 47 of the Treaty on European Union. The Court is therefore competent to ensure that acts concluding CFSP agreements do not encroach upon the powers conferred by the EC Treaty on the Community <sup>1</sup>.

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<sup>1</sup> Judgment of the Court of 12 May 1998 (airport transit), Commission v. Council, Case C-170/96, ECR, p. I-2763.

Where an action in the CFSP field provides for economic sanctions against a third country, implementation measures at Community level are necessary; they are taken on the basis of Articles 60 and 301 of the TEC. In the case of economic sanctions against individuals, recourse is had to Article 308 TEC. Nevertheless, the Council has broadly interpreted Articles 60 and 301, 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 exercises its judicial control with regard to all such implementing acts in accordance with the TEC.

## **II. Possible approaches**

1. As regards judicial control by the Court of Justice of CFSP matters in general and international agreements in particular, the first possible option is that of maintaining the status quo, as described under I. Under this option, a change of the wording of Articles 60 and 301 TEC could be considered, so as to make explicit provision for the possibility of adopting economic sanctions against individuals on the basis of those two provisions.
2. The first option of extending the Court's powers would involve giving the national courts the possibility of using the preliminary ruling procedure on interpretation before the Court of Justice when they have to decide on questions relating to the implementation by the Member States of CFSP decisions to which they are required to give effect.
3. In Part 1 it was explained that economic sanctions against individuals are already subject to the Court's judicial control. If it was desired to expand this possibility of recourse to CFSP decisions which may affect persons other than from an economic point of view, consideration should be given to the possibility of giving individuals the right to institute actions before the Court of Justice:
  - either for the annulment of CFSP decisions which are of direct and individual concern to them (e.g. visa bans)

- or solely claims for damages based on the illegality of the act, but without the Court having the right to annul the act or declare it void.
4. Other options aiming to extend substantially the Court's jurisdiction may be considered but are likely to modify the institutional balance in the CFSP field. These would primarily be:
- giving the institutions and Member States the right to ask the Court to annul CFSP decisions on the grounds that they were taken in violation of the Constitution or of a rule of international law by which the Union or all the Member State have agreed to be bound,
  - extending the Court's jurisdiction to CFSP matters on the same conditions as those that apply in the areas currently covered by the EC Treaty.
5. All the options of extending the Court's jurisdiction referred to in paragraphs 2 to 4 may have an impact on the nature of the CFSP; they must inevitably be discussed by the Convention during its debate on the CFSP.
6. As regards the prior opinion provided for in Article 300(6) TEC, consideration could be given to introducing into the Treaty the possibility for an institution or a Member State to request such an opinion in order for the Court of Justice to examine whether a planned international CFSP agreement would be compatible with the provisions of the Constitution.
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