

CIRCLE I

Working Document 18

“Discussion Circle” on the Court of Justice”

Subject: Contribution of Mr Andrew Nicholas Duff, member of the Convention and Ms Maria Berger, Elena Paciotti, Mr Reinhard Rack and Mr Joachim Würmeling, alternate members of the Convention.

Members of the “Circle of discussion” on the Court of Justice will find hereafter a paper by Mr Andrew Nicholas Duff, member of the Convention and Ms Maria Berger, Elena Paciotti, Mr Reinhard Rack and Joachim Würmeling, alternate members of the Convention.

Contribution of Mr Andrew Nicholas Duff, member of the Convention and Ms Maria Berger, Elena Paciotti, Mr Reinhard Rack and Joachim Würmeling, alternate members of the Convention.

Subject: Observations to the draft final report of Mr António Vitorino, Working Document 08 of 11 March 2003

I. As to several points of the draft final report

Question a)

Point 4, p. 2:

It should be stated clearly that the majority view was in favour of maintaining the rule of having one judge per Member State.

Point 5, p.2:

It is our understanding that the majority view was in favour of appointment by a Council act. This should have repercussions on the formulation of point 7.

Point 6, p.2:

Instead of speaking of a "filter mechanism", reference to the *consultative role* of an assessment panel should be made.

Furthermore, we would prefer a stronger commitment to an association of the European Parliament by replacing the word "might" by "*should*".

Point 8, p. 3:

We support the introduction of a non-renewable term of office of 9 years for the judges of the ECJ.

Question b)

Points 11 to 13, p. 4:

It should be stated clearly that according to the draft of article 25 of the Constitutional Treaty, all three articles quoted should follow the general rule of decision making through the legislative procedure (in a modified version as regards appointments to the judicial panels). There is no justification for an exception to the general rule.

Question d)

Point 20, p. 6:

We agree with the compromise text proposed by the chairman of the circle on condition that reference is made only to "*an act*", thus deleting "general application" and "regulatory" (it being understood that legislative acts of general application would thereby be covered). In our view this

compromise text serves best the aim of closing the gap of judicial protection where an individual is forced to breach a rule before having access to a court in cases where EU legislation is directly applicable without entailing implementing measures. For this reason, it would be unacceptable to apply this solution only to "regulatory" acts.

Question e)

Points 27 and 28, p. 8 and 9:

While agreeing with the proposals made, we consider that this point needs further discussion.

II. Extension of the Court's jurisdiction

We would like to underline that the respect for the rule of law requires an extension of the jurisdiction of the Court to the second and third pillar and the suppression of the special regime foreseen by article 68 of the EC Treaty. If no agreement on that question can be reached at the meeting of 17 March 2003, we insist on discussing this question in further meetings and after having received the drafts of the relevant articles of the Constitutional Treaty.

III. Other questions not mentioned by the draft final report

Questions to be addressed by the Constitutional Treaty and by the Statute

In its conclusions of the meeting of 17 February 2003, the chairman stressed the importance of clarifying which questions should be addressed on the level of the Constitutional Treaty and which should be in the remit of the statute of the Court or of an organic law. We would like this question to be reflected in the final report.

Standing of the CFI

This question was addressed without conclusion. It is worth being mentioned. We suggest that at least the title of the current section 4 of the EC Treaty needs to be adapted to something along the lines of "EU jurisdiction".
