

**CIRCLE I**

**Working Document 20**

**“Discussion Circle” on the Court of Justice**

**Subject:** remarks by Mr. Thom de Bruijn, alternate member of the convention, on the draft final report of the Court of Justice discussion circle

Members of the “Circle of discussion” on the Court of Justice will find hereafter a paper by  
by Mr. Thom de Bruijn, alternate member of the convention

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REMARKS BY MR. THOM DE BRUIJN, ALTERNATE MEMBER OF THE CONVENTION,  
ON THE DRAFT FINAL REPORT OF THE COURT OF JUSTICE DISCUSSION CIRCLE

**On question (a) of the framework**

**Court of Justice:**

The procedure for appointing the Judges and Advocates-General (Article 223 EC) has several steps. It begins with nomination: this stage should remain as it is, with just one person being nominated. While fully respecting the sovereign right of Member states to present their candidates, I support a more effective screening process of judges with clearer criteria for nominations and some system to ensure the suitability of nominees.

The Council should make the final decision by qualified majority vote.

Number of judges: one per member state.

Term: preferably six years, with the option of a single reappointment. An acceptable alternative is appointment for nine years. After enlargement, the membership of the Grand Chamber will need to be increased from 11 to 15 in order to retain a majority.

**Court of First Instance:**

The appointment procedure should be identical to that of the Court of Justice.

Number of judges: at least one per member state

Term: six years, with the option of a single reappointment. A longer term would be undesirable, partly in view of the possibility of appointing more than one judge per member state: if the term is too long it will become even more difficult to reach agreement on such matters as a rotation system for the appointment of the 'second' judge.

In the case of both the ECJ and the CFI, it will be advisable to depart from current practice by subjecting the candidate's CV to serious scrutiny prior to the appointment decision. A committee could be set up for this purpose, composed of a former President of the ECJ, or a former President of the CFI in the case of an appointment to the CFI, a number of judges from the highest courts in the Member States, and professors. This committee would have to meet behind closed doors.

#### **on question (b) of the framework**

I fully support the proposed conclusion.

#### **on question (c) of the framework**

I support the proposal to call the Court ‘Court of Justice of the European Union’. Also I can agree with the proposed names for the CFI and the specialised chambers.

#### **on question (d) of the framework**

The main priority should be effective legal protection of all parties, including individual citizens. This does not, however, imply that the scope for appeals under Article 230 EC, paragraph 4 should be increased. The current system should be maintained.

This being stated, the compromise as proposed by the President, seems to be the best option that is at this moment presented in the draft final conclusion. If I understand the compromise correctly, it leaves the current meaning of article intact. It only fills the legal gap that there is no legal protection against European acts that do not need to be implemented. Within this compromise I have a preference for the wording ‘a regulatory act’.

#### **on question (e) of the framework**

To alleviate the workload of the Court of Justice, there is a need to improve the procedure in infringement proceedings.

Instead of the Commission bringing infringements of European law to the Court’s attention, the Commission could simply determine that an infringement exists (a procedure comparable to that which existed under the Treaty establishing the European Coal and Steel Community). A member state would then have the option of appealing to the Court of Justice. This would prevent the Court having to hear uncontested infringement proceedings.

Particularly in the case of late, incomplete, or incorrect implementation of directives (in the future possibly framework acts) it would be desirable to build a more effective sanctions regime into the new treaty. One possibility would be to further strengthen the Commission’s powers, including its powers vis-à-vis the Court of Justice.

The Commission should possess the competence, in accordance with the second paragraph of Article 88, para. 2 EC, to address the Court directly, after first establishing that an infringement

exists. The Commission could then ask the Court to impose a penalty payment on the member state concerned. If the Court acts on this request, it is essential that the Court set a reasonable time for the member state's compliance. This would remove the necessity for a second judgment by the Court to impose a penalty payment, for which Article 228 EC currently makes provision.

### **Other remarks**

1. In order to make certain that the Court's case law applies to the constitutional treaty, it is advisable to include provisions in the constitutional part of the treaty to the effect that the current Community acquis shall also include the *acquis jurisprudentiel*. This is necessary in order to make sure that the entire Community acquis, including the *acquis jurisprudentiel*, plays a role in the interpretation of the new articles.

2. Building on the Spanish-Dutch paper on the Court of Justice and the Dutch paper on judicial review in the field of JHA, I would like to remark the following.

As things stand, the Court has jurisdiction over only part of the field of Justice and Home Affairs. The Member states do not all recognise its jurisdiction to the same extent or in the same way: there are major discrepancies here. I welcome a discussion on the extension of the Court's jurisdiction in this field. It is essential to bear in mind that any expansion of its jurisdiction must not be allowed to undermine the effective adjudication of criminal proceedings at national level or of cases involving aliens. For example, requests for preliminary rulings in the field of criminal law will have serious consequences for the national administration of criminal justice, since criminal proceedings cannot continue until the Court has given a preliminary ruling. During the 22.7 months the Court takes to deal with a case, the accused must be released, which is often problematic and undesirable. In addition, any similar criminal proceedings must be suspended until the preliminary ruling has been given. All this places a heavy burden on the administration of criminal justice and does not reflect the preoccupations of EU citizens. A request for a preliminary ruling in asylum cases would have a similar effect in that sense that it will seriously endanger the efficient handling of these cases.