



## Spanish-Dutch proposals on the Court of Justice

### Proposals to guarantee greater efficiency and effectiveness in the working methods of the Court of Justice and the Court of First Instance

#### **A. BACKGROUND**

The position of the Court of Justice under the new Constitution needs to be considered. The enlargement of the EU will certainly increase its workload. The possible consequences of some of the proposals put to the Convention also call for reflection on the Court's position, as members of the Convention (including the Dutch and Spanish government representatives) have pointed out before. In acknowledgment of the subject's importance, the Praesidium decided to set up a discussion circle on the Court of Justice. This paper suggests some concrete measures designed to guarantee that the Court of Justice and the Court of First Instance do their work efficiently and effectively.

#### **B. CONCRETE SUGGESTIONS**

##### ***1. The amendments introduced by the Treaty of Nice***

The Treaty of Nice provided for a number of measures to help the Court cope with its increased workload after enlargement. These improvements should be incorporated into the new treaty.

## **2. Access to the Court**

The issue of whether individual citizens should have access to the Court needs further and careful study. The possibility of amending the current drafting of article 230, fourth paragraph, should go hand in hand with the introduction of a system of hierarchy among EU norms. In this context, we consider that the judicial protection of human rights within the Union is already well guaranteed by the European Court of Justice itself, as well as by the national courts and by the European Court of Human Rights

It would not be a good idea to extend direct access to the Court to national parliaments to allow them to examine decisions in the light of the subsidiarity criterion, or to regional and local authorities. This would simply sow confusion in the different positions occupied by national parliaments and national governments. Another objection is that it could potentially politicise the Court, which would ultimately undermine its credibility and its prestige (“auctoritas”).

## **3. Jurisdiction of the Court**

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. The Netherlands and Spain 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.

## **4. Simpler decision-making about the Court of Justice**

Decision-making in the Council *in relation to* the Court of Justice could also be improved, preferably by expanding the scope for qualified majority voting. In this context, article 225A should be amended to enable decisions to set up judicial panels to be taken by qualified majority vote. It is also recommended that the possibility for creating judicial panels within the Court of First Instance be used more frequently than at this moment is foreseen. Highly sensitive matters, such as linguistic regimes, should continue to be subject to the rule of unanimity.

## **5. *Administrative disposal of infringement proceedings***

Infringement proceedings have an administrative stage followed by a judicial stage in which the infringement is established. This means that the Commission eventually has to bring every infringement before the Court of Justice. It would greatly reduce the Court's workload if infringement proceedings were to end with the Commission's determination that an infringement exists. A Member state should then have the option of appealing to the Court; this appeal should have suspensory effect and should be subject to defined time limits. Instead of the Commission automatically bringing infringements to the Court's attention, the initiative would lie with the Member state instead. A similar procedure existed under the European Coal and Steel Community Treaty. This new system would require much clearer procedural guarantees than the ones currently existing within EC law.

## **6. *Streamlining of the infringement proceedings within article 228 of the ECT***

Within article 228 ECT the Court could fix, if so required, a reasonable time period for the Member state found at fault to start taking the necessary measures to comply with a judgement of the Court. Once that period expired, the possibility of the Commission having to open *automatically* an infringement procedure, itself with clearer time limits, could be envisaged.

## **7. *Nomination of Judges***

While fully respecting the sovereign right of Member states to present their candidates, the Netherlands and Spain support a more effective screening process of judges with clearer criteria for nominations and some system to ensure the suitability of nominees.

## **8. *Preservation of ECJ jurisprudence***

The current process of reform of the European Union cannot be a "*tabula rasa*" process. We have to build our reform on what we have already achieved within the European

Communities and the current European Union. An essential element of this heritage is the “*acquis communautaire*”, and among the ingredients of the latter we think that the Court’s jurisprudence is of a particular relevance. The Netherlands and Spain consider that the reform under way should not undermine the validity of the existing jurisprudence established by the Court.

### **9. *Recognition of the national Judge as Judge of Community (EU) Law***

One of the main features of the EU Law system is that its respect and execution is guaranteed by the National Courts, which act therefore as part of the “EU jurisdictional structure”. The whole procedure of preliminary rulings by the EJC or the CFI is based on this understanding. It seems appropriate that such an important element of the EU as “a community of law” be explicitly recognised in the future Treaty.

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