

**COVER NOTE**

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from	Secretariat
to	“Discussion Circle” on the Court of Justice
Subject :	Oral presentation by M. Bo Vesterdorf, President of the Court of First Instance of the European Communities, to the "discussion circle" on the Court of Justice on 24 February 2003

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Mr Chairman,

Ladies and Gentlemen,

First of all, I should like to thank you for giving me the opportunity to put forward the Court of First Instance's ("the CFI") point of view on a number of the matters which you are specifically considering.

Since the entry into force of the Treaty of Nice, the CFI has become the Court with ordinary jurisdiction to hear and determine all direct actions. There is now express provision for the CFI, together with the Court of Justice, to ensure that in the application of the Treaties the law is observed. It is therefore entirely appropriate that the CFI should be allowed to express its view independently in the context of the Convention.

Five main points have been raised in the framework of proceedings for the discussion circle. I shall address each of those points in turn once I have dealt with a question which merits consideration in the context of the preparation of the Treaty establishing a Constitution for Europe.

The question is: what is the institutional status of the CFI ? Originally established by Council Decision 88/591/ECSC, EEC, Euratom, of 24 October 1988, the CFI was, according to the very wording of the Treaties, attached to the Court of Justice. However, the CFI has ceased to be attached to the Court of Justice since the Treaty of Nice entered into force. Despite that development, the CFI is not mentioned in the Treaties either as an Institution or as a body of the European Communities. The CFI's only link with the institutional system arises as a result of the budget and Article 52 of the Statute of the Court of Justice, which provides that the President of the Court of Justice and the President of the CFI are to determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice are to render their services to the Court of First Instance to enable the latter to function.

From the Court of Justice's perspective, that situation is understood to mean that it, and it alone, embodies the "Court of Justice" *qua* Institution and it is solely responsible for managing the administration of the Institution's departments. The consequence is that the CFI, to which judicial panels may now be attached, has no control over its own administrative situation. The inability to take part in management of the Institution's departments is no longer acceptable today and will be even less so in the future if not only the CFI but also the judicial panels attached to it are excluded from the management of those departments. That situation must be changed by making it clear in the future Treaty establishing a Constitution for Europe that the CFI, as well as the prospective judicial panels, are an integral part of the Institution, "the Court of Justice", or – if this were deemed preferable – by making the CFI an autonomous body with its own departments. However, the second solution would doubtless be more onerous than the first and is therefore only an alternative to it.

The points specifically identified by the discussion circle call for the following observations from the CFI:

1. As regards the procedure for appointing judges, the CFI's view is that it is not essential to alter the current system. It would point out, however, that the current system is not entirely without drawbacks. The requirement for renewal in part of the CFI's membership every three years significantly disrupts the planning of judicial business. When certain Members are not reappointed, it is necessary to set up new chambers and the inevitable result is that the benefit of work carried out and experience acquired is lost.

If, however, a decision were taken to change the current system, the CFI would prefer its Members to be appointed for a single non-renewable term of at least twelve years. A nine-year term would, in our opinion, be clearly too short and would not allow the CFI to take sufficient advantage of the valuable judicial experience of its Members, which maintains the continuity and consistency of its case-law.

2. I shall make only a brief comment on the question as to whether the unanimity rule should be replaced by a qualified majority rule for decisions creating judicial panels, conferring jurisdiction on the Court of Justice in disputes relating to the application of acts which create Community industrial property rights and amending the provisions of the Statute of the Court of Justice. The CFI is in favour of such a change.

Permit me to take advantage of this setting to point out that it will be necessary in the very near future to establish at least two judicial panels if the CFI is not to become completely clogged up. Failing such a step some time next year at the latest, the CFI would, on the basis of the number of cases brought last year and given the enlargement of the European Union to include ten new Member States, have to deal with around 700 cases each year from 2005. Even with 25 judges following the accessions, that number would exceed the CFI's capacity by about 200 cases. The establishment of a judicial panel with jurisdiction over European staff cases and a judicial panel for intellectual property cases is therefore a matter of the utmost urgency.

In anticipation of the establishment of these judicial panels, two further comments are warranted. First, it should perhaps be recalled that one consequence of any such establishment will be that the CFI will have jurisdiction to hear and determine actions or proceedings brought against the decisions of those panels. Second, proceeding rationally by areas of jurisdiction, a logical consequence of transferring jurisdiction to judicial panels in specific spheres would be that jurisdiction be conferred on the CFI, *in those said spheres*, to hear and determine questions referred for a preliminary ruling (as is permitted by Article 225(3) EC).

3. The third point concerns the titles of the Court of Justice and the CFI. The CFI is clearly in favour of changing its title. Since the entry into force of the Treaty of Nice, its title has

ceased to reflect in any way the extent of its jurisdiction. Under the Treaty of Nice, the CFI is both a first-level court adjudicating at first instance in certain direct actions (namely all cases which are not transferred to judicial panels) and a court of second, and in general last, instance for the cases which will be transferred to those panels.

In those circumstances, there is every reason to rechristen the CFI. The answer to the question of what is an appropriate title depends on the Court of Justice's answer to the same question in respect of its own title. Any risk of confusion between the two courts should be avoided. If, for reasons which are entirely understandable to the CFI, the Court of Justice were to prefer to keep its current title, the CFI would choose the following title: "The High Court of the Union" ("Tribunal Supérieur de l'Union").

The title put forward takes into account my remarks concerning the institutional status of the CFI and of the judicial panels, whilst it should be made clear that the latter should indeed be renamed "Specialised Courts".

If the Court of Justice were, in future, to keep its current title, a concern for transparency and the desire to avoid confusion between the Court *qua* court of law and the Court *qua* Institution would make it imperative to rename the Institution. The latter could, for example, be called "The Judicial Authority of the Union". In the Chapter of the Treaty dealing with the Judicial Authority, it should be expressly provided that the Institution is composed of the Court of Justice, the High Court and the Specialised Courts.

4. The fourth point concerns direct actions by individuals against measures of general application taken by the Institutions. Whether the conditions of admissibility of actions for annulment laid down in the fourth paragraph of Article 230 EC should be made more flexible is, first and foremost, a matter of policy, which it is the responsibility of the constituent authority to settle. Having made that preliminary remark, I should tell you that opinion among the Members of the CFI is divided as to whether the judicial protection afforded to individuals by Article 230 EC is adequate. Certain Members take the view that the protection is adequate, whilst others consider that it does not ensure absolute judicial protection. As you are probably already aware, an extended Chamber of the CFI, in a judgment of 3 May 2002 in Case T-177/01 *Jégo-Quéré v Commission*, put forward a new interpretation of the term "person individually concerned". An appeal against that judgment

was brought before the Court of Justice which, for its part, reaffirmed its interpretation of the term "person individually concerned" in a judgment of 25 July 2002 in Case C-50/00 P *Unión de Pequeños Agricultores v Council*.

On the assumption that the constituent authority decides to extend individuals' access to justice by allowing them to challenge measures of general application taken by the Institutions, the broadly shared hope of the Members of the CFI is that a distinction would be drawn between legislative measures and regulatory measures (to that effect, see the Final Report of Working Group IX "Simplification"; CONV 424/02 of 29 November 2002), by enabling individuals to challenge the second category of measures (regulatory measures). As regards the possibility of challenging legislative measures, it would be appropriate to retain the conditions currently laid down in order "not to take a step backwards".

5. Since the fifth point concerns the effectiveness of the system of penalties for non-compliance with a judgment of the Court of Justice, it is not the CFI's place, at least not for the moment, to express its view on the matter.

Mr Chairman

Ladies and Gentlemen

Thank you for listening. I am now at your disposal to answer any questions you would like to ask me and to expand, if you consider it necessary, on any of the points which have just been briefly addressed.

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