

CONV 588/03

CERCLE I 11

REPORT

from:	Secretariat
to:	Convention
Subject:	Record of the meeting on 24 February 2003

1. The discussion circle heard an oral presentation by Mr Bo Vesterdorf, President of the Court of First Instance (CFI), who gave his replies to the questions raised in the framework of reference for the discussion circle (except for point (e) concerning penalties). He pointed out that, since the entry into force of the Treaty of Nice, the CFI was the court which had ordinary jurisdiction to hear, in principle, all direct actions. He also argued that the Constitutional Treaty should state that the CFI and the judicial panels formed an integral part of the Court of Justice as an institution, or else give the CFI organic autonomy from the Court of Justice. On the establishment of judicial panels, he highlighted the urgent need to set one up for cases involving officials and another for intellectual property cases. The speaking notes for his presentation have been circulated to members of the Convention (CONV 575/03). In the ensuing exchange of views, speaking personally, he was inclined to favour amending the fourth paragraph of Article 230 so as to allow individuals to challenge an allegedly invalid Community act of general application which was directly applicable (no implementing act required). Such a change would not necessarily impose an excessive workload on the CFI, although an increase in the number of judges might be warranted.
2. The discussion circle then heard representatives of the Council of the Bars and Law Societies of the European Union (CCBE), with Mr Brouwer, Mr Waelbroeck, Mr Berrisch, Lord Brennan and Mr Kahn each speaking in turn. In their presentations, they addressed the issues raised in the discussion circle's terms of reference. In particular, they argued for

amendment of the fourth paragraph of Article 230. They maintained (Mr Waelbroeck) that a distinction based on the nature of acts (legislative or regulatory) might prove an unduly formalistic criterion; what counted were an act's effects, not its form. On judges' term of office, the representatives (Mr Kahn) argued that procedures could differ for members of the Court of Justice and members of the CFI respectively. They suggested a renewable twelve-year term and pointed to the importance of having judges with experience at the bar. They were in favour of the Council acting by a qualified majority as regards Article 245 TEC.

3. The circle then discussed points (a) (appointment procedure) and (b) (possible amendment of Articles 225a, 229a and 245 TEC) in the terms of reference.
4. On point (a) in the terms of reference, discussions showed the following:
 - number of judges: there seemed to be a majority in favour of maintaining the status quo (one judge from each Member State);
 - procedure: there was a willingness to consider the idea that the decision should be a Council act;
 - term of office: the circle seemed to accept the idea that the term should not be the same for the Court of Justice as for judges at the CFI, for whom a majority in the circle favoured retaining the present renewable six-year term;
 - criteria for appointment of judges: members were in favour of specifying objective criteria, but also seemed willing to accept the Treaty wording on this;
 - list of candidates: members wishing to maintain the status quo (one candidate) were in the majority;
 - assessment panel: a majority favoured the idea, provided this was an advisory procedure only (without any public hearings); on the panel's composition, it was suggested that former Presidents of the Court of Justice could serve on it; it was also proposed that the European Parliament designate a member;
 - on the names of the Court of Justice, Court of First Instance and judicial panels, no specific suggested amendments were agreed to at this stage.
5. On point (b) in the terms of reference (Articles 225a, 229a and 245 TEC), the circle's members were willing to consider the idea that for Articles 225a, 229a and 245 the Council should act by a qualified majority. Some members nevertheless stated that unanimity should remain the rule for certain provisions of the Statute.

6. In response to calls from members, the Chairman announced that he planned to consider, at the next meeting, the issue of the Court of Justice's jurisdiction to rule on Union measures in the CFSP and JHA fields.
7. The Secretariat was asked to prepare, for the next meeting, an options paper for any amendment of the fourth paragraph of Article 230 TEC.
8. The next meeting will be held on 3 March 2003.

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