

CONV 619/03

CERCLE I 12

REPORT

from : Secretariat
to : Members of the "Discussion Circle" on the Court of Justice
Subject : **Report on the meeting on 3 March 2003**

1. Titles of the Court of Justice and the Court of First Instance

1. The Circle continued discussing changes mooted in the names of the Union's judicial bodies. There was consensus that the title "Court of Justice" should be kept in the Treaty but that in future "Court of Justice of the European Union" should be used instead of "of the European Communities". In addition, support was confirmed in the Circle for replacing the term "judicial panels" by "specialised courts".
2. It is proving more difficult to find a more appropriate name for the Court of First Instance, because of the need to distinguish clearly between the Court of Justice and the Court of First Instance in all languages and to denote the difference of level between them. The Chairman concluded the discussion of this item with the suggestion that the quest should continue with the help of the Institutions' legal-linguistic experts.

2. Consideration of Article 230, fourth paragraph, of the EC Treaty

3. The Chairman introduced this item by referring to Discussion Circle working document 1 and the earlier working document 21 from Working Group II on the same subject.
4. Several members voiced support either for *option a* or for *option b* as set out in working document 1. Others, however, warned that both options would risk overly

broadening individuals' rights to direct access to the Court of First Instance and hence substantially altering the decentralised system of redress through the courts; however, some members stressed that the referral procedure (under Article 234 TEC) would offer insufficient redress if the validity of Community acts themselves were being challenged.

5. In that connection, some members pointed out that under *option a*, for example, all farmers directly concerned by a regulation (or, in the future, by a law) establishing a common market organisation would be entitled to institute proceedings. On the other hand, some members maintained that *option b* could in certain cases make fewer actions admissible than at present.
6. Supporters of *options a* or *b* considered either that *option c* represented a minimum of opening-up or that it applied only to one very specific situation, i.e. where, currently, an applicant wishing to challenge via the courts the penalties imposed on him had no alternative but to break Community law. Some members who were sceptical about *options a* and *b* thought that the *option c* problem could be solved.
7. The written submission, supported by several members of the Convention, proposing the introduction of a specific action based on an alleged infringement of fundamental rights, was opposed by a series of speakers.
8. Several members welcomed a proposal to streamline the current wording of the fourth paragraph of Article 230 by replacing "decision" by "act" and deleting "although in the form of a regulation or a decision addressed to another person".
3. **Consideration of item (d) of the terms of reference concerning acts of agencies or bodies set up by the Union**
9. The Chairman referred to the possibility of applying Article 230 TEC in order to challenge not just acts of the institutions but also those of Union agencies or bodies. He pointed out that according to current practice Community acts establishing such agencies contained clauses

specifying the Court's jurisdiction in relation to the act concerned. Most members supported the simplification in principle but it was agreed that the question could be discussed in greater depth on the basis of a Secretariat working document describing current practice.

4. Consideration of item (e) of the terms of reference concerning the system of penalties

10. The Chairman opened discussion with the suggestion that two preliminary stages of the penalty procedure under Article 228 TEC, i.e. the formal notice and the reasoned opinion, could be eliminated and that in cases such as "failure to communicate", for example, the Commission could even be authorised to ask the Court, where it saw fit, both to find the failure and to impose the penalty as part of the same procedure.
11. The discussion revealed that members were generally receptive to the idea of stipulating a fast track procedure in Article 228 TEC as outlined by the Chairman. The response to other ideas, for example specifying mandatory procedural deadlines or introducing an obligation on the Commission to start infringement proceedings, was more cautious.

5. Consideration of a possible extension of the Discussion Circle's terms of reference

12. Under this item the Chairman raised the question of whether the Circle should continue to discuss the possible extension of the Court's jurisdiction to the areas of CFSP and justice and home affairs but acknowledged that, for the latter area, Working Group X on Freedom, Security and Justice had already made a recommendation.
13. Following a preliminary discussion, it was agreed that the Chairman's draft report for distribution to members would not touch on this issue but that it would be addressed in a separate working document from the Chairman, on which basis members could express their views as to the most appropriate way forward at the meeting on 17 March 2003.
