

THE EUROPEAN CONVENTION

THE SECRETARIAT

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COVER NOTE

from : Secretariat

to : the Convention

Subject : **Summary sheet of proposals for amendments concerning:
– Part Three, Title VI "The functioning of the Union": Court of Justice
(Subsection V) (Articles III-254 to III-285 – ex-Articles 221 to 245)**

Members will find attached the summary sheet of proposals for amendments concerning the Court of Justice, draft Articles III-254 to III-285 in Part Three, Title VI, Subsection V of the Constitution.

SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS

CONCERNING THE COURT OF JUSTICE

PART THREE, TITLE VI (ARTICLES III-254 TO III-285) OF THE CONSTITUTION

I. GENERAL COMMENTS

Some members of the Convention have tabled further amendments concerning Article 20 of Part One, particularly concerning the length of the term in office (9 years non-renewable for members of the Court – am.1 Duff +12 Convention members and am.4 Paciotti + 1 Convention member), the wording of the list of proceedings (am.2 Fischer, am.3 Kaufmann), the explicit guarantee of independence (am.4 Paciotti), and drafting amendments (am.5 Queiró). It should be remembered that the Secretariat has already drawn up a summary sheet on all the amendments to Article 20 in Part One (which has become Article I-28), to which reference should be made. This summary therefore only concerns the amendments tabled to the Articles in Part Three.

Regarding the amendments made to the Articles below, one member has proposed that, in all the Articles, the word "Constitution" should be replaced by "Treaty" (Queiró).

II. SUMMARY OF AMENDMENTS BY ARTICLE

ARTICLE III-254 (EX ARTICLE 221)

"The Court of Justice shall sit in chambers, in a Grand Chamber or as a full Court, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice."

- Provide that the Court of Justice should only sit as a full court "in exceptional circumstances":
(am.6 Villepin)

ARTICLE III-255 (EX ARTICLE 222)

"The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement."

- Provide for more Advocates-General (**10** Advocates-General – am.7 Borrell +1 Convention member, **16** Advocates-General – am.8 Figel or **a number equal to half the number of judges** – am.9 Paciotti)
- Replace unanimous decision by the Council with **decision by the Council by a qualified majority and after obtaining the consent of the European Parliament** (am.9 Paciotti)

ARTICLE III-256 (EX ARTICLE 223)

"The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States after consulting the panel provided for in [ex Article 224a].

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council, acting by a qualified majority."

- Change the procedure for appointing members of the Court, stipulating that Governments should make a proposal which is ratified by the European Parliament (am.10 Borrell +1 Convention member)
- Delete the consultation of the panel (am.11 Figel);
- Stipulate a non-renewable term (am.13 Paciotti, am.14 Queiró);
- Amend the procedure for adopting the Court's Rules of Procedure, providing for its approval by the Council but also by the European Parliament (am.12 Kaufmann).

ARTICLE III- 257 (EX ARTICLE 224)

"The number of Judges of the High Court shall be determined by the Statute of the Court of Justice. The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years after consulting the panel provided for in [ex Article 224a]. The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

The Judges shall elect the President of the High Court from among their number for a term of three years. He may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice. It shall act after receiving the approval of the Council, acting by a qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court."

- Council Decision setting the number of High Court judges by unanimity (am.16 Farnleitner)
- Delete the consultative panel from the procedure to appoint High Court judges (am.17 Figel)
- Approval of the High Court's Rules of Procedure by the European Parliament, and specification that those Rules should be considered as an organic law (am.18 Kaufmann)

ARTICLE III-258 (EX ARTICLE 224 BIS)

"A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the High Court before the governments of the Member States take the decisions referred to in [ex Articles 223 and 224].

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The appointment of members of the panel and the panel's operating rules shall be decided by the Council, acting by a qualified majority, on a proposal from the President of the Court of Justice.."

- Delete the panel (am.24 Figel, am.25 Fischer, am.26 Queiró)
- Delete the reference to the number of members of the panel (am.27 Roche)
- Explicit support for the panel (am.23 Einem + 2 Convention members)
- Stipulate that reasons must be given for the panel's opinion (am.22 Villepin)

Article III-259 (ex article 225)

- "1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in [ex Articles 230, 232, 235, 236 and 238], with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.**

Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

- 2. The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under [ex Article 225a].**

Decisions given by the High Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

- 3. The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under [ex Article 234], in specific areas laid down by the Statute.**

Where the High Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected."

- Add a new paragraph providing for appeal to international judicial bodies (ECHR)
(am.28 Queiró)

ARTICLE III 260 (EX ARTICLE 225 bis)

- "1. The European Parliament and the Council, in accordance with the legislative procedure, may adopt European laws establishing specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall act either on a proposal from the Commission after consulting the Court of Justice or at the request of the Court of Justice after consulting the Commission.***
 - 2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.***
 - 3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.***
 - 4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.***
 - 5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. They shall act after receiving the approval of the Council, acting by a qualified majority.***
 - 6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the specialised courts."***
- Provide for the legislative procedure, but with the Council acting unanimously
(am.30 Farnleitner, am.33 Queiró)
 - Drafting amendments (am.29 Borrell + 1 Convention member, am.32 Michel + 4 Convention members)

ARTICLE III-263 (EX ARTICLE 228)

- "1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.***
- 2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.***

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to [ex Article 227].

- 3. When the Commission brings a case before the Court of Justice pursuant to [ex Article 226] on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgement."***

- Include the pre-litigation phase in paragraph 2 and delete paragraph 3 (am.37 Villepin, am.39 Fischer, am.38 Einem + 2 Convention members, asking only for the deletion of paragraph 3).

ARTICLE III-264 (EX ARTICLE 229)

"European laws and framework laws as well as Council laws and regulations, adopted pursuant to the provisions of the Constitution, may give the Court of Justice unlimited jurisdiction with regard to the penalties provided for in them."

- Delete framework laws (am.42 Villepin)

ARTICLE III-265 (EX ARTICLE 229 A)

"Without prejudice to the other provisions of the Constitution, a European law shall confer on the Court of Justice, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create industrial property rights."

- A European law "may" confer jurisdiction on the Court, rather than "shall" confer jurisdiction (am.46 Farnleitner) ;
- Organic law (am.47 Kaufmann) ;
- Revert to a Council act by unanimity (am.48 Queiró).

ARTICLE III-266 (EX ARTICLE 230)

- "1. The Court of Justice shall review the legality of European laws and European framework laws, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of agencies and bodies of the Union which produce legal effects vis-à-vis third parties.*
- 2. It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.*
- 3. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.*
- 4. Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures.*
- 5. Acts setting up agencies and bodies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies intended to produce legal effects.*
- 6. The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be."*

Paragraph 3

- Add the Economic and Social Committee (am.49 Borrell + 2 Convention members);

Paragraph 4

- Replace "regulatory act" by "act of general application" (am.53 Fischer, am.55 Michel + 4 Convention members) or by "legal act" (am.54 Kaufmann);
- Delete the word "regulatory" (thus opening the way for proceedings against acts of general application) (am.52 Berger + 12 Convention members);
- Add "an act which has or is likely to have a substantial adverse affect on his interests" (am.51 Duff +13 Convention members, am.56 Queiró, who uses similar wording)
- Replace "regulatory act" by "regulation" and add the word "national" before "implementing measures" (am.50 Villepin)

ARTICLE III-267 (EX ARTICLE 230 bis)

"The Member State concerned by a determination made by the European Council or the Council pursuant to Article I-58 may apply to the Court of Justice, within one month from the date of that determination, regarding infringement of the purely procedural stipulations contained in that Article."

- Delete (am.57 Kaufmann);
- Drafting amendment (am.57 Villepin)

ARTICLE III-269 (EX ARTICLE 232)

"Should the European Parliament, the Council or the Commission, in infringement of the Constitution, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice to have the infringement established. This provision shall apply, under the same conditions, to agencies and bodies of the Union which fail to act.

The action shall be admissible only if the institution, agency or body concerned has first been called upon to act. If, within two months of being so called upon, the institution, agency or body concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution, agency or body of the Union has failed to address to that person any act other than a recommendation or an opinion."

- Exclude proceedings for failure to act as regards acts relating to judicial and police cooperation in criminal matters (am.59 Villepin);
- Drafting amendments (am.60 Kaufmann, am.61 Queiró)

ARTICLE III-271 (EX ARTICLE 234)

"The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Constitution;*
- (b) the validity and interpretation of acts of the institutions of the Union;*
- (c) the interpretation of the statutes of agencies or bodies established by an act of the Union, where those statutes so provide.*

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice shall act with the minimum of delay."

- Add a new paragraph at the beginning, indicating that national courts (ordinary courts) are an integral part of the judicial system of the Union (am.63 Villepin);
- Delete paragraph (c) in the first subparagraph (am.65 Kaufmann);
- Support for the last paragraph, but reworded (am.66 Michel + 4 Convention members): stating that the Court shall act within the time laid down by the Statute (am.67 Queiró); or raising the question of its incorporation in the Statute of the Court of Justice (Berger + 4 Convention members).

ARTICLE III-278 (EX ARTICLE 240 bis)

" The Court of Justice shall not have jurisdiction with respect to Articles I-39 and I-40 of Part One and the provisions of Chapter II of Title V of Part Three concerning the common foreign and security policy. "

- Deletion (am.72 Duff +14 Convention members, am.73 Einem + 4 Convention members, am.75 Kaufmann, am.77 Paciotti +1 Convention member);
- Jurisdiction for the Court of Justice to check the legality of the adoption of restrictive measures against individuals and administering acts (Michel + 4 Convention members) or to examine procedures in accordance with Article 230(4) or Article 234, when they relate to acts which concern persons directly and individually (am.74 Fischer) ; Mr de Villepin stated, in relation to the exclusion from the Court's jurisdiction of the CFSP, that the French authorities are prepared to consider arrangements for a limited and one-off extension of the jurisdiction of the Court to the CFSP for certain types of proceedings, if they preserved the capacity of the Union and the Member States, to take diplomatic action and were adapted to the special nature of the CFSP/ESDP (am.71 Villepin)

ARTICLE III-279 (EX ARTICLE 240 TER)

" In exercising its competences regarding the provisions of Sections 3 and 4 of Chapter IV of Title III concerning the area of freedom, security and justice, the Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, where such action is a matter of national law."

- Deletion (am.80 Duff + 13 Convention members, am.81 Berger + 4 Convention members, am.82 Fischer, am.83 Kaufmann);
- Revert to the wording of Article 35(5) TEU, deleting the words “where such action is a matter of national law ” (am.79 Villepin).

ARTICLE III-285 (EX ARTICLE 245)

"The Statute of the Court of Justice shall be laid down in a Protocol.

The law may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consulting the Commission, or at the request of the Commission and after consulting the Court of Justice."

- The Statute of the Court as organic law and deletion of the exceptions for Title I and Article 64 (am.91 Kaufmann);
- Accept the legislative procedure but with the Council acting unanimously (am.92 Queiró).

III. LIST OF AMENDMENTS BY ARTICLE

Article 20

1. *Duff, Dini, Fayot, Hasotti, Lang, Voggenhuber, Berger, Dybkjaer, MacIennan of Rogart, Mc Cormick, Severin, Van Eekelen, Arabadjiev*
2. *Fischer*
3. *Kaufmann*
4. *Paciotti, Van Lancker*
5. *Queiró*

Article III-254 (ex article 221)

6. *de Villepin*

Article III-255 (ex article 222)

7. *Borrell, Carnero, Lopez Garrido*
8. *Figel*
9. *Paciotti, Van Lancker*

Article III-256 (ex article 223)

10. *Borrell, Carnero, Lopez Garrido*
11. *Figel*
12. *Kaufmann*
13. *Paciotti, Van Lancker*
14. *Queiró*

Article III-257 (ex article 224)

15. *Borrell, Carnero, Lopez Garrido*
16. *Farnleitner, Tusek*
17. *Figel*
18. *Kaufmann*
19. *Paciotti, Van Lancker*
20. *Queiró*

Article III-258 (ex article 224 bis)

21. *Borrell, Carnero, Lopez Garrido*
22. *de Villepin*
23. *Berger, Einem, Farnleitner, Tusek*
24. *Figel*
25. *Fischer*
26. *Queiró*
27. *Roche*

Article III-259 (ex article 225)

28. *Queiró*
29. *Borrell, Carnero, Lopez Garrido*
30. *Hannes, Farnleitner, Tusek*
31. *Kaufmann*
32. *Michel, di Rupo, Van Lancker, Chevalier, Nagy*
33. *Queiró*

Article III-261 (ex article 226)

34. *Queiró*

Article III-262 (ex article 227)

35. *Queiró*

Article III-263 (ex article 228)

36. *Borrell, Carnero, Lopez Garrido*
37. *de Villepin*
38. *Berger, Einem, Farnleitner, Tusek*
39. *Fischer*
40. *Kaufmann*
41. *Queiró*

Article III-264 (ex article 229)

42. *de Villepin*
43. *Berger, Einem, Farnleitner, Rack, Tusek*
44. *Kaufmann*
45. *Queiró*

Article III-265 (ex article 229 A)

46. *Berger, Einem, Farnleitner, Rack, Tusek*
47. *Kaufmann*
48. *Queiró*
49. *Borrell, Carnero, Lopez Garrido*
50. *de Villepin*
51. *Duff, Fayot, Hasotti, Voggenhuber, Berger, Dybkjaer, Lichtenberger, MacLennan of Rogart, Mc Cormick, Severin, Van Eekelen, Nagy, Arabadjiev*
52. *Altmaier, Berger, Brok, Demetriu, Duff, Einem, Farnleitner, Fayot, Paciotti, Rack, Tusek, Würmeling*
53. *Fischer*
54. *Kaufmann*
55. *Michel, di Rupo, Van Lancker, Chevalier, Nagy*
56. *Queiró*

Article III-267 (ex article 230 bis)

57. *de Villepin*
58. *Kaufmann*

Article III-269 (ex article 232)

59. *de Villepin*
60. *Kaufmann*
61. *Queiró*

Article III- (ex article 233)

62. *Queiró*

Article III-271 (ex article 234)

63. *de Villepin*
64. *Berger, Einem, Farnleitner, Rack, Tusek*
65. *Kaufmann*
66. *Michel, di Rupo, Van Lancker, Chevalier, Nagy*
67. *Queiró*

Article III-274 (ex article 237)

68. *Queiró*

Article III-276 (ex article 239)

69. Queiró

Article III-277 (ex article 240)

70. Queiró

Article III-278 (ex article 240 bis)

71. de Villepin

72. Duff, Dini, Fayot, Hasotti, Voggenhuber, Berger, Dybkjaer, Lichtenberger, MacLennan of Rogart, Mc Cormick, Severin, Van Eekelen, Nagy, Arabadjiev

73. Berger, Einem, Farnleitner, Rack, Tusek

74. Fischer

75. Kaufmann

76. Michel, di Rupo, Van Lancker, Chevalier, Nagy

77. Paciotti, Van Lancker

78. Queiró

Article III-279 (ex article 240 ter)

79. de Villepin

80. Duff, Dini, Fayot, Hasotti, Voggenhuber, Berger, Dybkjaer, Lichtenberger, MacLennan of Rogart, Mc Cormick, Severin, Van Eekelen, Nagy, Arabadjiev

81. Berger, Einem, Farnleitner, Rack, Tusek

82. Fischer

83. Kaufmann

84. Queiró

Article III-280 (ex article 240 quarter)

85. Queiró

Article III-281 (ex article 241)

86. Berger, Einem, Farnleitner, Rack, Tusek

87. Kaufmann

88. Queiró

Article III-282 (ex article 242)

89. Queiró

Article III-285 (ex article 245)

- 90. *Berger, Einem, Farnleitner, Rack, Tusek*
 - 91. *Kaufmann*
 - 92. *Queiró*
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