

Procedure file

Basic information		
CNS - Consultation procedure Decision	2003/0805(CNS)	Procedure completed
Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)		
Subject 8.40.04 Court of Justice, Court of First Instance		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs and Internal Market		18/03/2003
		PPE-DE GIL-ROBLES GIL-DELGADO José María	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	AFCO Constitutional Affairs	The committee decided not to give an opinion.	

Key events			
13/02/2003	Legislative proposal published	06283/2003	Summary
13/03/2003	Committee referral announced in Parliament		
27/01/2004	Vote in committee		Summary
27/01/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0046/2004	
10/02/2004	Decision by Parliament	T5-0071/2004	Summary
26/04/2004	Act adopted by Council after consultation of Parliament		
26/04/2004	End of procedure in Parliament		
29/04/2004	Final act published in Official Journal		

Technical information	
Procedure reference	2003/0805(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation

Legislative instrument	Decision
Legal basis	EC Treaty (after Amsterdam) EC 245-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/19274

Documentation gateway

Document attached to the procedure	SEC(2002)0994	20/09/2002	EC	Summary
Legislative proposal	06283/2003	13/02/2003	CSL	Summary
Document attached to the procedure	COM(2003)0660	10/11/2003	EC	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0046/2004	27/01/2004	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0071/2004 OJ C 097 22.04.2004, p. 0031-0081 E	10/02/2004	EP	Summary

Final act

[Decision 2004/407](#)
[OJ L 132 29.04.2004, p. 0005-0006](#) Summary

Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)

PURPOSE : to present the Commission's opinion on the request for an amendment to Article 51 of the Statute of the court of Justice, made by the Court in response to Declaration No 12, annexed to the Treaty on Nice, on Article 225 of the EC Treaty as amended by the Treaty of Nice.

CONTENT : the Court of Justice proposed that Article 51 of its Statute be amended as follows: The Court would retain exclusive jurisdiction over actions for annulment or on grounds of failure to act: - brought against the Council, the EP, or both by the Member States, the institutions or the ECB; and - brought against the Commission or the ECB, but only if brought by another institution or by the ECB. The jurisdiction of the Court of First Instance (CFI) would be extended to cover actions for annulment or on the grounds of failure to act brought by the Member States against the Commission and the ECB. The Court's proposal is based on a statistical and material examination of actions brought about by institutions and Member States over the past five years (1999-2000). The Court's proposal does not touch on a possible transfer to the CFI of jurisdiction for questions referred for a preliminary ruling pursuant to Article 225, paragraph 3 of the EC treaty as amended by the treaty of Nice. The Commission agrees with this approach. It also sought to draw a simple and unambiguous dividing line, so that the architecture of the system would remain clear and the notions employed would not be open to divergent interpretations. The aim of the treaty of Nice is indeed to reserve for the Court of Justice cases of major significance, so that in future it can concentrate on its triple role as a constitutional court (opinions, infringements, major direct actions), as the Court of Appeal against rulings at first instance given by the CFI, and as the supreme arbiter of interpretation by way of preliminary rulings and the procedure for reviewing decisions by the Court of First Instance. Major direct actions clearly include interinstitutional actions and actions brought by the Member States or the institutions against basic legislative instruments. However, the Commission notes that: a) as regards interinstitutional actions, the Court's proposal concerns only actions between the European Parliament, the Council, the Commission and the ECB. In the Commission's opinion, the Court's jurisdiction must include any interinstitutional dispute and must therefore also cover: - actions between the institutions and the bodies, offices and agencies set up by, or on the basis of, this Treaty in the words of Article 286(1) of the EC Treaty, and - any dispute challenging the rules of procedure or provisions governing the functioning of an institution or body of the Community. This applies in especially to actions brought by MEPs against provisions of their institution's rules of procedure or decisions approving framework agreements concluded between the institutions; b) the Commission also believes that the criterion for dividing jurisdiction between the Court and the CFI proposed by the Court - in other words the identity of the defendant, together with that of the applicant to define the new dividing line between jurisdictions - does not exactly fulfil the objective sought by the Treaty of Nice, since it would: - keep and reserve actions for the jurisdiction of the Court where maintaining its sole prerogative is no longer justified under the Treaty of Nice, - and would transfer to and maintain under the jurisdiction of the CFI the review of acts where this should be the sole prerogative of the Court. The Commission takes the view that: - measures implementing a basic instrument adopted under Treaty constitute a single whole and should be subject to review by a single court, in this instance the CFI; - on the other hand, the Court should have sole jurisdiction over actions brought by the member States, the institutions, or the ECB for annulment of acts adopted under a provisions of the treaty or on the grounds of failure to act under a treaty provisions, except for decisions taken in this field of competition and State aids. The proposed solution satisfies the Court's dual objective, which is to preserve its sole jurisdiction for review of the basic legislative activity of the institutions and to effect significant transfers in quantitative terms to the CFI.?

Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)

PURPOSE : to amend Articles 51 and 54 of the Statute of the Court of Justice aiming to transfer jurisdiction between the Court of Justice and the Court of First Instance. **CONTENT :** by Declaration No 12 adopted at the Nice summit, the Conference of the Representatives of the Governments of the Member States called on the Court of Justice and the Commission to give overall consideration to the allocation of jurisdiction between the Court of Justice and the Court of First Instance, in particular in the area of direct actions, and to submit suitable proposals for examination by the competent bodies as soon as the Treaty of Nice entered into force. Under the new Article 225, paragraph 1 EC, the Court of First Instance is the court of general jurisdiction at first instance not only for actions brought by individuals and undertakings, but for all the direct actions referred to in the first sentence of Article 225, paragraph 1. Within that framework, those exceptional cases in which the Court of Justice retains exclusive jurisdiction must be justified by particular circumstances. In order not to undo the previous transfer to the Court of First Instance of actions brought by individuals and undertakings, the proposal is limited to actions brought by Member States, Community institutions and the European Central Bank. By the same token, no consideration has been given to actions brought pursuant to Articles 235, 236 or 238 EC (non-contractual liability, disputes between the Community and its servants, arbitration clauses). There is no need, at this stage, to exploit the possibilities afforded by the final sentence of the first subparagraph of Article 225, paragraph 1 EC. First, it does not seem appropriate at present for the Court of Justice to consider divesting itself of jurisdiction in actions for infringement of Treaty obligations, even at first instance. Second, as regards other actions not referred to in the first sentence of Article 225, paragraph 1, in particular those referred to in Articles 237 EC and 239 EC, two factors to be taken into account are the uncertainty surrounding the possible consequences of such actions being brought before two courts in succession, and the very limited number of such cases. Those considerations appear to justify reserving jurisdiction in such matters to the Court of Justice. With the scope of the proposal thus limited to actions for annulment and actions for failure to act (Articles 230 EC and 232 EC), between which a degree of symmetry must be maintained, the aim has been to achieve the transfer of a significant number of cases so as to leave the Court of Justice exclusive jurisdiction at first and last instance only in respect of judicial review of basic legislative activity and in respect of the determination of inter-institutional disputes, with the Court of First Instance having jurisdiction to hear and determine the other categories of cases.?

Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)

This Commission opinion concerns the request for an amendment to Articles 51 and 54 of the Statute of the Court of Justice, presented by the Court in accordance with the second paragraph of Article 245 of the EC Treaty, in order to change the division of jurisdiction in direct actions between the Court of Justice and the Court of First Instance as referred to in Article 225(1) of the EC Treaty. The proposal forms part of the reforms provided for by the Treaty of Nice which seek to lighten the caseload of the Court of Justice on the one hand, by changing the division of jurisdiction between the Court of Justice and the Court of First Instance (CFI) and the caseload of the CFI, on the other, by relieving it, in particular, of disputes concerning the public service, by establishing a new court of first instance under Article 225a of the Treaty. The Commission suggests the following amendments: 1. By way of exception to the rule laid down in Article 225(1) of the EC Treaty and Article 140a(1) of the EAEC Treaty, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 230 and 232 of the EC Treaty and Articles 146 and 148 of the EAEC Treaty when they are brought by a Member State against: i) an act based on a provision of the EC Treaty or the EAEC Treaty or a failure to act by the Parliament and the Council, the Council or the Commission under the EC Treaty or the EAEC Treaty, except for: - decisions taken by the Commission or the Council under Article 88(2) of the EC Treaty; and - decisions taken by the Commission under Articles 38, 76(2), 81, 82, 85, 86(3) and 134 of the EC Treaty; ii) acts of or failures to act by the ECB under Article 110(1) of the EC Treaty or other provisions of the Protocol on the Statutes of the ESCB and the ECB; iii) an act not mentioned in Article 249 of the EC Treaty, adopted by an institution of the Communities and intended to have legal effects; iv) an act of or failure to act by a body or agency set up by, or on the basis of, the Treaty. 2. Jurisdiction shall also be reserved to the Court of Justice in actions brought by: - an institution of the Communities against an act of or failure to act by another institution of the Communities or the European Central Bank or by the European Central Bank against an act of or failure to act by an institution of the Communities, - an institution of the Communities against an act of or failure to act by a body or agency set up by, or on the basis of, the Treaty." The Commission is of the opinion that it would be worth checking whether the new distribution of jurisdiction between the Court and the CFI would not be clearer, in the spirit of the Treaty of Nice, if acts in respect of which the Court has jurisdiction were grouped by category (acts based on the Treaty, autonomous acts etc.) rather than just listed on the basis of the enacting institution. An approach whereby jurisdiction in respect of acts adopted on the basis of the Treaty, with the exception of those relating, in particular, to competition, state aid and commercial policy, is reserved to the Court therefore seems preferable. Such an approach might well also make it easier to adapt to changes flowing from the future constitutional Treaty.?

Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)

The committee adopted the report by José María GIL-ROBLES GIL-DELGADO (EPP-ED, E) approving the proposed Council Decision under the consultation procedure, subject to one amendment proposing an addition to Article 51 dealing with the jurisdiction reserved to the Court of Justice. The committee proposed that the Court should also be given exclusive competence in actions brought by a Member of the European Parliament "against an act of the latter concerning the performance of his or her electoral mandate".?

Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)

The European Parliament adopted a resolution approving the report by Jose Maria GIL-ROBLES GIL-DELGADO (EPP-ED, E) subject to one amendment. (Please see the summary of 27/01/04.)?

Court of Justice: transfer of direct actions to the Court of First Instance (amend. Articles 51 and 54 Statute)

PURPOSE : to amend Articles 51 and 54 of the Protocol on the Statute of the Court of Justice. LEGISLATIVE ACT : Council Decision 2004/407/EC, Euratom amending Articles 51 and 54 of the Protocol on the Statute of the Court of Justice. CONTENT : in accordance with the new Article 225 of the EC Treaty and of the new Article 140a of the EAEC Treaty, it is necessary to redraft Article 51 of the Protocol on the Statute of the Court of Justice in order to define the respective jurisdictions of the Court of Justice and the Court of First Instance, since the transfer of jurisdiction at first instance to the Court of First Instance has to be significant and the criteria for allocation of jurisdiction sufficiently clear to be understood unequivocally by the institutions and the Member States. Actions brought by the Member States against acts of the Council by which it exercises implementing powers in accordance with the rules referred to in the third indent of Article 202 of the EC Treaty should fall within the jurisdiction of the Court of First Instance. These are cases where the Council has either reserved the right to exercise implementing powers or has regained the right to exercise such powers in the course of a 'committee procedure'. Lastly, the provisions of Article 54 of the Protocol on the Statute of the Court of Justice concerning the circumstances in which the Court of First Instance may decline jurisdiction in favour of the Court of Justice should be amended so as to accord with the new powers of the Court of First Instance. It is necessary to allow for jurisdiction to be declined where related cases are brought before the Court of Justice and the Court of First Instance in which the outcome of one of them may depend on that of the other. ENTRY INTO FORCE : 01/05/2004.?