COMMISSION OF THE EUROPEAN COMMUNITIES

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ESTABLISHMENT OF A COURT OF FIRST INSTANCE

PRELIMINARY GUIDELINES ADOPTED BY THE COMMISSION FOR THE PREPARATION OF AN OPINION ON THE PROPOSAL PUT FORWARD BY THE COURT OF JUSTICE FOR A COUNCIL DECISION ESTABLISHING A COURT OF FIRST INSTANCE (CFI) AND AMENDING THE STATUTES OF THE COURT OF JUSTICE

Sec. 1181

OPINION OF THE COMMISSION ON THE DRAFT COUNCIL DECISION ESTABLISHING A COURT OF FIRST INSTANCE (CFI) AND AMENDING THE STATUTES OF THE COURT, DRAWN UP BY THE COURT OF JUSTICE

1. In the course of the consultation procedure agreed upon with the European Parliament, the Commission sent to that institution, and to the Council and the Court of Justice for their information, its preliminary guidelines on the subject, adopted on 18 May 1988.[1]

2. The present document, with the abovementioned guidelines, constitutes the Commission's opinion on the draft Council decision drawn up by the Court of Justice under Articles 32d of the ECSC Treaty, 168A of the EEC Treaty and 140A of the Euratom Treaty, the present document being intended to supplement and clarify those preliminary guidelines, and to adjust them where necessary.

3.1. In view of developments since the adoption of those guidelines and especially the debates in Parliament, the Commission wishes to supplement its observations on the following points:

(i) the jurisdiction of the CFI, particularly as regards trade protection cases (point 5 below);

(ii) the specialization of the chambers and of the members of the CFI (point 5);

(iii) a more technical question concerned with the definition of those decisions of the CFI that may form the subject of an appeal to the Court of Justice (point 6).

3.2. The Commission also wishes to draw attention again to the essential points in its guidelines on which it is fully in agreement with Parliament (point 7).

4. As regards actions brought by private parties against decisions concerned with trade protection (anti-dumping and anti-subsidy cases) the Commission remains of the opinion, for the reasons set out in its preliminary guidelines, that the transfer of this jurisdiction from the Court of Justice to the CFI is not desirable in present circumstances; the subject of trade protection should therefore remain within the jurisdiction at first instance of the Court of Justice.

It will be for the later to make a fresh proposal to the Council pursuant to Article 168 a of the EEC Treaty regarding this aspect of its request, at the appropriate time.

[1] Document SEC(88)366 final.

5.1. As regards the specialization of the chambers, the Commission maintains that this is a functional necessity in view of the double nature of the CFI's jurisdiction: administrative law (especially civil service law) and economic law (especially competition law). (1)

This view takes its point of departure from the draft drawn up by the Court itself, which provides for the creation of chambers and excludes any plenary sitting of the CFI - on which Parliament has also expressed a favourable view.

The Commission considers that in order to maintain consistency in this approach it is preferable that this point should be dealt with in the decision creating and organizing the CFI rather than leaving it to be settled in the rules of procedure which the new court will have to draw up in agreement with the Court of Justice and with the approval of the Council.

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(1) During the preparatory work on the Treaties of Rome the Heads of Delegation emphasized in their report of 21 April 1956 (Spaak Report) to the Ministers for Foreign Affairs the need for a specialized branch of the judiciary to deal with competition problems (p. 56 of the Report).

This form of organization seems to the Commission to be such as to ensure the quality of the judgments of the future court and thus contribute to establishing its authority without in any way detracting from its independence, which must be complete - subject to the power of judicial review remaining with the Court of Justice by way of appeal - nor from the independence of its members in the exercise of their functions.

5.2. The same concern for effectiveness is at the root of the Commission's insistence that, in choosing the members of the CFI, a high level of qualifications should be required, and that these should be specific, i.e. relevant to the subjects to be dealt with.

The main disadvantage of such an approach is in fact extrinsic to the objective considerations on which it is based, since it resides in the risk of establishing, when the judges are appointed, a link between the national origin of the members of the CFI and their assignment to one of the specialized chambers - a procedure that would be likely to cast doubt a priori on that court's independence.

It is for this reason that the Commission has advised a nomination procedure (two candidates from each Member State and an opinion of the Court) designed to avoid this risk, and has not excluded any solution - for example, certain changes in the assignment of a judge during his term of office, or any other system having the same result - likely to avert this danger and leave the CFI free to adjust its organization to variations in the nature of its workload.

6. As regards the definition of the decisions of the CFI from which the parties and interveners are entitled to appeal to the Court of Justice, the Commission shares Parliament's view that where the decision is one of procedure an appeal should lie only in the case of important decisions affecting the outcome of the litigation. It is therefore desirable to supplement Article 48 (EEC),[1] first paragraph, in the

[1] And the similar provisions for the other Treaties.

Court's draft by specifying that an appeal shall lie against a decision on an incidental question of procedure dealing with a plea of inadmissibility, as Parliament suggests, but also on a plea that the CFI has no jurisdiction.

7.1. As regards the organization of the CFI, the Commission, like Parliament, takes the view that the number of members should be 12, and that the role of the advocates general should be institutionalized - in other words, that an advocate general should give an opinion on each case coming before the CFI.

7.2. As regards the locus standi to appeal to the Court of Justice against the judgments of the CFI, the Commission, like the European Parliament, is opposed to the idea of conferring a right of appeal on those Member States and institutions which did not intervene in the proceedings before the CFI, since such an arrangement seems to the Commission to militate against the objectives of the prompt and efficient dispatch of business underlying the creation of the new court.

Like the Parliament, the Commission believes this point to be an essentiel prerequisite to its favourable opinion in relation to the transfer of jurisdiction in cases concerning staff, competition and the ECSC (steel quotas and ECSC levies).

7.3. As regards staff cases, the Commission, like Parliament, considers that applicants should not be obliged to be represented by a lawyer before the CFI, and that the rules on costs in the Court of Justice should not be changed - in other words, the principle should be maintained that in staff cases the institution always bears its own costs.