



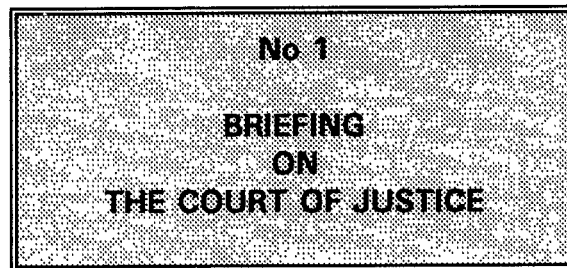
SECRETARIAT WORKING PARTY

TASK-FORCE  
ON THE  
"INTERGOVERNMENTAL CONFERENCE"

WORKING PARTY SECRETARIAT

JGG/ld/S/N

Luxembourg, 25 July 1995



(fourth update 25 July 1995)

**These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.**

**Briefings will be updated as negotiations proceed.**

**Already out:**

- 1 The Court of Justice**
- 2 The Commission**
- 3 The Court of Auditors, ESC and COR**
- 4 Differentiated integration.**
- 5 The common foreign and security policy**
- 6 The role of the national parliaments**
- 7 The hierarchy of Community acts**
- 8 The co-decision procedure**
- 9 Cooperation in the fields of justice and home affairs**
- 10 European citizenship**
- 11 WEU, security and defence**
- 12 The public services**
- 13 Social policy**

25 July 1995

BRIEFING No 1

THE COURT OF JUSTICE

## SUMMARY

Most of the (essentially non-governmental) proposals agree on the following points:

- the term of office of the Members of the Court should be increased to nine or twelve years and not be renewable;
- the European Parliament should participate in the procedure by which Members of the Court are appointed and should have greater access to the Court;
- the Court's internal procedures should be more flexible and more autonomous.

Opinions are still divided on important questions such as the how many Members the Court should have, its structure (Court/Court of First Instance/specialised Courts), and judicial review of the second and third pillars.

## CONFERENCE AGENDA

The Conference agenda envisaged by the EU Treaty itself (Article N(2)) does not include revision of the provisions of the Treaty relating to the Court of Justice. However, at the Brussels and Corfu European Councils (in December 1993 and June 1994 respectively) it was decided that the Conference would examine measures to ensure that the institutions functioned more efficiently and effectively, particularly in view of enlargement; it is therefore possible that questions relating to the composition, operation and powers of the Court of Justice may be tackled.

## SOURCES

Only the Luxembourg Government has so far expressed an opinion on these issues.

The main positions listed below come from the following documents:

- reports by the institutions on the functioning of the EU Treaty, and in particular the report by the Court of Justice itself;
- principal earlier reports of the European Parliament (Spinelli reports of February 1984 on the draft EU Treaty, the Herman report of February 1994 on the draft constitution of the Union and the Rothley report of April 1993 on the role of the Court of Justice);
- studies or reports by specialist organizations (Bertelsmann Foundation, January 1994; International European Movement, April 1995).

## POSITIONS

### 1. Members of the Court

#### 1.1. Appointments

- by the Council and European Parliament (Spinelli, Herman and Rothley reports);
- with the assent of the European Parliament (resolution of the European Parliament of 17 May 1995, based on the report by Bourlanges/Martin and the European Movement);
- by the Council in consultation with the European Parliament and/or the European Council (Spanish Government);
- without EP involvement (Bertelsmann Foundation);
- no European Parliament hearings for judges before they are appointed (Court of Justice).<sup>1</sup>

The Luxembourg Government takes the view that the method of appointing Members of the Court of Justice cannot be changed.

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<sup>1</sup> The Court does not express a view on whether the European Parliament should participate in the appointment of Members of the Court.

## 1.2. Number

- one judge per Member State useful (it would ensure that all the national legal systems were represented and legitimize Community justice), but a large increase in the number of judges has disadvantages (there would be too many judges to constitute a college and the creation of specialist chambers would undermine the unity of the law they made) (Court of Justice);
- creation of specialized chambers (European Parliament);
- an upper limit on the number of judges (e.g. 15 judges) or an increase with the creation of several 'full courts' (Spanish Government).

## 1.3. Term of office

- term of office longer and non-renewable (Court of Justice);
- nine-year non-renewable term of office for judges (Herman, Rothley, European Parliament);
- 12-year non-renewable term of office (Spanish Government, European Movement, Bertelsmann Foundation).

## 2. Internal organization

- 2.1. Freedom to determine own internal organization (Spinelli);
- 2.2. Streamlined procedure and Rules of Procedure adopted by the Court itself (abolition of unanimous approval of Council, which would be taken for granted after a certain period) (Court of Justice);
- 2.3. Greater flexibility in the inner workings of the Court (European Parliament).

## 3. Judicial structure

- 3.1. No change at this stage in the respective jurisdictions of the Court of Justice and the Court of First Instance; in the long term (when greater integration gives rise to more litigation), the chambers of the Court of First Instance could specialize, or courts could be created for specialist fields and to 'filter' appeals to the Court; the number of judicial bodies could only be increased if at the same time a supreme court was retained (Court of Justice);
- 3.2. The Court of Justice could concentrate on constitutional disputes, references for preliminary rulings and appeals; the jurisdiction of the Court of First Instance could be extended in other areas (Rothley and Bertelsmann Foundation).

#### 4. Submission of cases to the Court

- 4.1. A right for European Parliament to bring an action before the Court under the same conditions as the Council and Commission (Rothley, European Parliament, Court of Justice);
- 4.2. A right for the Court of Auditors to bring an action to safeguard its own prerogatives and when prevented from auditing in the Member States (Court of Auditors); a right for the Committee of the Regions to bring an action to safeguard its own prerogatives and in the event of a failure to adopt a decision, in breach of the Treaty (Committee of the Regions); a right for the Regions to bring an action when the principle of subsidiarity is infringed (Committee of the Regions).

#### 5. Jurisdiction of the Court

- 5.1. Extension of the Court's jurisdiction to the second and third pillars of the EU Treaty (European Parliament); consideration of possible partial extension (Commission and Spanish Government); need to ensure legal protection of individuals, legal consistency vis-à-vis Community law and the distribution of powers under the third pillar (Court of Justice);
- 5.2. Better supervision of the protection of fundamental human rights by extending the right of individuals to bring an action (Court of Justice);
- 5.3. Judicial review of acts of the EIB by the Court of Justice (European Parliament).

The Luxembourg Government emphasizes that the jurisdiction of the Court of Justice must remain as it is.

#### 6. Miscellaneous

- 6.1. Possibility for Advocates-General to take part in the election of the President of the Court of Justice (Court of Justice);
- 6.2. Possibility for the Council to annul judgments of the Court of Justice; it would appear that the British Government is in favour of a possible limitation on the Court's power to impose retroactive judgments on the Member States (British Government according to Agence Europe of 2 February 1995 and 22 May 1995)

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[For further information on this briefing please contact Mr Giraud, Lux. 2556.]