

AMENDMENT FORM

Suggestion for amendment of Article : Article 20 (Title IV)

Suggestion for protocol :

By Ms / Mr : David Heathcoat-Amory

Status : X - Member - Alternate

Article 20 : The Court of Justice of the European Union

1. The Court of Justice, including the [*High Court*] **Court of First Instance**, shall [*ensure respect for the Constitution and Union law.*] **adjudicate on matters referred to it by a Member state concerning the application and enforcement of Union laws.**

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

New 1a. National laws passed notwithstanding Union law is superior to European law. When a Member State has recourse to this clause, it shall raise the matter in the next Council meeting.

2. The Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges of the Court of Justice and the High Court, and the Advocates-General of the Court of Justice, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article [XX] of Part II, shall be appointed by common accord of the governments of the Member States for a term of six years 1, renewable.

New 2a. For issues in which a divergence in legal tradition is evident, between Common, Napoleonic, Scots law or similar, then due consideration shall be made to such distinction and consequence, and the pertinent judges shall sit in attendance.

New 2b. The EU, in pursuit of this article, shall not itself fund the teaching of Union law.

3. The Court of Justice shall be competent for :

- ruling on actions brought by the Commission, a Member State, an institution or a natural or legal person in the cases and according to the modalities foreseen in article [YY] of Part II;

- preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;

- ruling on appeals on decisions given by the High Court or exceptionally reviewing these decisions under conditions laid down in the Statute of the Court.

New 4. It shall have no competence in issues concerning the Common Foreign and Security Policy, or other matters concerning national criminal justice, or policing.

Explanation (if any) :

(1) « Ensuring respect » is proactive and open to interpretation.

(1a) Acknowledges that there are constitutional issues that arise from the supremacy of EU law, and addresses the concerns of such as the German Constitutional Court, and Thomas Paine (« no Parliament can bind its successor »)

(2a) Recognises that the EU has different legal traditions. The Canadian Supreme Court does likewise, by providing for a set number of its judges to come from the minority tradition.

(2b) Provides for the EU not to be involved in funding EU law courses, which may be interpreted as unduly supporting a tradition of the superiority of EU law

(4) Prevents the ECJ from interpreting on areas currently dealt with on an intergovernmental basis.