

CERCLE I

Working Document 05

“Discussion Circle” on the Court of Justice

**Subject: Better Access to the Court of the Justice for Citizens
by Ms Maria Berger, Mr Pierre Chevalier, Ms Elena Paciotti and
Mr Reinhard Rack, alternate members of the Convention.**

Members of the “Circle of discussion” on the Court of Justice will find hereafter a paper by Ms Maria Berger, Mr Pierre Chevalier, Ms Elena Paciotti and Mr Reinhard Rack, alternate members of the Convention.

Better Access to the Court of the Justice for Citizens

Contribution by Maria Berger, Pierre Chevalier, Elena Paciotti, Reinhard Rack to the
Discussion Circle on the Court of Justice

Under the current system of legal remedies provided for in the Treaty establishing the European Community (TEC) actions for annulment brought by individuals against legal acts of the European Community, which directly interfere with their rights, but are not directly addressed to them, are subject to very strict conditions on admissibility. According to Art. 230 para. 4 TEC such legal acts, in order to be challengeable before the CFI and ECJ, must directly and individually concern the plaintiff. In a great number of cases “individual concern”¹ cannot be established by the plaintiff and therefore the action has to be declared inadmissible, though it may be well founded (for an overview on the respective case-law see CONV 116/02 and WG II - WD 021).

Effective judicial protection for individuals against legal acts which directly infringe upon their rights is a general principle in a Union based on the rule of law stemming from the constitutional traditions common to the Member States.² When drafting a new Constitution for the Union, which expressly confers rights on individuals, effective judicial remedies to protect these rights should also be provided for. In line with the foregoing arguments the following proposal for reform of Art. 230 para. 4 TEC aims at improving access to the Union Courts by individuals. A future paragraph on actions brought by individuals could read as follows:

“Any natural or legal person may, under the same conditions, institute proceedings against a legal act of the Union addressed to that person or against a legal act of the Union which is of direct concern to that person and affects his legal position³.”

¹ According to case-law individuals must be concerned “on account of certain attributes, which are peculiar to them, or by reason of factual circumstances, which differentiate them from all other persons, thereby distinguishing them individually in the same way as persons to whom an individual legal act is addressed.”

² See Case C-50/00 P, *Unión de Pequeños Agricultores*, [2002] ECR I-6677, para. 38, 39

³ An alternative formulation would be: “Any natural or legal person may, under the same conditions, institute proceedings against a legal act of the Union addressed to that person or

This proposal adapts the wording of Art. 230 para. 4 TEC to the introduction of new types of legal acts proposed by Working Group IX (Simplification). By preserving the notion “direct concern” the proposal seeks not to interfere with the existing case-law, stating that only “self-executing” acts shall be challengeable.¹ The criterion of “individual concern” is replaced by the condition that a legal act interferes in the legal position of the person concerned.² The proposal tries to strike a balance between ensuring better access for individuals to the European Courts and preventing the Courts from being overburdened. Therefore actions of individuals should only be admissible if the plaintiff is able to prove that a legal act of the Union directly – without being implemented – affects his legal position.

Proposed amendments to Art. 230 para. 4 TEC:

Any natural or legal person may, under the same conditions, institute proceedings against a legal act of the Union addressed to that person or against a legal act of the Union which is of direct concern to that person and affects his legal position.

Toute personne physique ou morale peut former, dans les mêmes conditions, un recours contre un acte juridique de l'Union dont elle est destinataire ou contre un acte juridique de l'Union qui la concerne directement et qui affecte sa situation juridique.

Jede natürliche oder juristische Person kann unter den gleichen Voraussetzungen gegen einen Rechtsakt der Union, der an sie gerichtet ist oder gegen einen Rechtsakt der Union, der sie unmittelbar betrifft und der ihre Rechtsposition beeinträchtigt, Klage erheben.

against a legal act of the Union which is of direct concern to that person and affects the rights conferred upon the former by this Constitution or by any legal act relating to its application.”

¹ It is arguable that in actions brought against future European laws or European framework laws this precondition will only be fulfilled in exceptional cases.

² Cf. Case T-177/01, *Jégo-Quéré*, [2002] ECR II-2365, para. 51.