

CERCLE I

Working Document 07

“Discussion Circle” on the Court of Justice

**Subject: “Securing an effective EU court system for an enlarged Union” : Contribution
by Baroness Scotland of Asthal, alternate member of the Convention**

Members of the “Circle of discussion” on the Court of Justice will find hereafter a paper from
Baroness Scotland of Asthal, alternate member of the Convention.

SECURING AN EFFECTIVE EU COURT SYSTEM FOR AN ENLARGED UNION

The UK wants to see an ECJ, effective within its remit, ensuring that Member States live up to their obligations and that EC law is respected. The ECJ has been a great success, but increased areas of responsibility for EU policy making, as well as a rapidly expanding Union are impeding the Court's ability to provide prompt justice. More needs to be done to enforce compliance with EC law. This paper sets out practical proposals to ensure a more effective EU court and enforcement system.

Better enforcement

Effective enforcement of EC law is critical to public confidence in the Union as a whole. There is a perception that, at the moment, half-hearted application of the rules attracts sometimes only a delayed response. Enforcement could be made more effective by:

- (i) **A faster and more effective fines procedure.** At the moment there is a two stage process *after* the original judgment - the Commission must issue a reasoned opinion before returning to the Court to seek a fine. This could be simplified with fines being imposed under a fast-track, streamlined procedure. In line with President Rodriguez Iglesias' suggestion, we should provide for the Commission to be able to apply directly to the Court in cases of non-implementation, after sending the letter of formal notice but without the need to issue a reasoned opinion. In addition, we could make provision for the Court to have discretion to impose a fine calculated with effect from the date of the original judgment if a Member State did not comply by a given date.
- (ii) **Tightening up the time limits for infringement procedures.** Clear time limits for the Commission to act between each stage of the infraction process (Letter of Formal Notice, Reasoned Opinion, Referral) would speed up the proceedings.
- (iii) **Making other sanctions available.** Scoreboards of compliance with EC law would build on the success this idea has already had (e.g. in the single market field). Scoreboards by the Commission could be presented to the European Council to publicise failure to comply with the law more effectively and bring greater peer pressure to bear.

Lightening the load: A more effective division of labour between the ECJ and the Court of First Instance

The Nice reforms aim to distribute work more efficiently between the ECJ and CFI and have the potential to transform the EU court system. Work is now underway to implement the Nice provisions. The key change is the power to create 'judicial panels'. We should be ambitious about the areas judicial panels might cover - not just staff and patents cases as currently discussed but possibly competition and other cases.

Looking ahead, the CFI and the judicial panels, reinforced with sufficient resources, should shoulder the main burden of work and allow the ECJ to handle the more important cases. If necessary, the CFI and the judicial panels' names could change to reflect these roles.

Judicial review of Commission competition decisions needs to be quicker to be truly effective. One option would be to establish a swifter fast track procedure for certain cases. Another could be the creation of a dedicated European Competition judicial panel, perhaps with lighter procedures and staffed by specialist judges.

The EU court system must have adequate resources to do its job efficiently. We support the ECJ in pursuing a more effective recruitment and retention framework and we would be sympathetic to appropriate budgetary resources to achieve that.

Ensuring the quality of decision-making

The Courts' work has been characterised by high-quality and hard-working judges but the challenge is to maintain this standard as the Court system expands and more judges join. Ensuring the quality of decision-making in the ECJ and the CFI must remain a priority. Under current procedures Member States simply "rubber-stamp" each others' candidates. We support a more effective screening process with clearer criteria for nominations and some system to provide advice to Member States on the suitability of nominees, while fully respecting the sovereign right of Member States to present their candidates.

Extending QMV for procedural matters

At present, certain decisions relating to the functioning and the organization of the Court require unanimity within the Council. We support some acts such as the creation of judicial panels or procedural matters in the ECJ statute to be adopted by QMV to improve the efficiency of the Court system.

Conclusion

We support the following:

- Treaty provision for fast-track process omitting the reasoned opinion for fines procedure to be imposed and fines to take effect from date of first judgment
 - Treaty provision for time limits for each stage of procedure
 - Scoreboards on compliance presented to the European Council
 - CFI and judicial panels to be reinforced with sufficient staff resources
 - Ambitious areas for judicial panels to cover e.g. competition
 - Screening process for judges
 - Extending QMV for the creation of judicial panels and procedural matters in the ECJ statute
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