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# CCBE

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**CONSEIL DES BARREAUX DE  
L'UNION EUROPEENNE RAT DER  
ANWALTSCHAFTEN DER  
EUROPÄISCHEN UNION CONSEJO DE  
LOS COLEGIOS DE ABOGADOS DE LA  
UNION EUROPEA CONSIGLIO DEGLI  
ORDINI FORENSI DELL'UNIONE  
EUROPEA RAAD VAN DE BALIES  
VAN DE EUROPESE UNIE CONSELHO  
DAS ORDENS DE ADVOGADOS DA UNIÃO  
EUROPEIA ΣΥΜΒΟΥΛΙΟ ΤΩΝ  
ΔΙΚΗΓΟΡΙΚΩΝ ΣΥΛΛΟΓΩΝ ΤΗΣ  
ΕΥΡΩΠΑΙΚΗΣ ΕΝΩΣΗΣ RÅDET FOR  
ADVOKATERNE I DEN EUROPÆISKE  
FÆLLESKAB EUROOPAN UNIONIN  
ASIANAJAJALIITTOJEN NEUVOSTO  
RÅD LÖGMANNAFELAGA I  
EVROPUSAMBANDINU RÅDET FOR  
ADVOKATFORENINGENE I DET  
EUROPEISKE FELLESKAP RÅDET FOR  
ADVOKATSAMFUNDEN I DEN  
EUROPEISKA UNIONEN COUNCIL OF  
THE BARS AND LAW SOCIETIES OF THE  
EUROPEAN UNION**

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**SUBMISSION OF THE CCBE FOR THE  
INTERGOVERNMENTAL CONFERENCE 2000  
(NOVEMBER 2000)**

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**SUBMISSION OF THE CCBE FOR THE  
INTERGOVERNMENTAL CONFERENCE 2000**

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**ON THE NEED:**

- **To provide consequential amendments in the statute of the Court of Justice consequent on the proposed amendments to Article 225 EC to enable the Court of First Instance be given jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234 EC and to enable certain decisions given by the Court of First Instance be subject to review by the Court of Justice.**
1. The Council of the Bars and Law Societies of the European Union (CCBE) represents through the national Bars and Law Societies some 500,000 European Lawyers within and outside the European Union. In this capacity, the CCBE – and more particularly its Permanent Delegation to the European Court of Justice and the Court of First Instance of the EC and the EFTA Court – is closely following the IGC discussions and decision making concerning amendments to the Treaties regarding the Court of Justice and the Court of First Instance.
  2. The CCBE has considered the proposed amendments to be made to the Treaties with regard to the Court of Justice and the Court of First Instance as set out in the Presidency's note dated 9 October 2000 (SN 4560/00).
  3. The CCBE supports the proposed amendments to Articles 225 and 225a.
  4. The CCBE is however concerned that, the proposal that the Court of First Instance be competent to hear and determine questions referred for a preliminary ruling under Article 234 and that such decisions may exceptionally be subject to review by the Court of Justice, require certain amendments to the Statute which are not envisaged in the current draft amendments to the Statute dated 9 October 2000 (SN 4561/00).
  5. CCBE considers that the provisions in the Treaty and Statute which enable decisions given by the Court of First Instance on questions referred for a preliminary ruling under Article 234, to be subject to review by the Court of Justice, ought to be governed by the following legal principles.
    - **The review ought to be an exceptional procedure.** This principle appears covered by the present text of the proposed amendment to Article 225(3).
    - **The review should be subject to a rapid procedure.** The proposed amendment to the Statute at point 10 of document SN 4561/00 only partly respects this

principle insofar as the Court of Justice is required to decide within one month of the lodging of an application, whether the Decision of the CFI should be reviewed. CCBE recognises the proposed statement of the Conference that in exceptional cases in which the Court of Justice decides to review a decision of the Court of First Instance on a question for a preliminary ruling, it should be decided by an emergency procedure. However, CCBE considers that a binding obligation to this effect should be included in the Statute.

- **Equality of rights of litigants.** The current amendment to the Statute only envisages that the Council, Commission or a Member State may lodge an application for review by the Court of Justice of a decision of the CFI on a preliminary ruling. CCBE considers that the principle of equality and access to justice and indeed, Article 6 of ECHR, requires that the parties to the national proceedings be entitled to lodge an application for review by the Court of Justice. It also requires that such persons be entitled to participate in the review by the Court of Justice where the application is made by the Council, Commission or a Member State.
  
- **Legal Certainty.** The concept of a “review” by the Court of Justice of a decision of the CFI is new to the legal system of the EU. Legal certainty therefore, requires that the Statute specify the consequences for the decision of the CFI, of the lodging of the application for review; the decision by the Court of Justice that the decision of the CFI should be reviewed and the ultimate decision of the Court of Justice on the review. None of these matters are addressed in the proposed amendment to the Statute. It is therefore not clear as to whether the lodging of the application or the decision by the Court of Justice to review has suspensory effect on the decision of the CFI under review. It is also unclear as to what is the intended effect on the decision of the CFI of the review by the Court of Justice where the decision on review reaches a different conclusion on the law to that expressed in the decision of the CFI. Having regard to the special nature of preliminary rulings under Article 234 and in particular, by reason of the fact that the decisions of the CFI on preliminary rulings are all decisions of law which must then be applied by national courts in determining the inter partes litigation before them, CCBE considers
  - The lodging of an application for review must have suspensory effect on the decision of the CFI; and
  - The decision of the Court of Justice on the review must have the potential effect of altering the decision of the CFI so that the answers given to the national courts on the questions referred under Article 234 are in accordance with the determination of the Court of Justice following the review procedure. The purpose of the review procedure is to avoid a serious risk to the unity or consistency of Community Law. A review may only take place where such risk exists. If such a risk exists, the national court should not receive answers on the questions referred in accordance with the determination of the CFI.

6. CCBE wishes to draw attention to two further matters consequent on the proposal that the CFI be given jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234.
- The continued success of the Article 234 procedure is dependant *inter alia* on the national courts having respect for and confidence in the ability of the Judges of the Court to whom the questions are referred. This is particularly important where the Courts of Final Appeal of the Member States are required to refer certain questions of interpretation and validity of EC law. CCBE notes the distinction in the qualifications required for appointment to the Court of Justice and CFI under Articles 223 and 224. CCBE suggests that the requirements for appointment to CFI under Article 224 should be strengthened so as to require that candidates possess the qualifications required for appointment to high judicial office in their respective countries. Also, consideration should be given to implementing a system of appointment as recommended in the report of the Working Party on the Future of the European Court of Justice dated January 2000 under President Ole Due.
  - The experience of practising lawyers is that the opinions of Advocates General on questions referred for preliminary rulings have contributed very significantly to the coherent development of EC law and the national courts understanding of the answers given by the Court of Justice to the questions referred. CCBE therefore, considers it essential that when CFI is given jurisdiction to hear and determine questions referred under Article 234 that the Statute is amended to provide for the appointment of a number of Advocate Generals to the CFI as is permitted under Article 224. The present work load of the CFI does not realistically permit its members to act as Advocate Generals as well as Judges.

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