

COUNCIL DECISION

of 26 April 2004

amending Articles 51 and 54 of the Protocol on the Statute of the Court of Justice

(2004/407/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 245 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 160 thereof,

Having regard to the request of the Court of Justice of 12 February 2003,

Having regard to the opinion of the European Parliament of 10 February 2004,

Having regard to the opinion of the Commission of 10 November 2003,

Whereas:

- (1) Point (31) of Article 2 of the Treaty of Nice replaces Article 225 of the EC Treaty by a new provision of which the first subparagraph of paragraph 1 provides: 'The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236 and 238, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice. The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.'
- (2) Article 3(13) of the Treaty of Nice made a similar amendment to the EAEC Treaty.
- (3) Account was taken of that amendment in the provisional draft of Article 51 of the Protocol on the Statute of the Court of Justice under which: 'By way of exception to the rule laid down in Article 225(1) of the EC Treaty and Article 140a(1) of the EAEC Treaty, the Court of Justice shall have jurisdiction in actions brought by the Member States, the institutions of the Communities and the European Central Bank.'
- (4) In accordance with the letter and general scheme of the new Article 225 of the EC Treaty and of the new Article 140a of the EAEC Treaty, it is necessary to

redraft Article 51 of the Protocol on the Statute of the Court of Justice in order to define the respective jurisdictions of the Court of Justice and the Court of First Instance, since the transfer of jurisdiction at first instance to the Court of First Instance has to be significant and the criteria for allocation of jurisdiction sufficiently clear to be understood unequivocally by the institutions and the Member States.

- (5) Actions brought by the Member States against acts of the Council by which it exercises implementing powers in accordance with the rules referred to in the third indent of Article 202 of the EC Treaty should fall within the jurisdiction of the Court of First Instance. These are cases where the Council has either reserved the right to exercise implementing powers or has regained the right to exercise such powers in the course of a 'committee procedure'.
- (6) The provisions of Article 54 of the Protocol on the Statute of the Court of Justice concerning the circumstances in which the Court of First Instance may decline jurisdiction in favour of the Court of Justice should be amended so as to accord with the new powers of the Court of First Instance. It is necessary to allow for jurisdiction to be declined where related cases are brought before the Court of Justice and the Court of First Instance in which the outcome of one of them may depend on that of the other,

HAS DECIDED AS FOLLOWS:

Article 1

1. Article 51 of the Protocol on the Statute of the Court of Justice shall be replaced by the following:

'Article 51

By way of derogation from the rule laid down in Article 225(1) of the EC Treaty and Article 140a(1) of the EAEC Treaty, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 230 and 232 of the EC Treaty and Articles 146 and 148 of the EAEC Treaty when they are brought by a Member State against:

- (a) an act of or failure to act by the European Parliament or the Council, or by both those institutions acting jointly, except for:

- decisions taken by the Council under the third subparagraph of Article 88(2) of the EC Treaty;
 - acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 133 of the EC Treaty;
 - acts of the Council by which the Council exercises implementing powers in accordance with the third indent of Article 202 of the EC Treaty;
- (b) against an act of or failure to act by the Commission under Article 11a of the EC Treaty.

Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same Articles when they are brought by an institution of the Communities or by the European Central Bank against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Communities against an act of or failure to act by the European Central Bank.'

2. the third paragraph of Article 54 of the Protocol on the Statute of the Court of Justice shall be replaced by the following:

'Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment. In the same circumstances, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.'

3. the following new paragraph shall be added to Article 54 of the Protocol on the Statute of the Court of Justice:

'Where a Member State and an institution of the Communities are challenging the same act, the Court of First Instance shall decline jurisdiction so that the Court of Justice may rule on those applications.'

Article 2

Cases coming within the jurisdiction of the Court of First Instance by virtue of this Decision and which have been brought before the Court of Justice by the date on which this Decision enters into force;

but

- (a) in which the proceedings have at that date been stayed in accordance with the last sentence of the third paragraph of Article 54 of the Protocol on the Statute of the Court of Justice;

or

- (b) in which the proceedings have not at that date reached the close of the written procedure as defined in Article 44 of the Rules of Procedure of the Court of Justice

shall be referred to the Court of First Instance.

Article 3

This Decision shall take effect on the first day of the second month following that of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 26 April 2004.

For the Council
The President
B. COWEN