

Treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice - Amendments to the Protocol on the Statute of the Court of Justice

2007/0812(CNS) - 20/11/2007 - Document attached to the procedure

COMMISSION OPINION on the request to amend the Statute of the Court of Justice, presented by the Court under the second paragraph of Article 245 of the EC Treaty, with a view to allowing the introduction, in certain areas, of an urgent preliminary ruling procedure derogating from certain provisions of the Statute.

To recall, in July 2007 the European Court of Justice sent two requests to the Commission and the Council. The first concerns an insertion into the Court's Statute for a new Article 23a, which reads as follows:

"The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling in specified areas, an urgent procedure, derogating from the provisions of Articles 20 and 23 of this Statute."

At the same time, the Court also requested that an accelerated procedure be adopted concerning preliminary rulings relating to Title VI of the TEU or Title IV Part Three of the TEU (area of freedom, security and justice).

The Commission welcomes both initiatives. The introduction of a new procedure is essential to safeguarding effective judicial protection and to guaranteeing a uniform interpretation of EU law within the time limits laid down in this field. The Commission concurs with the view that the Court must be in a position to respond speedily to questions referred for a preliminary ruling in the course of urgent national judicial proceedings.

Further, the Commission acknowledges that urgent requests of this kind are more likely to arise in future given that the area of liberty, security and justice is a dynamic process. Examples include asylum applications; expulsion decisions issued under immigration law; cases relating to parental responsibility; the enforcement of European arrest warrants; and cases involving the detention of a suspect.

The Commission's Opinion states that the new urgent preliminary ruling procedure must include the following elements:

- it must be quick in order to ensure the effective judicial protection of those who seek it;
- it must be flexible to allow for differing national time limits;
- it must comply with the adversarial principle;
- it must allow the Court to obtain information through the participation of the Commission, the Member States (in which the case originated); Parliament and the Council in cases involving their legal acts;
- it must allow for the intervention and contribution of other Member States; and
- it must not have the effect of delaying other cases pending before the Court.

The procedures proposed by the Council appears to have struck the right balance between all of these requirements and for that reason the Commission hopes it can be adopted as soon as possible and without significant change.

Given that the proposed procedure necessarily derogates from several Statute provisions, the Commission recommends that a provision authorising these derogations must be inserted into the Statue.

Regarding the wording of Article 23a the Commission would like to make one observation of a legal nature namely a more concise wording:

"The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling concerning the area of freedom, security and justice, an urgent procedure, derogating from the provisions of Articles 20 and 23 of this Statute."

Based on the above analysis the Commission delivers a favourable opinion, subject to the change in the preceding paragraph.