Court of Justice: review of decisions delivered by the Court of First Instance, Protocol on the Statute

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PURPOSE : to amend the Protocol on the Statute of the Court of Justice to lay down the conditions and limits for review by the Court of Justice of decisions delivered by the Court of First Instance. PROPOSED ACT : Council Decision. CONTENT : it follows from, in particular, Declaration No 13 adopted on 26 February 2001 at the Nice Summit that the Conference of the Representatives of the Governments of the Member States considered that the essential provisions of the review procedure in Article 225, paragraphs 2 and 3 of the EC Treaty should be defined in the Statute of the Court of Justice. The purpose of the current draft Council Decision is to act on that declaration. Article 225, paragraphs 2 and 3 of the EC Treaty as amended by the Treaty of Nice provides that decisions given by the Court of First Instance hearing and determining actions or proceedings brought against decisions of the judicial panels set up under Article 225a and decisions given on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected. Article 62 of the new Statute of the Court of Justice, annexed to the Treaty of Nice, also provides that the proposal for review of the decision of the Court of First Instance may be made by the First Advocate General where he or she considers that the condition laid down in Article 225 is satisfied, namely, that there is a serious risk of the unity or consistency of Community law's being affected. That proposal must be made within one month of delivery of the decision of the Court of First Instance and the Court of Justice must then decide within one month of receiving the proposal whether or not the decision ought to be reviewed. It is therefore necessary to lay down in the Statute both the detailed procedural rules for the conduct of the review procedure and the effects of that procedure on the substance of the action and the interests of the parties. The proposed Decision is base don't he following provisions: - suspensory effect : the first measure required, which is the subject-matter of Article 62a, is to provide that review is not to have suspensory effect; - observance of the adversarial principle : it would seem essential to ensure that the adversarial principle is observed, while avoiding unnecessary prolongation of the proceedings; - references for a preliminary ruling : With regard to review of a decision of the Court of First Instance given on a question referred for a preliminary ruling (Article 225(3) EC), it appears necessary for the "new interpretation" of the Community rule as it emerges from that review to be able to produce its full effect immediately; - direct actions : it is proposed as a general rule that when the Court of Justice receives a proposal for review made by the First Advocate General, if it considers that the proposal is justified and after requesting the parties to the proceedings before the Court of First Instance, the Member States and the institutions to submit observations, it should rule on the point of law subject to review and refer the case back to the Court of FirstInstance for the latter to apply to the action the principles of law as they emerge from the Court's decision. It is however proposed that in exceptional circumstances the Court of Justice should have the power to give final judgment if the outcome of the proceedings depends on the answer in law given on review and on the analysis of the facts as found in the Court of First Instance's judgment. - practice rules for the review procedure : in order to supplement the text of the Statute, pursuant to Article 63 of the Statute the Rules of Procedure of the Court of Justice and the Court of First Instance are to lay down the practical provisions governing procedure. In preliminary reference proceedings it will be essential in particular to provide for the national court to be kept informed as to the initiation and progress of the review procedure, so that it may await the adoption of a position by the Court of Justice in full knowledge of all the circumstances before it gives its decision on the dispute in the main proceedings.