EC/Ukraine Partnership and Cooperation Agreement

1994/0136(AVC) - 08/05/1995 - Modified legislative proposal

Given the Court of Justice's opinion 1/94 of 15 November 1994 on the European Community's competence to conclude the agreements resulting from the Uruguay Round, the procedure envisaged for the present agreement had proven to be inappropriate. Similarly, the provisional application of the Energy Charter (signed on 17 December 1994) required that the legal basis of the agreement be changed whilst respecting the differences between the contents of the partnership and cooperation agreement and the Charter. The legal bases to added further to Articles 113 and 235 of the EC Treaty and Article 101 of the ECSC Treaty initially envisaged (in conjunction with Article 228), were the following: - Article 54(2) and the last sentence of Article 57(2), as with the Energy Charter: the requirements set out in the agreements relating to establishment affected the rules adopted by the Communities on issues relating to the stock exchange and accounting as well as banking and insurance matters; - Article 73c(2) of the EC Treaty, as with the Charter: the requirements set out in the agreement relating to the free movement of capital and payments have concerned the Community since the entry into force of the second stage of EMU; - Articles 75 and 84(2) of the EC Treaty: contrary to the Charter, the agreement would have a certain impact on Community transport regulations (primarily in the maritime sector). According to the Commission, it was not necessary to add any other legal bases, particularly since Article 235 more or less supported the economic cooperation provided for in the agreement. It was not a question of purely extending significantly the provisions in the 1989 agreement. Community competence was not exclusive; rather it should operate in tandem with that of the Member States. The Court's reflections as to the conditions in which exclusive competence could be based on Article 235 through the application of the AETR case law were thus not relevant in this case. Furthermore, the ECSC Consultative Committee had been consulted with regard to the conclusion of the partnership agreement with Ukraine (on 31 March 1995).