COUNCIL DECISION

of 3 October 2005

amending the Protocol on the Statute of the Court of Justice, in order to lay down the conditions and limits for the review by the Court of Justice of decisions given by the Court of First Instance

(2005/696/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 225(2) and (3) and the second paragraph of Article 245 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 140a(2) and (3) and the second paragraph of Article 160 thereof,

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

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

Having regard to the opinion of the Commission of 11 February 2005,

Whereas:

(1) Article 225(2) and (3) of the EC Treaty, as amended by Article 2(31) of the Treaty of Nice, provides:

'2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a.

Decisions given by the Court of First Instance under this paragraph 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.

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of Community law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance 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.'

(2) Article 140a(2) and (3) of the EAEC Treaty was similarly amended by Article 3(13) of the Treaty of Nice.

(3) Account was taken in part of those amendments in Article 62 of the Protocol on the Statute of the Court of Justice, in accordance with which: 'In the cases provided for in Article 225(2) and (3) of the EC Treaty and Article 140a(2) and (3) of the EAEC Treaty, where the First Advocate General considers that there is a serious risk of the unity or consistency of Community law being affected, he may propose that the Court of Justice review the decision of the Court of First Instance.

The proposal must be made within one month of delivery of the decision of the Court of First Instance. Within one month of receiving the proposal made by the First Advocate General, the Court of Justice shall decide whether or not the decision should be reviewed.'

(4) In accordance with Declaration No 13 annexed to the Final Act of the Treaty of Nice, it is necessary to adopt the provisions concerning review of judgments delivered by the Court of First Instance ruling on decisions of the judicial panels and on questions referred for a preliminary ruling, specifying:

'— the role of the parties in proceedings before the Court of Justice, in order to safeguard their rights,

— the effect of the review procedure on the enforceability of the decision of the Court of First Instance,

— the effect of the Court of Justice decision on the dispute between the parties.',

HAS DECIDED AS FOLLOWS:

Article 1

The following Articles shall be inserted between Articles 62 and 63 of the Protocol on the Statute of the Court of Justice:

'*Article 62a*

The Court of Justice shall give a ruling on the questions which are subject to review by means of an urgent procedure on the basis of the file forwarded to it by the Court of First Instance.

Those referred to in Article 23 of this Statute and, in the cases provided for in Article 225(2) of the EC Treaty and in Article 140a(2) of the EAEC Treaty, the parties to the proceedings before the Court of First Instance shall be entitled to lodge statements or written observations with the Court of Justice relating to questions which are subject to review within a period prescribed for that purpose.

The Court of Justice may decide to open the oral procedure before giving a ruling.

Article 62b

In the cases provided for in Article 225(2) of the EC Treaty and in Article 140a(2) of the EAEC Treaty, without prejudice to Articles 242 and 243 of the EC Treaty, proposals for review and decisions to open the review procedure shall not have suspensory effect. If the Court of Justice finds that the decision of the Court of First Instance affects the unity or consistency of Community law, it shall refer the case back to the Court of First Instance which shall be bound by the points of law decided by the Court of Justice; the Court of Justice may state which of the effects of the decision of the Court of First Instance are to be considered as definitive in respect of the parties to the litigation. If, however, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the Court of First Instance was based, the Court of Justice shall give final judgment.

In the cases provided for in Article 225(3) of the EC Treaty and Article 140a(3) of the EAEC Treaty, in the absence of proposals for review or decisions to open the review procedure, the answer(s) given by the Court of First Instance to the questions submitted to it shall take effect upon expiry of the periods prescribed for that purpose in the second paragraph of Article 62. Should a review procedure be opened, the answer(s) subject to review shall take effect following that procedure, unless the Court of Justice decides otherwise. If the Court of Justice finds that the decision of the Court of First Instance affects the unity or consistency of Community law, the answer given by the Court of Justice to the questions subject to review shall be substituted for that given by the Court of First Instance.'

Article 2

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 3 October 2005.

For the Council

The President

D. ALEXANDER