



Issues concerning the Court of Justice

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The need for a dispute settlement procedure

The issue

- Pending procedures
- Body to rule on interpretation of the withdrawal agreement
 - EU Council Guidelines
 - 17. The withdrawal agreement should include appropriate dispute settlement and enforcement mechanisms regarding the application and interpretation of the withdrawal agreement, as well as duly circumscribed institutional arrangements allowing for the adoption of measures necessary to deal with situations not foreseen in the withdrawal agreement. *This should be done bearing in mind the Union's interest to effectively protect its autonomy and its legal order, including the role of the Court of Justice of the European Union.* (emphasis added)
- Body to adjudicate on the future deal

What might that body look like?

It has been suggested that a court could be set up drawing on judges from the Court of Justice and the UK courts. However, see [Opinion 1/91](#):

34 This means that, when a dispute relating to the interpretation or application of one or more provisions of the agreement is brought before it, the EEA Court may be called upon to interpret the expression 'Contracting Party', within the meaning of Article 2(c) of the agreement, in order to determine whether, for the purposes of the provision at issue, the expression 'Contracting Party' means the Community, the Community and the Member States, or simply the Member States. Consequently, the EEA Court will have to rule on the

respective competences of the Community and the Member States as regards the matters governed by the provisions of the agreement.

35 It follows that the jurisdiction conferred on the EEA Court under Article 2(c), Article 96(1)(a) and Article 117(1) of the agreement is likely adversely to affect the allocation of responsibilities defined in the Treaties and, hence, the autonomy of the Community legal order, respect for which must be assured by the Court of Justice pursuant to Article 164 of the EEC Treaty. This exclusive jurisdiction of the Court of Justice is confirmed by Article 219 of the EEC Treaty, under which Member States undertake not to submit a dispute concerning the interpretation or application of that treaty to any method of settlement other than those provided for in the Treaty. Article 87 of the ECSC Treaty embodies a provision to the same effect.

36 Consequently, to confer that jurisdiction on the EEA Court is incompatible with Community law.

See also Opinion 2/13:

196. In the third place, it must be pointed out that Protocol No 16 permits the highest courts and tribunals of the Member States to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms guaranteed by the ECHR or the protocols thereto, even though EU law requires those same courts or tribunals to submit a request to that end to the Court of Justice for a preliminary ruling under Article 267 TFEU.

197. It is indeed the case that the agreement envisaged does not provide for the accession of the EU as such to Protocol No 16 and that the latter was signed on 2 October 2013, that is to say, after the agreement reached by the negotiators in relation to the draft accession instruments, namely on 5 April 2013; nevertheless, since the ECHR would form an integral part of EU law, the mechanism established by that protocol could — notably where the issue concerns rights guaranteed by the Charter corresponding to those secured by the ECHR — affect the autonomy and effectiveness of the preliminary ruling procedure provided for in Article 267 TFEU.

198. In particular, it cannot be ruled out that a request for an advisory opinion made pursuant to Protocol No 16 by a court or tribunal of a Member State that has acceded to that protocol could trigger the procedure for the prior involvement of the Court of Justice, thus creating a risk that the preliminary ruling procedure provided for in Article 267 TFEU might be circumvented, a procedure which, as has been noted in paragraph 176 of this Opinion, is the keystone of the judicial system established by the Treaties.

199. By failing to make any provision in respect of the relationship between the mechanism established by Protocol No 16 and the preliminary ruling procedure provided for in Article 267 TFEU, the agreement envisaged is liable adversely to affect the autonomy and effectiveness of the latter procedure.

200. Having regard to the foregoing, it must be held that the accession of the EU to the ECHR as envisaged by the draft agreement is liable adversely to affect the specific characteristics of EU law and its autonomy.

b) Article 344 TFEU

201. The Court has consistently held that an international agreement cannot affect the allocation of powers fixed by the Treaties or, consequently, the autonomy of the EU legal system, observance of which is ensured by the Court. That principle is notably enshrined in Article 344 TFEU, according to which Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein (see, to that effect, *Opinions 1/91*, EU:C:1991:490, paragraph 35, and 1/00, EU:C:2002:231, paragraphs 11 and 12; judgments in *Commission v Ireland*, C-459/03, EU:C:2006:345, paragraphs 123 and 136, and *Kadi and Al Barakaat International Foundation v Council and Commission*, EU:C:2008:461, paragraph 282).

Euratom and Agencies

Euratom

CHAPTER 1

Application of certain provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union

Article 106a

1. Article 7, Articles 13 to 19, Article 48(2) to (5), and Articles 49 and 50 of the Treaty on European Union, and Article 15, Articles 223 to 236, Articles 237 to 244, Article 245, Articles 246 to 270, Article 272, 273 and 274, Articles 277 to 281, Articles 285 to 304, Articles 310 to 320, Articles 322 to 325 and Articles 336, 342 and 344 of the Treaty on the Functioning of the European Union, and the Protocol on Transitional Provisions, shall apply to this Treaty.

2. Within the framework of this Treaty, the references to the Union, to the 'Treaty on European Union', to the 'Treaty on the Functioning of the European Union' or to the 'Treaties' in the provisions referred to in paragraph 1 and those in the protocols annexed both to those Treaties and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.

3. The provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union shall not derogate from the provisions of this Treaty.

The Court of Justice of the European Union

Article 144

The Court of Justice of the European Union shall have unlimited jurisdiction in:

(a) proceedings instituted under Article 12 to have the appropriate terms fixed for the granting by the Commission of licences or sub licences;

(b) proceedings instituted by persons or undertakings against sanctions imposed on them by the Commission under Article 83.

Article 145

If the Commission considers that a person or undertaking has committed an infringement of this Treaty to which the provisions of Article 83 do not apply, it shall call upon the Member State having jurisdiction over that person or undertaking to cause sanctions to be imposed in respect of the infringement in accordance with its national law.

If the State concerned does not comply with such a request within the period laid down by the Commission, the latter may bring an action before the Court of Justice of the European Union to have the infringement of which the person or undertaking is accused established.

Agencies

Article 263(1) TFEU

[The Court of Justice] shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

European Medicines Agency

The European Medicines Agency (EMA) is responsible for the scientific evaluation of centralised marketing authorisation applications (MAA). Once granted by the European Commission, the centralised marketing authorisation is valid in all European Union (EU) Member States, Iceland, Norway and Liechtenstein. EMA is an agency and its decisions are subject to judicial review: see eg Case C-513/16 P(R) *European Medicines Agency (EMA) v. PTC Therapeutics International Ltd*

Also see [Reg 726/2004](#) laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency

Article 72 1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question. The Court of Justice of the European Communities shall have jurisdiction pursuant to any arbitration clause contained in a contract concluded by the Agency.

Article 73 Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint with the Ombudsman or form the subject of an action before the Court of Justice, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Community Plant Variety Office

The Community Plant Variety Office (CPVO) is an EU agency responsible for the management of the Community Plant Variety Rights System. The CPVO's task is to administer the Plant Variety Rights System in Europe. This system, which is the largest in the world, provides protection with an intellectual property right for new plant varieties. The board of Appeal is responsible for deciding on

appeals made against certain kinds of decisions taken by the CPVO. Its decisions are subject to the Judicial review under Article 263 TFEU. Council Regulation 2100/94

Article 33 Liability

1. The contractual liability of the Office shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Office.
3. In the case of non-contractual liability, the Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.
4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
5. The personal liability of its servants towards the Office shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.