Greek memorandum on the reform of the judicial system of the European Union (22 mars 2000)

Caption: On 22 March 2000, the Greek representative to the European Union (EU) sends a memorandum setting out the position of the Greek authorities on the reform of the EU's judicial system to Javier Solana, Secretary-General of the Council/High Representative for the Common Foreign and Security Policy.

Source: Conference of the Representatives of the Governments of the Member States Translation of letter – IGC 2000 – Greek memorandum on the reform of the judicial system of the European Union, CONFER 4730/00. Brussels: 12.04.2000. 4 p. http://www.consilium.europa.eu/uedocs/cms_data/docs/cig2000/en/04730en.pdf.

URL:
http://www.cvce.eu/obj/greek_memorandum_on_the_reform_of_the_judicial_system_of_the_european_union_22_mars_2000-en-32ac3785-5997-4506-98ff-a4516cefb4bd.html

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CONFERENCE
OF THE REPRESENTATIVES OF THE
GOVERNMENTS
OF THE MEMBER STATES

Brussels, 12 April 2000

CONFER 4730/00

LIMITE

TRANSLATION OF LETTER

from :	M. Loukas TSILAS, Permanent Representative of Greece to the European Union
dated:	22 March 2000
to :	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	***IGC 2000:*** Greek memorandum on the reform of the judicial system of the European Union

Sir,

I enclose a memorandum on the position of the Greek authorities concerning the reform of the judicial system of the European Union.

(Complimentary close).

(s.) Loukas TSILAS

MEMORANDUM

INTERGOVERNMENTAL CONFERENCE

OBSERVATIONS CONCERNING THE REFORM

OF THE JUDICIAL SYSTEM OF THE EUROPEAN UNION

The need for reform of the judicial system of the European Union, both in terms of its structure and in relation to the development of its various procedures is a matter of fact which is beyond dispute. Greece raised the issue at the previous Intergovernmental Conference in 1996/1997. The enlargement and expansion of Community matters require a corresponding adaptation of all the institutions of the EU and especially of the Court.

The Greek Government wishes to contribute to the discussion which has already begun and is submitting a number of preliminary ideas which are considered ready at this stage to become the subject of new rules. The views expressed below have as their starting-point relevant documents from the Court of Justice and the Court of First Instance which were submitted before this memorandum was drafted.

A. Composition and subsidiary bodies of the Court of Justice and the Court of First Instance

1.1. The Greek Government is convinced that as long as the basic structure of the Community remains the same, the rule that each Member State is represented by a Judge must not be changed. Each Member State should and can contribute equally to the shaping of the Community legal system.

It sympathises with the concern that a large number of Judges in the composition of the Plenary will render the functioning of the courts difficult. It considers that one solution which has already been proposed might be acceptable, namely that the Plenary would have a quorum when half of the total number of Judges were present (plus one or two, in order to achieve an odd number).

1.2. As far as the term of office of the Judges is concerned, the Greek Government considers that 6 years is insufficient but that 12 is too long and it prefers the intermediate solution of 9 years, which would be non-renewable. Such a term guarantees the independence of the Judges and at the same time is of a sufficient length to allow the greatest contribution from those appointed and enable new jurists to gain experience.

1.3. As regards the question of checking the qualifications of the Judges and Advocates-General, as laid down in the Treaty, it takes the view that that procedure should not be carried out by the Court itself.

1.4. It also believes that the Presidents of the chambers of the Court of Justice and the Court of First Instance should be appointed by the Member of the Court for a term of office of three years, renewable once, and not by the President of the Court.

1.5. As regards the Advocates-General, it would seem reasonable that they should not make submissions on all the cases examined in the Court of Justice. The President should decide, after hearing the First Advocate-General, in which cases submissions by the Advocates-General are necessary.

As regards the referral of the positions of the Advocates-General to the Court of First Instance, given that the current system has been used only very rarely the possibility of reviewing that system could be examined, but in conjunction with the increase in the number of Judges and the application of a rotation system.

1.6. Furthermore, it would appear premature to extend the powers of the "Single Judge" Court of First Instance to areas of the law where the jurisprudence may be deemed to be "fixed" as this could introduce uncertainties and inconsistencies into the jurisprudence. In cases where the jurisprudence of the Court of Justice is fixed, the latter should be allowed to reply with a concise ruling. It is possible in any event to allow the national court the possibility of insisting on the need for a full ruling.

1.7. Finally, the extension, both present and future, of Community competence to new areas and the resulting increase in cases before the Court of Justice and the Court of First Instance prompts, inter alia, ideas and proposals regarding the possibility of the chambers and/or the Judges in the two Courts becoming specialised and/or being increased in number, with a view to the possible establishment of a Charter of Fundamental Rights.

Greece has mixed views on the above issues: it accepts the creation of specialised chambers but rejects the specialisation of Judges for staffing those chambers. In addition, it is not in principle favourably disposed to the institutionalisation of single-judge courts. It supports an increase in the number of Judges – necessarily after enlargement, since it believes in the principle of one Judge per Member State. It suggests henceforth engaging *référendaires* (clerks) as additional staff for the offices of existing judges.

B. Procedures

2.1. As far as the future structure of the various procedures and legal processes is concerned and the changes or improvements which would be desirable in order to speed up the hearing of cases and to enable the judicial system to function more rationally and more efficiently, but without any loss of quality, the Greek Government notes that:

i. As regards the procedure for preliminary referral:

2.2.1. At the present stage of the development of the Community legal order, the hearing of referrals for preliminary rulings is best left exclusively to a single judicial body. The exclusive competence of one Court for preliminary rulings is in keeping with the nature of that procedure, which must be speedy and guarantee the authenticity of Community law.

2.2.2. It might be possible to give competence to the Court of First Instance to hear preliminary referrals in areas which are its exclusive responsibility. It is clear that such a possibility will have to be examined carefully insofar as the Court of First Instance will rule in this case at first and final instance.

2.2.3. It does not agree with the idea of restricting the national courts which may address requests for preliminary rulings to the Court of Justice. Restricting the type of court would result in difficulties and delays.

2.2.4. Proposals which deserve further study, either separately or together, include the following:

– The establishment, alongside the Court of Justice, of a consultative group which, in an initial phase and with the help of electronic means, would examine existing jurisprudence and would provide information informally to national courts and Judge-Rapporteurs.

– The secondment to the Court of Justice as observers, for a fixed period of time, of court officials from the national courts who would transfer experience and information to and from the Court of Justice and the national courts.

– More detailed justification by the national court for its referral and the formulation of a recommendation/proposal concerning the reply requested from the Court of Justice.

ii. As regards direct proceedings:

2.3.1. The Greek Government supports:

– The introduction of a procedure to limit the possibility of appeal against decisions by the Court of First Instance.

– The idea that the European Commission should be given the possibility of issuing rulings, by reasoned and enforceable act, in matters which would otherwise become the subject of proceedings for infringement (former Article 169) in cases of non-compliance with Community directives, where the infringement is manifest. The Member States would be obliged to comply with the Commission ruling, or apply to the Court of Justice for annulment.

– The view that proceedings for infringement should remain a matter for the Court of Justice. The Court of Justice will also have sole jurisdiction in proceedings for the annulment of acts of a regulatory nature (former Article 173) and in the new procedure for the imposition of sanctions on Member States which fail to implement decisions condemning them for infringements of the Treaty.

iii. As regards the "new material" following the Treaty of Amsterdam:

2.4.1. It is too early for the formulation of a complete and definitive position on matters which are included in the new Treaty for the first time (e.g. cooperation in civil and criminal matters, immigration, asylum, Europol and, looking ahead, the protection of fundamental rights). However, it is a useful exercise to begin examining at this stage all the issues surrounding them.

Athens, February 2000