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NOTE

From: Presidency
To: Working Party on the Court of Justice

Subject: **Reform of the General Court of the European Union**
- **Possible way forward**

The new proposal of the Court of Justice of 13 October 2014 on the reform of the General Court (document 14448/14 + COR 1) was discussed at the meeting of the Working Party on Court of Justice on 7 November 2014 and at a Coreper lunch on 20 November 2014. While there was large support for the proposal, it appeared that further work was needed in particular on the following issues :

- legal guarantees for putting into practice the three phases of the reform,
- the budgetary costs of the reform, and
- the effects of the envisaged reform on the Court of Justice.

The Presidency's intention is to provide delegation with the following additional elements in order to find possible way forward.

1. Legal guarantees

In legal terms, the Court's legislative request of 28 March 2011 (document 8787/11) to amend the Protocol on the Statute of the Court of Justice, which included *inter alia* an increase of the number of judges at the General Court by 12, is still on the table.

This proposal could be amended so as to ensure that the three phases of the enlargement of the General Court are laid down in the Statute of the Court of Justice, it being understood that the re-integration of the Civil Service Tribunal into the General Court will necessitate a new legislative request by the Court of Justice. A draft text, based on the phasing-in as proposed by the Court, is included in the *Annex* to this document (see in particular the amendments of Article 48 of the Statute and the transitional provisions in Article 3 which aim to ensure the insertion of the new judges into the three-yearly rhythm of partial renewals of the General Court).

2. Budgetary costs

The following elements should be taken into account when examining the budgetary impact of the proposal.

- Statistics since 2007 show a steady increase in the number of new cases brought before the General Court, and there are no indications that this trend will be reversed in the future. On the contrary, as the competences of the Union tend to grow, this will have an effect on the number of cases brought before the General Court (REACH cases, decisions of the newly established financial authorities and of the ECB, restrictive measures in the CSFP field, etc.).
- The costs of non-reform : as the Court points out, there has been a significant increase of the number of new cases as compared to the situation in 2011, which has in some cases led to excessive duration of proceedings, in particular in the areas of state aid and competition. As a consequence, actions for damages due to a breach of the reasonable time principle laid down in Article 47 of the Charter of Fundamental Rights are currently pending before the General Court, involving claims for damages of close to 23,3 million €. In addition, delayed procedures cause considerable costs for economic operators, billions of euros being blocked during Court proceedings, not to speak of the political damage to the image of the Union being unable to respect its own fundamental principles.

- The increase of the number of judges of the General Court would also allow the possibility to decide in chambers of 5 judges, to attribute more cases to the Grand Chamber and to designate Advocates General from among the judges for certain cases. This was foreseen in the Statute but not used in practice in the past due to the structural constraints faced by the General Court. This possibility would have a significant impact on the quality of judgments.
- In the first half of 2014, an agreement was already reached on an increase of the number of judges by 9.

Against this background, the reform should enable the General Court in the long term to carry out its functions under the Treaties and in the respect of the fundamental right to a process within a reasonable time. In the short term, the priority should be to enable the General Court to reduce the backlog of pending cases. On the other hand, taking into account the budgetary constraints and the need for fiscal consolidation, these objectives should be achieved by the most cost-effective means and ensuring that the overall cost of the reform entails the least possible budgetary costs.

Taking into account the results of the last COREPER lunch, it appears that reducing the number of legal secretaries (*référéndaires*) and assistants could be seen as the way to achieve this objectives :

- During phase 1 and 2, each of the additional judges would have three legal secretaries. This would allow the General Court to quickly resolve the backlog of pending cases and would give it enough time for preparing the necessary internal reforms for a General Court with 56 judges.
- The third phase, foreseeing an increase of another 9 judges, would not require any additional administrative costs (no recruitment of additional legal secretaries and assistants).

3. Effects of the envisaged reform on the Court of Justice and on the internal organisation of the General Court

A number of delegations raised concerns that the reform of the General Court might in the mid-term necessitate an increase of the number of judges of the Court of Justice in the future due to the number of appeals against judgments in civil service cases and other areas of law.

At the meeting of the Court of Justice Working Party on 7 November, the Registrar clearly stated that the Court of Justice would be able to cope with the appeal cases in the short term. As regards the evolution of the number of appeals in the mid or longer term, the Court of Justice could be invited to present in 2019 (i.e. three years after the re-integration of the Civil Service Tribunal into the General Court) a report on the evolution of appeal cases and, if necessary, propose appropriate measures .

ANNEX

Initial proposal by the Court of Justice (doc. 8787/11)	Adapted proposal
<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION</p> <p>Having regard to the Treaty on European Union, and in particular the second subparagraph of Article 19(2) thereof,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 254, the first and second paragraphs of Article 257 and the second paragraph of Article 281 thereof,</p> <p>Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,</p> <p>Having regard to the request of the Court of Justice,</p> <p>Having regard to the opinion of the Commission,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p> <p>(1) In order to increase the participation of all the Judges in the decisions of the Grand Chamber of the Court of Justice, there should be an increase in the number of Judges who may participate in the Grand Chamber, and the automatic participation of the Presidents of Chambers of five Judges should cease.</p>	<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p><i>Not necessary as a legal basis - see Regulation n° 741/2012 amending the Protocol on the Statute of the Court of Justice, OJ L 228 of 23.8.12, p. 1.</i></p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 254 and the second paragraph of Article 281 thereof, <i>[reference to Article 257 is no longer necessary]</i></p> <p>Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,</p> <p>Having regard to the request of the Court of Justice,</p> <p>Having regard to the opinion of the Commission,</p> <p><u>After transmission of the draft legislative act to the national parliaments</u> <i>[see Regulation n° 741/2012 - the original draft has already been transmitted to the national parliaments],</i></p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p> <p><i>No longer necessary, as the corresponding amendment has been adopted - see Regulation n° 741/2012.</i></p>

<p>(2) Corresponding adjustments must be made to the quorum of the Grand Chamber and of the full Court.</p>	<p><i>idem</i></p>
<p>(3) The increasing responsibilities of the President of the Court of Justice require the establishment of the office of Vice-President of the Court of Justice in order to assist the President in carrying out those responsibilities.</p>	<p><i>idem</i></p>
<p>(4) In the era of new technology, it no longer appears necessary to retain periods of grace based on considerations of distance.</p>	<p><i>It was decided not to include the corresponding amendment in Regulation n° 741/2012 ; the recital is thus no longer necessary.</i></p>
<p>(5) As a consequence of the progressive expansion of its jurisdiction since its creation, the number of cases before the General Court is now constantly increasing.</p>	<p>(1) As a consequence of the progressive expansion of its jurisdiction since its creation, the number of cases before the General Court is now constantly increasing.</p>
<p>(6) The number of cases brought before the General Court exceeds the number of cases disposed of each year, resulting in a significant increase in the number of cases pending before that court and an increase in the duration of proceedings.</p>	<p>(2) The number of cases brought before the General Court <u>has been steadily increasing over the years</u>, resulting <u>over time</u> in an increase in the number of cases pending before that court and an increase in the duration of proceedings. <i>[changes resulting from the text agreed at the trilogue with the EP in February 2014 and reflected in the EP's first reading position adopted on 15/04/14]</i></p>
<p>(7) That increase in the duration of proceedings does not appear to be acceptable from the point of view of litigants, particularly in the light of the requirements set out in Article 47 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.</p>	<p>(3) That increase in the duration of proceedings does not appear to be acceptable from the point of view of litigants, particularly in the light of the requirements set out in Article 47 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.</p>

<p>(8) The situation in which the General Court finds itself has structural causes relating to the increase in the number and variety of legislative and regulatory acts of the institutions, bodies, offices and agencies of the European Union, as well as to the volume and complexity of the cases brought before the General Court, particularly in the areas of competition and State aid.</p> <p>(9) Consequently, the necessary measures should be taken to address this situation, and the possibility, provided for by the Treaties, of increasing the number of Judges of the General Court is such as to enable both the volume of pending cases and the excessive duration of proceedings before the General Court to be reduced within a short time.</p> <p>(10) In order to enable the specialised courts to continue to function satisfactorily in the absence of a Judge who, while not suffering from disablement deemed to be total, is prevented from participating in judicial business for an extended period of time, provision should be made for the possibility of attaching temporary Judges to those courts.</p> <p>HAVE ADOPTED THIS REGULATION:</p>	<p>(4) The situation in which the General Court finds itself has structural causes relating to the increase in the number and variety of legislative and regulatory acts of the institutions, bodies, offices and agencies of the European Union, as well as to the volume and complexity of the cases brought before the General Court, particularly in the areas of competition and State aid.</p> <p>(5) Consequently, the necessary measures should be taken to address this situation, and the possibility, provided for by the Treaties, of increasing the number of Judges of the General Court is such as to enable both the volume of pending cases and the excessive duration of proceedings before the General Court to be reduced within a short time. <u>This increase should be effected in three successive phases.</u></p> <p><i>No longer necessary, as the corresponding amendment has been adopted - see Regulation n° 741/2012.</i></p> <p><u>5a) It is necessary to adapt accordingly the provisions on the partial replacement that takes place every three years.</u></p> <p>6) <u>Protocol No 3 on the Statute of the Court of Justice of the European Union should therefore be amended accordingly [see Regulation n° 741/2012]</u></p> <p>HAVE ADOPTED THIS REGULATION :</p>
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Article 1

The Protocol on the Statute of the Court of Justice of the European Union shall be amended as follows:

1. The following Article 9a shall be added:

‘The Judges shall elect the President and the Vice-President of the Court of Justice from among their number for a term of three years. They may be re-elected.

The Vice-President shall assist the President of the Court. He shall take the latter’s place when he is prevented from attending, when the office of President is vacant or at the President’s request.’

2. The second paragraph of Article 16 shall be replaced by the following:

‘The Grand Chamber shall consist of 15 Judges. It shall be presided over by the President of the Court. The Vice-President

Article 1

Protocol n° 3 on the Statute of the Court of Justice of the European Union is hereby amended as follows:

1. Article 9 is replaced by the following :

"1. When, every three years, the judges are partially replaced, one half of the number of Judges shall be replaced. If the number of Judges is an uneven number, the number of Judges who shall be replaced shall alternately be the number which is the next above one half of the number of Judges and the number which is next below one half.

2. Paragraph 1 shall also apply when the Advocates General are partially replaced, every three years."

[text agreed in principle at the trilogue with the EP in February 2014]

adopted - see Regulation n° 741/2012

adopted - see Regulation n° 741/2012

<p>and other Judges designated in accordance with the conditions laid down in the Rules of Procedure shall also form part of the Grand Chamber.’</p>	
<p>3. The third and fourth paragraphs of Article 17 shall be replaced by the following:</p> <p>‘Decisions of the Grand Chamber shall be valid only if 11 Judges are sitting.</p> <p>Decisions of the full Court shall be valid only if 17 Judges are sitting.’</p>	<p><i>adopted - see Regulation n° 741/2012</i></p>
<p>4. The fourth paragraph of Article 20 shall be replaced by the following:</p> <p>‘The oral procedure shall consist of the hearing by the Court of agents, advisers and lawyers and of the submissions of the Advocate General, as well as the hearing, if any, of witnesses and experts.’</p>	<p><i>adopted - see Regulation n° 741/2012</i></p>
<p>5. The second paragraph of Article 39 shall be replaced by the following:</p> <p>‘Should the President be prevented from attending, his place shall be taken by the Vice-President or another Judge under conditions laid down in the Rules of Procedure.’</p>	<p><i>adopted - see Regulation n° 741/2012</i></p>
<p>6. The first paragraph of Article 45 shall be deleted.</p>	<p><i>It was decided not to retain this amendment in Regulation n° 741/2012</i></p>

<p>7. In Article 48, the figure ‘27’ shall be replaced by the figure ‘39’.</p> <p>8. The following paragraph shall be added to Article 62c:</p> <p>‘The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties.’.</p> <p style="text-align: center;"><i>Article 2</i></p>	<p>2. <u>Article 48 shall be replaced by the following :</u></p> <p><u>"The General Court shall consist of</u></p> <p><u>- 40 Judges as from 1st September 2015,</u> <u>- 47 Judges as from 1st September 2016,</u> <u>- 56 Judges as from 1st September 2019.</u></p> <p><i>adopted - see Regulation n° 741/2012</i></p>
<p>In Article 2 of Annex I to the Protocol on the Statute of the Court of Justice of the European Union, the current text shall form paragraph 1 and the following paragraph 2 shall be added:</p> <p>‘2. Temporary Judges shall be appointed, in addition to the Judges referred to in the first subparagraph of paragraph 1, in order to take the place of those Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the judicial business for an extended period of time.’</p>	<p><i>adopted - see Regulation n° 741/2012</i></p>

Article 3

1. Points 1, 2, 3 and 5 of Article 1 shall enter into force on the first occasion when the Judges are partially replaced, as provided for in Article 9 of the Protocol on the Statute of the Court of Justice of the European Union, following the publication of this Regulation in the *Official Journal of the European Union*.

2. Points 4, 6, 7 and 8 of Article 1 and Article 2 shall enter into force on the first day of the month following that of the publication of this Regulation in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ..., ...

Article 3

To be replaced by the following transitional provision :

1. The term of office of the additional Judges of the General Court to be appointed pursuant to Article 48 shall be as follows :

- The term of office of six of the twelve additional Judges to be appointed following the entry into force of this Regulation, chosen by lot, shall end on 31 August 2016. The term of office of the other six Judges shall end on 31 August 2019.

- The term of office of three of the seven additional Judges to be appointed as from 1st September 2016, chosen by lot, shall end on 31 August 2019. The term of office of the other four Judges shall end on 31 August 2022.

- The term of office of five of the nine additional Judges to be appointed as from 1st September 2019, chosen by lot, shall end on 31 August 2022. The term of office of the other four Judges shall end on 31 August 2025.

2. This Regulation shall enter into force on the first day of the month following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ..., ...