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**NOTE**

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From:	Presidency
To:	Coreper (Part II)
Subject:	<b>Reform of the General Court of the European Union</b> <b>- Way forward</b>

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**A. Background**

1. On 28 March 2011, the Court of Justice submitted a legislative initiative (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. While the other proposed amendments were adopted on 11 August 2012 and an agreement in principle on the increase of the number of judges has been reached between the co-legislators, it has to date been impossible to overcome differences as to the method of appointment of additional judges.
2. The European Parliament adopted at its plenary session on 15 April 2014 its position at first reading on the Court's initial proposal, supporting an increase of the number of judges by 12.
3. In response to an invitation by the Presidency, the Court of Justice presented on 13 October 2014 a new proposal on the reform of the General Court (document 14448/14 + COR 1) aiming to unblock discussions in the Council. The Court proposes to double the number of judges at the General Court in three stages by 2019, including the integration of the Civil Service Tribunal in the General Court, resulting in a net increase of the number of judges at the General Court by 21 additional judges. This would result in having two judges per Member State at the end of a gradual process :

- First stage (from September 2015): increase of the number of judges by 12.
  - Second stage (from September 2016): transfer of first-instance cases relating to the EU civil service to the General Court and integration of the 7 posts of judges of the Civil Service Tribunal and their chambers staff into the General Court, on the basis of a legislative initiative which the Court of Justice will submit.
  - Third stage (from September 2019): increase of the number of judges by 9.
4. The estimated costs of the proposed increase of the number of judges are set out in an annex to the Court's proposal in *gross* figures (thus without taking into account revenue due to taxes paid *on* salaries). On the basis of the figures provided by the Court of Justice, the *net* costs for the EU budget per year would be as follows:
- |   |                  |
|---|------------------|
| - First phase (+ 12 judges) :             | 9,4 Mio €        |
| - Second phase (integration of the CST) : | 1,9 Mio €        |
| - <u>Third phase (+ 9 judges) :</u>       | <u>7,2 Mio €</u> |
| Total                                     | 18,5 Mio €       |
5. Following discussions in the Working Party on Court of Justice on 7 November 2014 and at a Coreper lunch on 20 November 2014, the Presidency presented on 28 November 2014 options for a possible way forward (document 16217/14) on three issues :
- legal guarantees for putting into practice the three phases of the reform;
  - the budgetary costs of the reform, with a proposal (accepted by the Court of Justice) for reduced costs by about 25 % compared to the original proposal by reducing the number of legal secretaries and assistants as from the third phase; the overall costs per year at cruising speed from 2019 would thus be approximately 14 million Euro in net figures (0,013 % of the general EU budget);
  - the effects of the envisaged reform on the Court of Justice.
6. This document was discussed at the meeting of the Working Party on Court of Justice on 1 December 2014. On this basis a Coreper breakfast was held on 2 December 2014.

## **B. Justification of the proposal**

7. As the Court points out, the number of judges proposed is justified by the significant increase of the number of new cases as compared to the situation on 2011, as is demonstrated by the statistics provided by the Court in Annex I.

8. This situation leads to an ever increasing duration of proceedings, which is a matter of concern in particular in the areas of state aid and competition, in which the average duration of proceedings in cases completed in 2013 was respectively 48,1 months and 46,4 months. In several cases, the Court of Justice found a breach by the General Court of the reasonable time principle laid down in Article 47 of the Charter of Fundamental Rights, and as a consequence first actions for damages have been brought before the General Court, involving claims for damages of close to 23,3 million Euro. In addition, delayed procedures, in particular on competition and state aid cases, cause considerable costs for economic operators.
9. There are no indications that the current upward trend of the number of new cases will be reversed in the future. On the contrary, recently adopted legislation and proposals currently under discussion are likely to lead to a further increase of cases brought before the General Court (REACH, decisions of the newly established financial authorities and of the ECB, decisions in the field of data protection). In addition, increased activity of the EU in certain areas, e.g. restrictive measures, is likely to lead to further litigation.
10. The increase of the number of judges of the General Court would also have a positive impact on the quality of its judgments. As a matter of fact, between 2011 and 2013, no case was decided by the Grand Chamber, and in 2013, 85 % of the cases were decided in chambers of three judges and only 1,1 % by chambers of five judges. With the proposed reform, it would be possible for the General Court to decide on the attribution of cases in a manner which takes better account of their importance, to allocate judges to the chambers according to the caseload in different areas, thus increasing flexibility and rapidity. It would also reinforce the coherence of the EU judicial system as a whole and make it simpler, as it would comprise only two levels of jurisdiction and avoid divergences in case law.

### **C. Questions raised by delegations**

11. In discussions so far, it appeared that there was support among delegations for a solution along the lines proposed by the Court. However, the following questions and concerns were raised.

#### **a) Legal guarantees**

12. A number of delegations insisted that the three phases of the reform be set out clearly in a legally binding text, which should also clarify the mechanism of the integration of the Civil Service Tribunal and the fact that there should be no more than two judges originating from the same Member State altogether in both the General Court and the Civil Service Tribunal.

13. This can be achieved by amending 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 is still on the table, 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. (A possible draft text, based on the phasing-in as proposed by the Court, was included in the Annex to document 16217/14.)

b) Budgetary costs

14. A number of delegations expressed doubts as to whether the proposed increase was the most cost-effective option and/or asked whether there was any potential for savings.
15. When examining the budgetary impact of the proposal, account needs to be taken of the factual elements set out under point B) above and the costs of non-reform. Against this background, in the short term, the priority should be to enable the General Court to reduce the backlog of pending cases. At the same time, the reform should enable the General Court in the long term to carry out its functions under the Treaties, in the respect of the fundamental right to a process within a reasonable time. 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.
16. Reducing the number of legal secretaries (*référéndaires*) and assistants could be seen as the way to achieve these objectives :
- During phases 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).
17. This would reduce costs by about 25 % compared to the original proposal; the overall costs per year at cruising speed from 2019 would thus be approximately 14 million Euro in net figures (0,013 % of the general EU budget).

*c) Timeframe of the envisaged increase*

18. Some delegations questioned whether a General Court with 56 judges would be justified and necessary in 2019 and argued that before deciding on the third phase an assessment of the situation should be made.
19. In this context, account should be taken of the fact that the measures mentioned under point B) above to increase the quality of the jurisdiction and the freeze of the overall number of legal secretaries and assistants as from 2019 are likely to reduce at least temporarily the output of each judge per year: whereas, based on the estimate (provided by the Court in mid-November) of 750 cases closed in 2014, each judge settled on average about 27 cases per year, the output may drop in 2019 to about 20-21 cases per judge and year.
20. Considering that the number of new cases brought before the General Court in 2014 is estimated at 950 and that the constant upward trend observed over the past years is likely to continue, that the integration of the Civil Service Tribunal into the General Court in 2016 is neutral as regards the total capacity of the General Court (given that between 160 and 180 civil service cases per year<sup>1</sup> will have to be dealt with by the General Court), it is rather likely that in 2019 the total number of cases brought before the General Court will be around 1200. Under these assumptions and taking into account that the General Court could appoint Advocates General from among its members, this would indeed necessitate a General Court with 56 judges in order to keep pace with the number of incoming cases.
21. This does not exclude, however, to foresee an assessment of the situation of the General Court at each stage which, if necessary, could lead to certain adjustments, it being understood that these will not touch upon the number of judges, but may include any other aspect relating to the functioning and the administrative expenditure of the Court.

*d) Effects of the envisaged reform on the Court of Justice*

22. A number of delegations raised concerns that the reform of the General Court might lead to an overload of the Court of Justice due to the number of appeals in civil service cases.
23. In this respect, the Court of Justice has made it clear that it will be able to cope with the additional appeal cases in the short term. In line with current practice, it will present yearly figures on its judicial activity, including on the evolution of appeal cases, and, if necessary, propose appropriate measures.

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<sup>1</sup> It follows from the annual report of the Court of Justice for the year 2013 that the number of cases brought before the Civil Service Tribunal between 2009 and 2013 was as follows : 2009 - 113 cases; 2010 - 139 cases; 2011 - 159 cases; 2012 - 178 cases; 2013 - 160 cases. In 2013, 211 cases were pending before the Civil Service Tribunal.

*e) Effects on the internal organization of the General Court*

24. Some delegations considered that the enlargement of the General Court to a total of 56 judges must entail changes to the internal organization of the General Court, including in particular the creation of specialized chambers.
25. The General Court has provided assurances that it will proceed to a profound review of its internal organization and its Rules of Procedure and submit appropriate proposals in time before the final phase of its enlargement in 2019.

*f) Method for the selection of the Member States who can propose candidates in phases 1 and 2*

26. A number of delegations wished to have clarity on the method for the selection of the Member States who can propose candidates for additional judges in phases 1 and 2.
27. In the first place, it should be underlined that the importance of this issue should not be overrated, given that at the latest in 2019 there will be two judges originating from each Member State at the General Court. It is therefore suggested that this issue should not hold up an agreement in principle on the reform, it being understood that discussions between the Member States on the appropriate method will continue. This method should be based on objective and egalitarian criteria and make sure that at no point of time there are more than two judges originating from one Member State in the General Court and the Civil Service Tribunal taken together.

**D. Conclusions**

28. In the light of the above and given the urgency to make progress on the necessary reform of the General Court, Coreper is invited to agree on the following elements for the way forward.
  - a) The number of judges at the General Court should be increased to 56 in three stages, it being understood that the objective is that each Member State will have two judges at the General Court :
    - from September 2015 : increase of the number of judges by 12.
    - from September 2016 : transfer of first-instance cases relating to the EU civil service to the General Court and integration of the 7 posts of judges of the Civil Service Tribunal and their chambers staff into the General Court, on the basis of a legislative initiative which the Court of Justice will submit in 2015.
    - from September 2019 : increase of the number of judges by 9.

- b) During phases 1 and 2, each of the additional judges would have three legal secretaries. The third phase will not require any additional administrative costs (no recruitment of additional legal secretaries and assistants).
- c) The Court of Justice will present yearly figures on its judicial activity, including on the evolution of appeal cases, and, if necessary, propose appropriate measures.
- d) At each stage of the enlargement of the General Court, an assessment of the situation of the General Court should take place which, if necessary, could lead to certain adjustments, it being understood that these will not touch upon the number of judges, but may include any other aspect relating to the functioning and the administrative expenditure of the Court.
- e) The General Court is expected to proceed to a review of its internal organization and its Rules of Procedure and submit appropriate proposals in time before the final phase of its enlargement in 2019.

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In case of an agreement on the above elements, Coreper is invited to mandate the incoming Presidency to continue work on this basis.

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## ANNEX 1

### Financial information concerning the proposal of the Court of Justice of the European Union for the strengthening of the General Court

*(Response to meetings of 7 November 2014 of the Council's 'Court of Justice' Group and of 11 November 2014 of the European Parliament's Committee on Legal Affairs)*

#### 1. INCREASE IN THE NUMBER OF CASES BROUGHT BEFORE THE GENERAL COURT

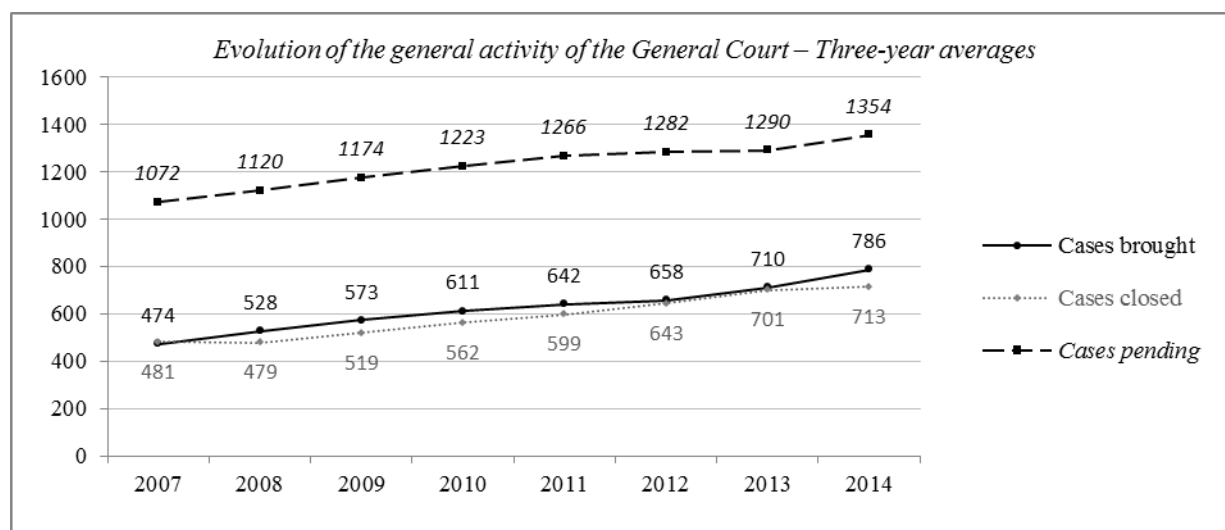
##### *Strong growth in activity since the Court's proposal of 2011*

<i>Number of cases</i>	2011	2012	2013	2014*
Cases brought	722	617	790	950
Cases closed	714	688	702	750
Cases pending	1308	1237	1325	1500

\* Estimates on the basis of the figures available on 1 November 2014

- From 2007 to 2014 the number of cases brought before the General Court has risen by 82%.
- This increase is ever more rapid, the number of new cases having risen by more than 20% a year since 2012 (compared to 10%, on average, since 2007).

##### *Clear structural upward trend in numbers of cases*



- Changes in the running three-year averages <sup>2</sup> of the number of cases brought, which make it possible to smooth out the peaks and troughs of certain years, do indeed confirm the existence of a sustained trend of growth in the number of cases before the General Court since 2007.
- The increased number of cases closed does not enable the General Court to cope with the number of cases brought and to prevent the backlog of pending cases growing larger.

<sup>2</sup> Calculated on the basis of the data for the years n, n-1 and n-2.



- ▶ That rise in the number of actions before the General Court, attributable to the increasing effect of EU law on European economic activity, bears out the relevance of the Court's proportionate, step-by-step proposal, consisting of increasing the number of Judges in the General Court in three stages in order to reduce the backlog and to keep pace with the rise, according to the following procedure:
  - 12 Judges in 2015 ;
  - 7 Judges in 2016, by incorporating the Civil Service Tribunal ('the CST') ;
  - 9 Judges in 2019.

## 2. COST OF THE REFORM

### *A budgetary cost of 18.5 million euros net*

Stages of the strengthening of the General Court	Gross cost (€)	Net cost (€)
2015 - 12 Judges	11.6 million	9.4 million
2016 - 7 Judges ( <i>incorporation of the CST</i> )	2.4 million	1.9 million
2019 - 9 Judges	8.9 million	7.2 million
<b>Total (28 Judges) :</b>	<b>22.9 million</b>	<b>18.5 million</b>

- ▶ 95% of the net budgetary cost relates to expenditure on the remuneration of the Judges and of the staff in the *cabinets* and the Registry. In consequence, the net cost to the institution's budget is considerably less (practically 20%), on account of the revenue corresponding to social security and tax deductions from remuneration.

### *A cost spread over several financial years*

	Gross budget		Net budget	
The Court's total budget for the year 2014	348.7 million €	100%	302.7 million €	100%
2015 - 12 Judges	11.6 million €	3.3 %	9.4 million €	3.1 %
2016 - 7 Judges ( <i>incorporation of the CST</i> )	2.4 million €	0.7 %	1.9 million €	0.6 %
2019 - 9 Judges	8.9 million €	2.6 %	7.2 million €	2.4 %
<b>Total (28 Judges)</b>	<b>22.9 million €</b>	<b>6.6 %</b>	<b>18.5 million €</b>	<b>6.1 %</b>

- ▶ The total cost of the reform amounts to 6.1% of the Court of Justice's net budget, which is, *mutatis mutandis*, equivalent to an annual increase, spread over the five financial years 2015 to 2019 of about 1.2%.

### *A charge of 0.34% of the institutions' total administrative budget*

- ▶ The total budgetary cost of this proposal represents an altogether reduced burden in relation to the amount of administrative expenditure of the institutions in the aggregate, as shown in heading 5 of the EU budget (0.34 % of the 6.8 milliards in heading 5).

Total administrative budget of the institutions (2014)	6 783.2 million€	100%
2015 - 12 Judges	11.5 million €	0.17 %
2016 - 7 Judges ( <i>incorporation of the CST</i> )	2.4 million €	0.03 %
2019 - 9 Judges	8.9 million €	0.13 %
<b>Cost and total burden of the strengthening (28 Judges) :</b>	<b>22.9 million €</b>	<b>0.34 %</b>

- It is also to be observed that the budgetary cost of the Court's proposal remains very clearly within the margin available under the ceiling in heading 5 of the multiannual financial perspectives, as it appears at this stage in the estimates for the period 2015-2020.
- Furthermore, the principle of strengthening the General Court is fully consistent with the national budgetary decisions made by most of the Member States between 2006 and 2012, those decisions confirming the desire of those States to maintain the efficiency and rapidity of justice,<sup>3</sup> in spite of the context of controlling public expenditure.

***A charge of 0.016% to the EU's general budget***

General budget of the European Union (2014)	135 504.6 million€	100%
Total budget of the Court of Justice	348.7 million €	0.257%
Total burden of the proposed reform	22.9 million €	0.016%

***Effect on the court's staff: strengthening limited to the necessary minimum***

- The Court's proposal is the solution at the lowest level possible, the best suited to responding to the urgency and necessity of absorbing the backlog.  
In addition to the Judges themselves, strengthening the staff corresponds to:
  - temporary posts making it possible to make up a complete *cabinet* for each of the new Judges as and when they take up their duties, less the *référéndaire* posts granted by the budgetary authority for the financial year 2014;
  - increasing the number of members of staff in the General Court Registry.
- This structure corresponds to the minimum structure that will give the General Court the striking force necessary to tackle absorbing the backlog of cases pending (about 1500 at the end of the year 2014), to reduce the length of proceedings, and in addition to meet the estimated growth in the number of cases.

***Effect on departmental staffing: a very rigorous approach***

- Likewise, the Court's proposal adopts the strictest of approaches by not providing, at this stage, for any strengthening of the support services (in particular, the translation and interpretation services).
- This rigorous approach is in keeping with that adopted in recent years, as evidenced by the fact that:
  - the Court made no requests for reinforcement of its staff on the entry into force of the Treaty of Lisbon, contrary to the approach followed by most of the other institutions;
  - during the period 2007-2012,<sup>4</sup> the overall change in staff numbers at the Court of Justice (+3.7%) was less than the average change in staff numbers in the other institutions and bodies (+6.5%),<sup>5</sup> even though the Court – because it is a judicial body – has no control over its workload and even though the number of cases brought rose sharply over the same period;
  - the Court has played its part in the staff-reduction action imposed on the institutions (59 posts given up in the financial years 2013, 2014 and 2015).

<sup>3</sup> The European Commission for the Efficiency of Justice (CEPEJ), *Report on European judicial systems*, "Efficiency and quality of justice", 5<sup>th</sup> report - Edition 2014 (2012 data), p. 24; 4<sup>th</sup> Report - Edition 2012 (data 2010), p. 23; and 3<sup>rd</sup> Report - Edition 2010 (data 2008), p. 20.

<sup>4</sup> The period 2007-2012 enables the relevant analysis of staffing trends since, on the one hand, the judicial structure did not change in that period (numbers of Judges, Advocates General and courts unaltered) and, on the other, the period is long enough (6 years) for the fundamental trends in judicial activity to be revealed.

<sup>5</sup> In the period 2007-2012, changes in the table of posts of the other institutions and bodies of the EU was as follows: Parliament: + 11.6%; Council: + 1.9%; Commission: + 5.8%; Court of Auditors: +6.1%; Economic and Social Committee: + 3.7%; Committee of the Regions: +12.4%.

### 3. COSTS OF FAILING TO REFORM

- ▶ The cost of strengthening the General Court must be assessed by the yardstick of the cost of failing to strengthen it properly. In addition to damage to the image of European justice, the General Court's current inability to cope with its workload leads to excessive time being taken to handle cases, the economic repercussions of which give rise to the risk both of a burden being placed on the EU budget and of the proper functioning of the internal market being compromised.

***More than 23 million euros claimed from the EU because a reasonable duration of proceedings has been exceeded***

- ▶ Any applicant whose case has been decided after an excessively long time in infringement of Article 47 of the Charter of Fundamental Rights of the European Union, which gives everyone the right to have his case heard within a reasonable time, may bring an action for damages before the General Court for an order against the Union.
- ▶ In the field of competition law, four applicants have already brought actions before the General Court for breach of the duty to adjudicate within a reasonable time. In total, they claim 23.3 million euros and interest:

Applicants	Cases	Amounts claimed	with interest from:
Kendrion N.V.	T-479/14	13 358 million €	26.11.2013
Gascogne Sack Deutschland GmbH	T-577/14	3 881 million €	04.08.2014
Groupe Gascogne S.A.			
Aalberts Industries N.V.	T-725/14	6 082 million €	13.01.2010

- ▶ The applicants base their applications on, in particular, the economic and financial costs directly caused to them by the excessive length of the proceedings, such as:
  - interest on the amount of the fine calculated by the Commission for the period exceeding a reasonable duration for the proceedings;
  - the cost of the bank guarantee provided for the purpose of paying the fine and interest, which the applicants had to have extended, on less favourable terms, pending the outcome of the proceedings.
- ▶ The number of actions based on infringement of Article 47 of the Charter is bound to rise:
  - to date, the Court of Justice has found an excessive length of time taken by the General Court in the handling of 9 cases;
  - infringement of a reasonable duration of proceedings has also been raised in several cases pending before the Court or recently settled by it;
  - if there is no strengthening of the General Court, the duration of competition law procedures before that body, the number of cases pending and the regular bringing of new cases in that field will, it is to be feared, lead to an increased number of actions based on infringement of Article 47 of the Charter.

***Disturbances of the internal market assessed at several milliard euros***

- ▶ In the light of the nature, largely economic, of the cases within the jurisdiction of the General Court, delay in the handling of cases brings about immediate repercussions for economic operators, for the proper functioning of the internal market and, therefore, for the development of growth in Europe.

- ▶ Thus, challenging before the General Court the fines imposed by the Commission for breaches of competition law leads to the locking up, in one form or another, for the whole length of the proceedings, of considerable amounts of money of which the European economy is thereby deprived. In this regard, the budgetary cost of strengthening the General Court is very little, compared to the aggregate amount of the fines challenged in cases pending before the Union judicature, which comes to 7.783 milliard euros, according to the most recent information sent to the Court by the Commission.
- ▶ In addition, there are the sums amounting to milliards of euros at stake, particularly in cases concerning State aid (242 cases pending before the General Court at 1 November 2014) or structural funds, which call for a swift response, having regard to the serious social and economic disturbances that they are liable to entail.

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