COUNCIL OF THE EUROPEAN UNION

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COVER NOTE

from:	Mr V. SKOURIS, President of the Court of Justice of the European Union
dated:	4 April 2011
to:	Mr J. MARTONYI, President of the Council of the European Union
Subject:	Draft amendments to the Statute of the Court of Justice of the European Union and to Annex I thereto

Delegations will find attached a letter forwarded by Mr V. SKOURIS, President of the Court of Justice of the European Union, to Mr J. MARTONYI, President of the Council of the European Union, the above draft from the Court of Justice of the European Union and an explanatory note accompanying the draft.

The draft Regulation of the European Parliament and of the Council relating to temporary judges of the European Union Civil Service Tribunal, referred to in the explanatory note, is set out in 8786/11.

ANNEX

Luxembourg, 28 March 2011

Mr János Martonyi
President of the Council of the
European Union
175, rue de la Loi

B - 1048 BRUSSELS

Dear President,

With reference to the second paragraph of Article 281 of the Treaty on the Functioning of the European Union and Article 106a(1) of the EAEC Treaty, I hereby submit to you the draft amendments to the Statute of the Court of Justice set out in the attached document.

The proposed amendments concern the three courts composing the Court of Justice of the European Union, and are intended, in essence, to amend the rules relating to the composition of the Grand Chamber and to establish the office of Vice-President of the Court of Justice, to increase the number of Judges of the General Court and to provide for the possibility of attaching temporary Judges to the specialised courts.

The proposed amendments are accompanied by an explanatory note, to which reference should be made.

These amendments, which are also being submitted to the President of the European Parliament, are enclosed in all the official languages.

A statement enabling the financial impact of the proposed amendments to be assessed will be sent to you as soon as possible.

Yours faithfully,

Vassilios SKOURIS

DRAFT

AMENDMENTS TO THE STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION AND TO ANNEX I THERETO

The Court of Justice hereby submits to the European Union legislature draft amendments to the Statute of the Court of Justice and to Annex I thereto. [1] This single text incorporates separate proposals in respect of each of the three jurisdictions which comprise the Court of Justice of the European Union.

I. Proposals relating to the Court of Justice

The Court of Justice is endeavouring not only to simplify the procedure that applies to cases brought before it but also to adapt its Rules of Procedure to case-law and current practice, and to make them easier to understand. It is thus embarking on a general recasting of those rules, which will be submitted to the Council shortly.

The simplification measures, which also affect the Statute of the Court of Justice, are intended to improve efficiency in the work of the Court and to reduce, as far as possible, the duration of proceedings. Although the situation in the Court of Justice is currently satisfactory – the Court having succeeded, for example, in reducing the average duration of preliminary ruling proceedings from 25.5 months in 2003 to 16 months in 2010 – the prospects of a constant increase in the number of cases brought, in particular following the 2004 and 2007 accessions and the entry into force of the Treaty of Lisbon, need to be considered.

The Court also considers it desirable to establish the office of Vice-President of the Court of Justice and to amend the rules relating to the composition of the Grand Chamber.

The current structure of the Grand Chamber and the rules determining how it operates – a quorum of nine Judges together with the participation in every case of the President of the Court and the Presidents of the Chambers of five Judges – are the product of amendments introduced by the Treaty of Nice, which entered into force on 1 February 2003.

Since that date, there have been a number of changes affecting the work of the Court: the accession of 12 new Member States; the transition from two to three Chambers of five Judges in May 2004 and to four Chambers of five Judges in October 2006; the introduction of the urgent preliminary ruling procedure in March 2008; and the introduction of the review procedure following the establishment of the Civil Service Tribunal.

[1] OJ 2004 L 333, p. 7, with corrigendum OJ 2007 L 103, p. 54.

At present, the President of the Court and the Presidents of the Chambers of five Judges have a very heavy workload, whereas other Judges sit in relatively few cases assigned to the Grand Chamber. The participation of those other Judges in the work of the Grand Chamber could be further reduced should the Court decide to establish a new Chamber of five Judges following an increase in the number of cases.

Furthermore, the automatic participation of the Presidents of Chambers of five Judges in cases assigned to the Grand Chamber could suggest that they represent within the Grand Chamber the Judges of their Chambers, a role which does not follow in any way from the nature of their office. Such a situation might thus be perceived as affecting the principle of equality between Judges.

The present proposal provides for broader participation by the Judges in cases assigned to the Grand Chamber, allowing them to sit far more frequently than at present (in almost half, instead of a third, of all cases). That would be achieved by the amendment of Articles 16 and 17 of the Statute so as to increase to 15 the number of Judges constituting the Grand Chamber and to end the automatic participation of the Presidents of Chambers of five Judges in Grand Chamber cases. The latter amendment would also have the advantage of enabling the Presidents of Chambers of five Judges to devote more time to managing their Chambers, which would help further to improve efficiency in the work of those Chambers, and to ensuring the harmonious development of the case-law.

The office of Vice-President would be established and the Vice-President would sit, like the President, in every case assigned to the Grand Chamber. The permanent presence of two persons, together with the more frequent participation of the other Judges in the work of the Grand Chamber, would ensure that its case-law is consistent. In addition, and in any event, under the current rules governing the designation of Judges, it is possible to ensure that at least one or, more often, two Presidents of Chambers of five Judges sit in every case assigned to the Grand Chamber.

The number of Judges forming the Grand Chamber (15) has been chosen on the basis of the composition of the ‘grand plenum’ prior to the amendment introduced by the Treaty of Nice, which operated satisfactorily.

Corresponding adjustments must be made to the rules relating to the quorum of the Grand Chamber and of the full Court.

In addition to sitting in every Grand Chamber case, the Vice-President would also assist the President of the Court in his duties. The responsibilities borne by the President have increased substantially following the successive enlargements of the European Union, particularly with regard to the representation and administration of the Court. The same problem appears to have been encountered by various national and international courts, such as the European Court of Human Rights, which have a structure comparable to that proposed.

The amendment to the fourth paragraph of Article 20 concerns the reading at the hearing of the report presented by the Judge-Rapporteur. In practice, there has been no such reading for 30 years or so.

The amendment to Article 45 is designed to abolish periods of grace based on considerations of distance. Those periods of grace, which originally reflected the time needed for postal communications to reach the Court, no longer serve that purpose and were, indeed, harmonised in 2000 to a fixed period of 10 days, irrespective of the place of sending.

It is proposed that those periods of grace be abolished, as it seems increasingly difficult to justify their retention in this era of new technology. This will also avoid confusion between the various types of time-limit, some of which are currently extended on account of distance, while others are not.

II. Proposals relating to the General Court

The Court of Justice also proposes that the number of Judges of the General Court be increased by 12, from 27 to 39.

The difficulties faced by European Union litigants bringing a case before the General Court are well known. For several years now, the number of cases disposed of by the General Court has been lower than the number of new cases, so that the number of pending cases is rising constantly. At the end of 2010, there were 1 300 cases pending, whereas, in the same year, 527 cases were disposed of. From 20.9 months in 2004, the average duration of proceedings rose to 27.2 months in 2009. Even though it was reduced to 24.7 months in 2010, it is much greater in certain classes of action. Thus, the average duration of proceedings in cases dealt with by way of judgment last year was 42.5 months for State aid cases and 56 months for other competition cases.

In Case C-385/07 P *Der Grüne Punkt* [2009] ECR I-6155, the Court of Justice held that competition proceedings before the General Court which lasted five years and ten months had infringed the principle that the case should be dealt with within a reasonable time, a principle expressed not only in the second paragraph of Article 47 of the Charter of Fundamental Rights but also in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The latter aspect could place the European Union in a delicate position at a time when its accession to that convention is being negotiated.

Simply to state that there has been a failure to adjudicate within a reasonable time does not solve the problem, which is structural and linked to the particularly complex nature of those cases – such as competition, including State aid, cases or those concerning EAGGF investigations [2] – which require a considerable amount of factual information to be taken into consideration. Whatever it does, the General Court is unable to deal with the volume of cases lodged every year, still less absorb the accumulated backlog.

[2] These are actions brought by the Member States against Commission decisions excluding from European Union financing certain expenditure incurred by the Member States under the EAGGF Guarantee Section, the EAGF or the EAFRD, or actions brought by undertakings against Commission decisions withdrawing financial assistance because of irregularities.

The current increase in workload is due to the devolution of jurisdiction, since 2004, to rule on certain classes of action or proceedings brought by the Member States; [3] to the increase in litigation following the 2004 and 2007 accessions; to the litigation engendered by the increase, resulting from greater European integration, in the number and variety of legislative and regulatory acts of the institutions, bodies, offices and agencies of the European Union; and to the growth of litigation relating to Community trade mark applications [4] caused by the rise in the number of such applications.

In addition to the number of cases currently pending, the likely increase in the number of cases brought before the General Court must be taken into account. In 2000 there were 787 cases pending. In 2005 there were 1 033 and, in 2010, there were 1 300, an increase of 65% between 2000 and 2010. To add to that existing increase there will be more new cases as a result of the entry into force of the Treaty of Lisbon. That treaty, it will be recalled, eased the conditions governing the admissibility of actions for annulment against regulatory acts under Article 263 TFEU. Furthermore, by virtue of Article 275 TFEU, and in consequence of the repeal of Article 35 TEU as applicable before the Treaty of Lisbon, the General Court has acquired jurisdiction to hear and determine actions in new areas of law. Finally, it has been clear since 1 December 2009 that applicants and their representatives will make full use of the opportunities offered by the elevation of the Charter of Fundamental Rights of the European Union to the status of primary law [5] and, in the near future, the European Union's accession to the ECHR.

In addition to those areas of litigation, further litigation will be generated by the application of the numerous regulations establishing European Union agencies, in particular the REACH Regulation. [6] It cannot be ruled out that the influx of cases generated by such legislation, raising novel and technically complex issues, will be not gradual and continuous but sudden and intense.

Certain measures have already been adopted. In 2005, the Civil Service Tribunal was established to relieve the General Court of that specific and readily severable caseload. However, as the graph in Annex 1 shows, the benefits of the establishment of that specialised court can be seen only for 2005 and 2006. In 2007 there was a resumption of the upward trend in the number of cases brought.

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[3] Council Decision 2004/407/EC, Euratom of 26 April 2004 amending Articles 51 and 54 of the Protocol on the Statute of the Court of Justice (OJ 2004 L 132, p. 5).

[4] In accordance with Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

[5] First subparagraph of Article 6(1) TEU, as amended by the Treaty of Lisbon.

[6] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

The General Court has adopted a number of internal measures, some regulatory or organisational, others involving the use of information technology. However, and in spite of the establishment of the Civil Service Tribunal, those measures have not enabled it to stem the increase in the backlog, still less to absorb it.

The Court of Justice believes that a structural solution is urgently required, although this does not preclude the adoption of further internal measures, which are moreover being considered by the General Court.

The Treaties offer two possible routes to reform:

The *first* is provided for in the first paragraph of Article 257 TFEU, which states: 'The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.' This first possibility would entail the establishment of a specialised court with jurisdiction to hear and determine direct actions in a specific area. The field of intellectual property has been mooted in that regard. [7]

The *second* is available under the second subparagraph of Article 19(2) TEU, which provides that '[t]he General Court shall include at least one judge per Member State', and the first paragraph of Article 254 TFEU, according to which '[t]he number of Judges of the General Court shall be determined by the Statute of the Court of Justice of the European Union'. This option would consist in increasing the number of Judges of the General Court by means of an amendment to Article 48 [8] of the Statute in accordance with the mechanism provided for in the second paragraph of Article 281 TFEU.

Having weighed up the two options at length, the Court of Justice has come to the conclusion that an increase in the number of Judges is clearly preferable to the establishment of a specialised court in the field of intellectual property. Its reasons relate to the *effectiveness* of the proposed solution, the *urgency* of the situation, the *flexibility* of the measure envisaged and the *consistency* of European Union law.

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[7] The establishment of such a court is the option proposed by the General Court, which adopted that position at its plenary meetings on 8 April 2008 and 22 April 2009, and confirmed its choice in a document sent to the President of the Court of Justice on 22 December 2009.

[8] According to Article 48 of the Statute, '[t]he General Court shall consist of 27 Judges'.

With regard to the *effectiveness* of establishing a specialised court in the field of intellectual property, examination of the volume of cases pending before the General Court [9] shows that removing the trade mark caseload would not resolve the overload. Repetitive cases which can be dealt with relatively quickly would be passed to the specialised court, whereas the complex cases (the majority of the 'other actions') would remain within the jurisdiction of the General Court. Yet the number of pending complex cases continues to grow unchecked, and it is precisely to deal with those cases that the General Court requires reinforcement. There is, therefore, every reason to fear that a transfer of trade mark cases would offer only a brief respite, as did the transfer of staff cases. Any such respite would be all the more limited since, once the specialised court began delivering judgments, the number of appeals to the General Court would *increase*, partly cancelling out the volume of cases transferred to the specialised court, quite apart from any possible *addition* of preliminary ruling proceedings to the General Court's jurisdiction.

Increasing the number of Judges within the General Court, on the other hand, offers greater advantages than establishing a specialised court. It is not necessary to establish such a court in order to achieve the greater productivity sought by specialisation, which can equally be achieved at the level of the chambers within a general court. By contrast, account should be taken of the risks associated with the limited number of Judges in a specialised court; the absence of any one of them, on medical or other grounds, can create serious difficulties in the functioning of that court. That is indeed precisely why the Civil Service Tribunal is seeking to have the option of calling, in certain circumstances, on temporary Judges. Finally, in organisational terms, it is easier to integrate new Judges into an existing organisational structure than to establish a new one.

In view of the *urgency* of the situation, the speed with which the proposed solution can be implemented is a critical factor for the Court of Justice. Establishing a specialised court, appointing its Judges, selecting its Registrar and adopting its rules of procedure would probably slow down the handling of cases over a period of approximately two years, as was the case when the Civil Service Tribunal was established. The appointment of additional Judges to the General Court, on the other hand, could have an almost immediate effect on the handling of cases and, therefore, on the backlog and the time taken for proceedings to be completed.

[9] See the table in Annex 2.

Another advantage of the proposed solution is its *flexibility* and the fact that it is reversible. Relative variation in the different types of caseload within a single court has no impact on its structure. The General Court can use such additional human resources as may become available if the number of cases falls in a particular area [10] to deal with cases in other areas. Furthermore, a specialised court could always be established at a later stage should the need arise, whether in relation to intellectual property or to take account of developments in particular areas of litigation, such as matters covered by the REACH Regulation. By contrast, it would be decidedly more difficult to dismantle a new court once it had come into operation than to reduce the number of Judges by providing for certain posts to lapse when terms of office expire.

In addition to these practical considerations, there are others associated with the concern to maintain the *consistency* of European Union law. Trade mark cases include disputes about the registration of Community trade marks, currently within the jurisdiction of the General Court and, on appeal, of the Court of Justice, but also disputes relating to infringements or to national trade marks, which are brought before the Court of Justice in the context of questions referred for a preliminary ruling on the interpretation of Directives 89/104 and 2008/95. [11] These cases require the uniform interpretation – preferably by a single court – of certain concepts, whether they appear in Regulation No 207/2009 or in the directives. It has accordingly been contended that any transfer to a specialised court of direct actions relating to Community trade marks ought to go hand in hand with a transfer to the General Court of preliminary ruling proceedings relating to trade marks.

A Community trade mark application could thus be subject to six successive levels of review [12] and, as has been stated above, the reduction in the General Court's caseload as a result of the decrease in the number of direct actions would be partly cancelled out by an increase in the number of appeals and the addition of preliminary ruling proceedings. Furthermore, the advantages, in terms of consistency in the case-law on trade marks, are slight in comparison with the negative repercussions of such a transfer on other areas, such as the internal market – including, in particular, the free movement of goods – or the principles applicable to references for a preliminary ruling as such, a delicate matter on the border between the jurisdiction of the Court of Justice and that of the national courts, that is to say, between the competences of the European Union and those of the Member States.

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[10] Thus, it has been observed that there are currently fewer staff cases, but the causes are unclear and it is therefore not possible to foresee how the situation will evolve. A similar trend cannot be ruled out even in relation to intellectual property matters, in view of the extensive body of case-law that is still being developed in relation to the Community trade mark.

[11] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), replaced by Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25), which entered into force on 28 November 2008.

[12] Decision of the OHIM examiner, decision on any opposition, decision of the Board of Appeal of OHIM, action before the specialised court, appeal to the General Court, review by the Court of Justice.

It is true that Article 256(3) TFEU provides for the possibility of conferring on the General Court the task of hearing and determining questions referred for a preliminary ruling 'in specific areas' and that, just as in the case of judgments delivered by the General Court on appeal, its preliminary rulings would be subject to review. Review is, however, an exceptional procedure, to be used only sparingly where the interests of European Union law clearly outweigh the imperfections of the review procedure with regard to the participation of the parties. Review is not, therefore, an appropriate tool for ensuring consistency of case-law other than in relation to important issues of principle.

Thus, using the option of conferring on the General Court responsibility for dealing with questions referred for a preliminary ruling – an option envisaged rather in order to relieve the Court of Justice should it find itself in difficulty, which is currently not the case – would be likely to give rise to more difficulties than it would provide benefits. Apart from the consistency issues mentioned above, the allocation of questions referred for a preliminary ruling between the two courts could also create confusion among the Member States' courts and discourage them from referring such questions, particularly in view of the procedural delays involved in the event of a review by the Court of Justice of a decision of the General Court.

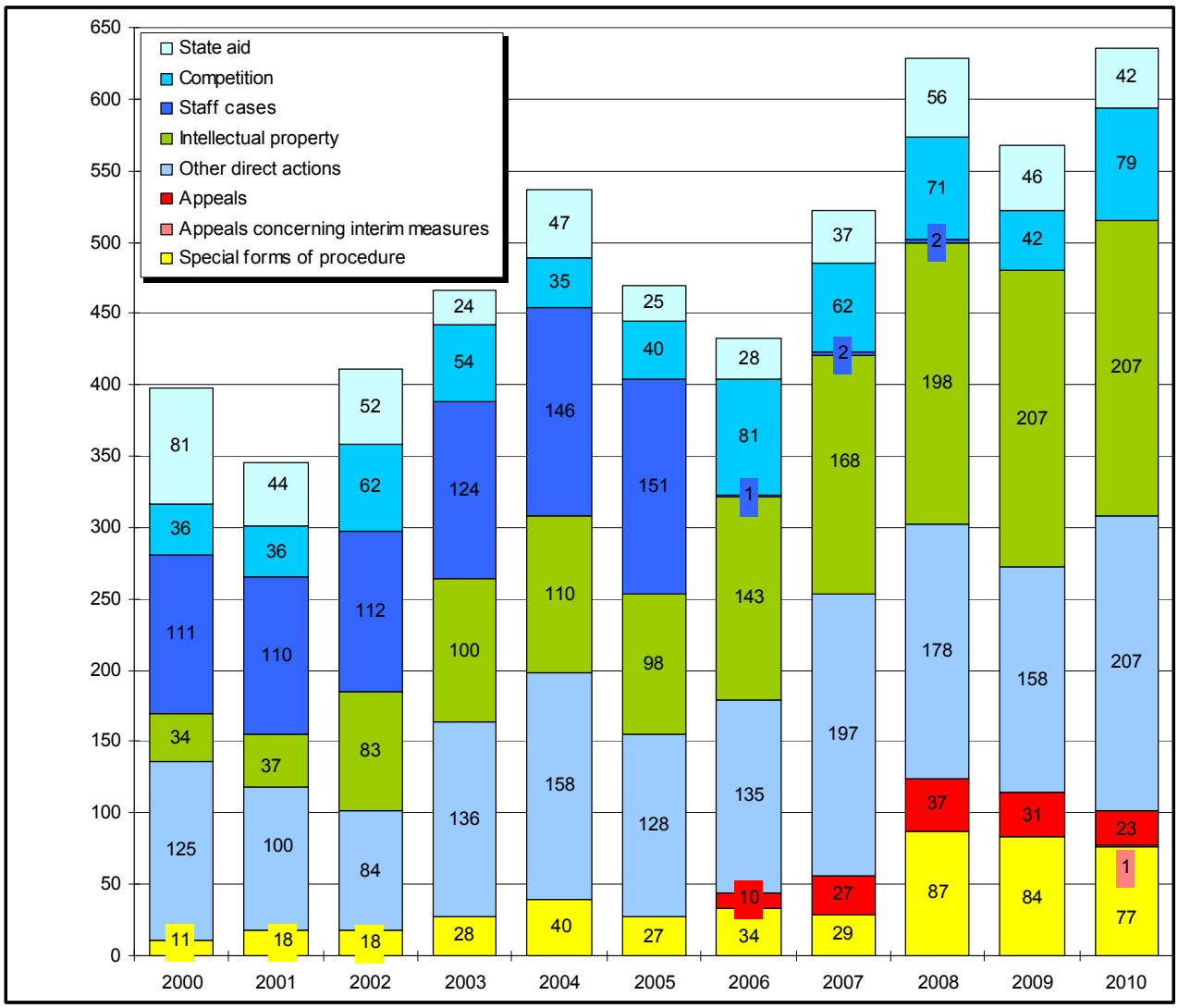
The Court of Justice therefore considers, on the basis of the above, that an increase in the number of Judges by at least 12, bringing the number of General Court Judges to 39, is necessary. That increase would make it possible not only to complete each year the same number of cases as are brought (636 in 2010), but also to begin to absorb the General Court's backlog (1 300 cases pending as at 31 December 2010, many of them at a stage in the proceedings which enables them to be considered by that Court). The additional resources could provide an opportunity for reorganisation, enabling the 'other actions' category to be dealt with as a matter of priority, particularly those concerning competition law, for which particular vigilance is required to ensure that they are dealt with within a reasonable time.

The Court of Justice emphasises that an increase in the number of Judges will not, by itself, resolve every problem. It is essential that it be accompanied at the same time by reflection on how to make the best use of all the General Court's resources, perhaps through specialisation by certain chambers and flexible management of case allocation, and pursuit of the General Court's efforts to improve its productivity.

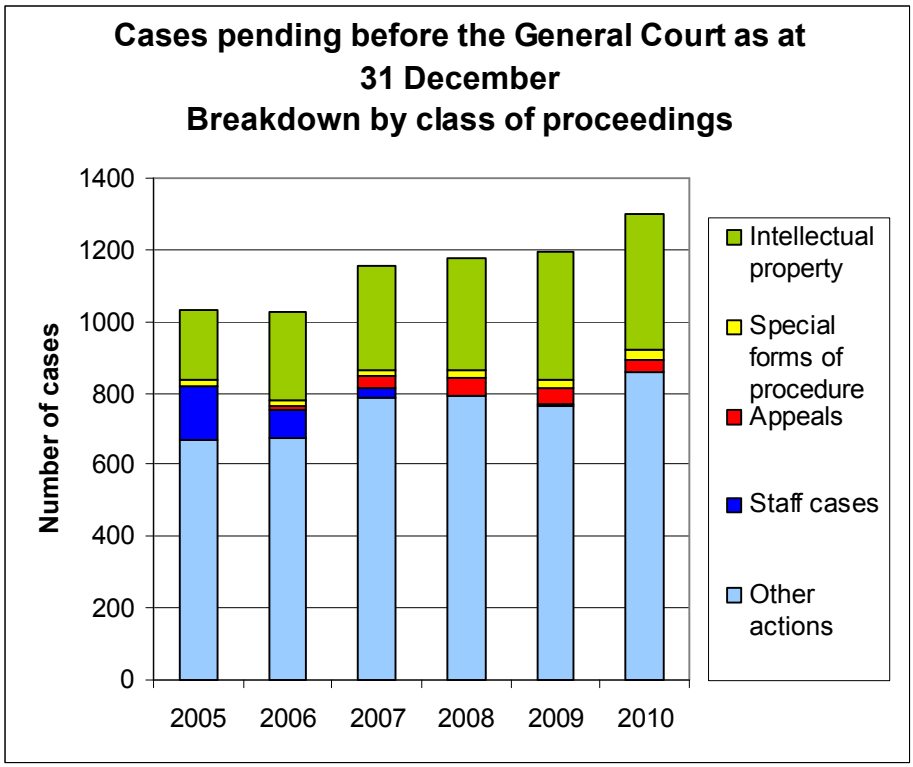
The Court wishes to stress the urgency of the measures to be adopted.

Annex 1

New cases before the General Court 2000 to 2010



This figure shows, inter alia, that the beneficial effects of the establishment of the Civil Service Tribunal were felt only in 2005 and 2006.


Cases pending before the General Court as at 31 December
Breakdown by class of proceedings
Number of cases
1400
1200
1000
800
600
400
200
0
2005
2006
2007
2008
2009
2010
Intellectual property
Special forms of procedure
Appeals
Staff cases
Other actions

III. Proposals relating to the Civil Service Tribunal

The European Union Civil Service Tribunal comprises seven Judges.

Owing to that limited composition, the functioning of the Tribunal can be seriously affected if one of its members, for an extended period of time, is prevented on medical grounds from performing his duties, without however suffering from disablement within the meaning of Article 10 of Council Regulation No 422/67/EEC, No 5/67/Euratom of 25 July 1967 determining the emoluments of the President and Members of the Commission, of the President, Judges, Advocates General and Registrar of the Court of Justice, of the President, Members and Registrar of the General Court and of the President, Members and Registrar of the European Union Civil Service Tribunal. [13]

In order to ensure that the Civil Service Tribunal is not placed in a situation of difficulty such as to prevent it from carrying out its judicial functions, it is proposed to amend Article 62c of the Statute of the Court by providing, in general terms, for the possibility of attaching temporary Judges to the specialised courts.

In accordance with Article 62c of the Statute, as thus amended, the actual attachment of temporary Judges to the Civil Service Tribunal requires an amendment to Annex I [14] to the Statute.

In order to preserve the homogeneity of the Statute and of Annex I thereto, it is, however, appropriate to lay down the rules governing the appointment of temporary Judges, their rights and obligations, the conditions under which they are to perform their duties and the circumstances in which they will cease to perform those duties in a separate regulation, adopted on the basis of Article 257 TFEU, which would thus supplement Annex I to the Statute. That draft regulation is attached to these draft amendments.

[13] OJ, English Special Edition 1967, p. 222.

[14] OJ 2004 L 333, p. 7, with corrigendum OJ 2007 L 103, p. 54.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union, and in particular the second subparagraph of Article 19(2) thereof,

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,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the request of the Court of Justice of …….,

Having regard to the opinion of the Commission of ……..,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(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.

(2) Corresponding adjustments must be made to the quorum of the Grand Chamber and of the full Court.

(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.

(4) In the era of new technology, it no longer appears necessary to retain periods of grace based on considerations of distance.

(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.

(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.

(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.**

(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.**

(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.**

(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.**

HAVE ADOPTED THIS REGULATION:

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 and other Judges designated in accordance with the conditions laid down in the Rules of Procedure shall also form part of the Grand Chamber.'

3. The third and fourth paragraphs of Article 17 shall be replaced by the following:

'Decisions of the Grand Chamber shall be valid only if 11 Judges are sitting.

Decisions of the full Court shall be valid only if 17 Judges are sitting.'

4. The fourth paragraph of Article 20 shall be replaced by the following:

'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.'

5. The second paragraph of Article 39 shall be replaced by the following:

'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.'

6. The first paragraph of Article 45 shall be deleted.

7. In Article 48, the figure '27' shall be replaced by the figure '39'.

8. The following paragraph shall be added to Article 62c:

'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.'.

Article 2

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:

'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.'

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 …, …

For the European Parliament	***For the Council***
President	***President***