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NOTE

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
Subject:	Proposal for a Regulation of the the European Parliament and the Council amending Protocol n° 3 on the Satue of the Court of Justice of the European Union - Presidency debriefing on the outcome of the quadrilogues - Confirmation of the final compromise text with a view to agreement

1. Delegations will find attached the consolidated text (set out in Annex I), together with a draft joint statement (set out in Annex II), as it results from the informal quadrilogue held on 20 October 2015 with a view to reaching an agreement at second reading on the above proposal.
2. The Presidency considers that the text now constitutes a fair and balanced overall package which meets a large number of Member States' concerns, while it accommodates as far as possible the concerns of the European Parliament, namely in relation to gender balance and review clause. In particular, the text:

- i. ensures an increase in the number of Judges at the General Court up to 56 in 3 stages, as agreed by the Council at first reading ;
 - ii. confirms the measures aiming at a reduction of costs during the third stage ;
 - iii. confirms that at the second and third stages of the enlargement, an assessment of the situation at the General Court will 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.
 3. The reform would, once adopted, provide a sustainable and long-term solution to the current challenges faced by the jurisdictions of the Union and enable them to fulfil their functions within the time limits and the quality standards which European citizens and companies are entitled to expect in a Union based on the rule of law.
 4. The Permanent Representative Committee is invited to:
 - endorse the consolidated text as set out in Annex I with a view to reaching an agreement, to be sent as such to the European Parliament ;
 - endorse the draft joint statement on gender balance as set out in Annex II.
 - authorise the Presidency to send a letter to the European Parliament stating that if the Parliament were to adopt its position at second reading, in accordance with Article 294 paragraph 7 of the Treaty, in the form as set out in Annex I to this note, subject to the previous revision of the text by the lawyer-linguists, the Council would, in accordance with Article 294 paragraph 8 of the Treaty, approve the European Parliament's position at second reading and the act shall be deemed to have been adopted in the wording which corresponds to the Council position at first reading as amended by the European Parliament.
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REGULATION (EU, EURATOM) 2015/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Protocol No 3 on the Statute
of the Court of Justice of the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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,

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,

Having regard to the opinion of the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 23 June 2015 (not yet published in the Official Journal).

Whereas:

- (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.
- (2) At present, 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.
- (3) The situation in which the General Court finds itself has causes relating, *inter alia*, to the increase in the number and variety of legal acts of the institutions, bodies, offices and agencies of the Union, as well as to the volume and complexity of the cases brought before the General Court, particularly in the areas of competition, State aid ***and intellectual property***.
- (3a) ***The option of setting up specialised courts as provided for in Article 257 TFUE has not been taken up.***
- (4) Consequently, ***suitable measures of an organisational, structural and procedural nature, including in particular an increase in the number of Judges***, should be taken to address this situation. Making use of the possibility provided for by the Treaties of increasing the number of Judges of the General Court would allow for a reduction within a short time of both the volume of pending cases and the excessive duration of proceedings before the General Court.
- (5) Taking into account the evolution of the workload of the General Court, the number of Judges should be fixed at 56 at the end of a three-stage process, ***two judges being appointed upon a proposal by each of the Member States***, it being understood that at no point of time can there be more than two Judges sitting at the General Court appointed upon proposal by the same Member State.

- (5a) *The panel provided for in Article 255 TFEU takes into account in particular independence, impartiality, expertise and the professional and personal suitability of the candidates.*
- (6) In order to rapidly reduce the backlog of pending cases, twelve additional Judges should take office *upon entry into force of this Regulation.*
- (7) In September 2016, first instance jurisdiction in **European Union** civil service cases and the seven posts of the Judges sitting at the Civil Service Tribunal should be transferred to the General Court, on the basis of *the legislative* request *already announced* by the Court of Justice.
- This request will consider the modalities of the transfer of the seven posts of Judges of the Civil Service Tribunal including staff and resources.*
- (8) In September 2019, the remaining nine Judges should take office. In order to ensure cost-effectiveness, this should not entail the recruitment of additional legal secretaries or other support staff. Internal re-organisation measures within the institution should make sure that efficient use be made of existing human resources, *which should be equal for all Judges, without prejudice to the decisions taken by the General Court concerning its internal organisation.*
- (8a) *It is of high importance to ensure gender balance within the General Court. In order to achieve that objective, partial replacements in that Court should be organised in such a way that the Governments of Member States gradually begin to nominate two Judges for the same partial replacement with the aim therefore of choosing one woman and one man, provided that the conditions and procedures laid down by the Treaty are respected.*
- (9) It is necessary to adapt accordingly the provisions of the Statute of the Court of Justice of the European Union on the partial replacement of Judges and Advocates-General that takes place every three years.

- (9a) *As the Court of justice of the European Union has already announced, it will, as a follow up to the reform of the General Court, present yearly figures on its judicial activity and, if necessary, suggest appropriate measures. At the second and third stages of the enlargement of the General Court, an assessment of the situation of the General Court will take place which, if necessary, could lead to certain adjustments, notably in terms of administrative expenditure of the Court.*
- (10) Protocol No 3 on the Statute of the Court of Justice of the European Union should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Protocol No 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 :

"Article 9

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.

The first paragraph shall also apply when the Advocates-General are partially replaced, every three years."

- (2) Article 48 is replaced by the following:

"Article 48

The General Court shall consist of:

- (a) 40 Judges as from ...*;
- (b) 47 Judges as from 1 September 2016;
- (c) two Judges per Member State as from 1 September 2019."

* OJ: *please insert the date of entry into force of this Regulation.*

Article 2

The term of office of the additional Judges of the General Court to be appointed pursuant to Article 48 of Protocol No 3 on the Statute of the Court of Justice of the European Union shall be as follows:

- (a) The term of office of six of the twelve additional Judges to be appointed as from ...* shall end on 31 August 2016. Those six Judges shall be chosen ***in such a way that the governments of six Member States nominate two Judges for the partial replacement of the General Court in 2016***. The term of office of the other six Judges shall end on 31 August 2019;
- (b) The term of office of three of the seven additional Judges to be appointed as from 1 September 2016 shall end on 31 August 2019. Those three Judges shall be chosen ***in such a way that the governments of three Member States nominate two Judges for the partial replacement of the General Court in 2019***. The term of office of the other four Judges shall end on 31 August 2022;
- (c) The term of office of four of the nine additional Judges to be appointed as from 1 September 2019 shall end on 31 August 2022. Those four Judges shall be chosen ***in such a way that the governments of four Member States nominate two Judges for the partial replacement of the General Court in 2022***. The term of office of the other five Judges shall end on 31 August 2025.

Article 2 a

1. . ***By ...* at the latest, the Court of Justice shall draw up a report, using an external consultant, for the European Parliament, the Council and the Commission on the functioning of the General Court.***

* OJ: ***please insert the date of entry into force of this Regulation.***

* OJ : ***please insert the date : five years after the entry into force of this Regulation.***

In particular, this report shall focus on the efficiency of the General Court, the necessity and effectiveness of the increase to 56 judges, the use and effectiveness of resources and the further establishment of specialised chambers and/or other structural changes.

Where appropriate, the Court of Justice shall make legislative proposals to amend its Statute accordingly.

2. *By ...** at the latest, the Court of Justice shall draw up a report for the European Parliament, the Council and the Commission on possible changes to the distribution of competence for preliminary rulings under Article 267 of the Treaty on the Functioning of the European Union. The report shall be accompanied, where appropriate, by legislative proposals.*

Article 3

This Regulation shall enter into force on the day 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 ..., on ...

*For the European Parliament
President*

*For the Council
President*

****** OJ : please insert the date : *two years after the entry into force of this Regulation.*

Joint Statement by the European Parliament and the Council

At the end of the reform process, the General Court will consist of two Judges per Member State. Therefore, in order to achieve the equality between women and men, which is an objective of the European Union according to Article 3 TEU, the governments of the Member States should, to the greatest possible extent, in the process of appointing candidates as Judges at the General Court pursuant to Article 254 TFEU, ensure an equal presence of women and men.
