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COVER NOTE

From:	Mr Koen LENAERTS, President of the Court of Justice of the European Union
To:	Mr Jean ASSELBORN, President of the Council of the European Union
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the transfer to the General Court of the European Union of jurisdiction at first instance in disputes between the Union and its servants

Delegations will find attached a letter from Mr K. Lenaerts, President of the Court of Justice of the European Union, to Mr J. Asselborn, President of the Council of the European Union.

Luxembourg, 17 November 2015

Mr Jean Asselborn
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, and following the adoption by the European Parliament, at second reading, of the Regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union, I hereby enclose a proposal for a regulation of the European Parliament and of the Council on the transfer to the General Court of the European Union of jurisdiction at first instance in disputes between the Union and its servants.

This proposal is fully consistent with the scheme and broad logic of the reform of the judicial architecture of the European Union, and implements the second phase of the increase in the number of Judges of the General Court through the integration into that court, with effect from 1 September 2016, of the seven Judges of the Civil Service Tribunal. The proposed amendments are accompanied by an explanatory statement introducing, inter alia, the provisions relating to the transfer to the General Court of the jurisdiction currently exercised by the Civil Service Tribunal in disputes between institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other.

In order to enable those provisions to be brought into force with maximum efficiency, it is desirable that the new Judges be appointed at the earliest opportunity and that the Governments submit their proposals taking into account, so far as possible, the desirability of ensuring continuity in the handling of cases falling within the area concerned.

Yours faithfully,

Koen LENAERTS
Lu Luxembourg, 17 November 2015

REGULATION (EU, EURATOM) 2016/XXX
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

on the transfer to the General Court of the European Union of jurisdiction at first instance in disputes between the Union and its servants

Explanatory statement

The draft Regulation of the Parliament and of the Council set out below is based on Article 256(1) TFEU, the first and second paragraphs of Article 257 TFEU, the second paragraph of Article 281 TFEU, and Article 106a(1) EAEC.

The text repeals, in *Article 1*:

- Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal¹ (subject to the transitional provisions in Article 4 of this draft regulation), and, in consequence thereof,
- Regulation (EU, Euratom) No 979/2012 of the European Parliament and of the Council of 25 October 2012 relating to temporary Judges of the European Union Civil Service Tribunal.²

Article 2 introduces two new Articles into the Statute of the Court.

- A new Article 50a sets out, in paragraph 1, pursuant to the last sentence of Article 256(1) TFEU, the jurisdiction of the General Court with regard to the civil service. Inasmuch as Article 256(1) TFEU refers in particular to Article 270 TFEU, it would not in itself suffice to cover disputes between all institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction would be conferred on the Court of Justice of the European Union – a solution to be found in Annex I to the Statute of the Court, destined to disappear – and which would not fall, as

¹ OJ L 333, 9.11.2004, p. 7.

² It is not envisaged that Articles 62 to 62b of the Statute of the Court relating to review should be repealed. Those provisions can remain ‘in reserve’ in case a specialised court is re-established in the future. Those provisions deal, moreover, with the review of judgments delivered on a reference for a preliminary ruling, although jurisdiction to give preliminary rulings has not yet been conferred on the General Court. In any event, it is conceivable that a review might be pending before the Court of Justice on 1 September 2016. It should also be possible for the Court of Justice to initiate, even after that date, review of a judgment which the General Court has delivered on appeal. Should the General Court be seised of a case referred back to it after review, the provisions of its own Rules of Procedure would apply.

such, within the Staff Regulations of Officials of the European Union or the Conditions of Employment of Other Servants of the European Union. What is referred to, in particular, is disputes between the ECB and its staff, which fall within the jurisdiction of the Court of Justice of the European Union in accordance with Article 36.2 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, or between the EIB and its staff (not subject to the Staff Regulations either).

The new Article 50a(2) reintroduces into the Statute of the Court the invitation to the court responsible for civil service disputes, contained in Article 7(4) of Annex I to the Statute, to examine, at all stages of the procedure, the possibilities of amicable settlement of disputes. The use of this alternative method of dispute resolution has proved to be helpful, in practice, in certain categories of dispute.

- A new Article 62c provides, in general terms, that the provisions relating to the jurisdiction, composition, organisation and procedure of any specialised court established under Article 257 TFEU are to be contained in an Annex to the Statute.

Article 3 governs the procedure for dealing with cases pending before the Civil Service Tribunal ('CST') on 31 August 2016, which are to be transferred, on 1 September 2016, to the General Court. The General Court should continue dealing with those cases as it finds them at that date, the procedural steps taken by the CST in those cases remaining applicable. In the event of a case being transferred to the General Court after the hearing, the oral part of the procedure would be reopened.

Article 4 of the draft regulation lays down a transitional regime in respect of appeals under examination when jurisdiction is transferred on 1 September 2016, or brought after that date, against decisions of the CST. In accordance with Article 256(2) TFEU, the General Court is to continue to have jurisdiction to hear and determine such appeals. Accordingly, Articles 9 to 12 of Annex I to the Statute of the Court must remain applicable to the proceedings concerned. If the General Court sets aside a decision of the CST but considers that the state of the proceedings does not permit a decision, it is to refer the case to a chamber other than that which ruled on the appeal (that is to say, the Appeal Chamber).

The *first paragraph of Article 5* sets the date on which the transfer of jurisdiction to the General Court to rule at first instance on disputes between the Union and its servants is to take effect as 1 September 2016.

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 Article 256(1), 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 ...,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 48 of Protocol No 3 on the Statute of the Court of Justice of the European Union, as amended by Regulation (EU, Euratom) 2015/XXX of the European Parliament and of the Council of ..., ³ provides that the General Court, consisting of 40 Judges as from [...] 2016, will consist of 47 Judges as from 1 September 2016, and of two Judges per Member State as from 1 September 2019.
- (2) It is apparent from recital 9 in the preamble to Regulation 2015/XXX that increasing by seven the number of Judges of the General Court on 1 September 2016 will also require jurisdiction at first instance in disputes between the Union and its servants under Article 270 TFEU to be transferred to the General Court, which presupposes, in accordance with Article 256(1) TFEU, the dissolution of the European Union Civil Service Tribunal. It is accordingly necessary to repeal Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal, ⁴ inasmuch as that decision attached the European Union Civil Service Tribunal to the General Court, and, in consequence thereof, Article 62a, now, after amendment, Article 62c of Protocol No 3 on the Statute of the Court of Justice of the European Union and Annex I thereto, and Regulation (EU, Euratom) No 979/2012 of the European Parliament and of the Council of 25 October 2012 relating to temporary Judges of the European Union Civil Service Tribunal. ⁵
- (3) Jurisdiction must also be conferred on the General Court, as it was on the European Union Civil Service Tribunal, as is evident from Article 1 of Annex I to Protocol No 3 on the Statute of the Court of Justice of the European Union, repealed by this Regulation, in disputes between all institutions and all bodies, offices or agencies, on the one hand, and

³ OJ L XXX

⁴ OJ L 333, 9.11.2004, p. 7.

⁵ OJ L 303, 31.10.2012, p. 83.

their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union.

- (4) The General Court should try cases, in the light of the specific features of European Union civil service disputes, while examining the possibilities for amicable settlement of disputes at all stages of the procedure.⁶
- (5) Furthermore, provision should be made for appropriate transitional arrangements concerning the transfer to the General Court of disputes at first instance relating to the European Union civil service, in order to ensure the efficient conduct of proceedings in the cases pending before the European Union Civil Service Tribunal on the date of transfer, and to lay down the rules applicable to appeals under examination as at that date, or brought subsequently, against decisions of that Tribunal.

HAVE ADOPTED THIS REGULATION:

Article 1

The following are repealed:

1. Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal and, in consequence, Article 62c of Protocol No 3 on the Statute of the Court of Justice of the European Union, together with Annex I thereto, without prejudice to Article 4;
2. Regulation (EU, Euratom) No 979/2012 of the European Parliament and of the Council of 25 October 2012 relating to temporary Judges of the European Union Civil Service Tribunal.

Article 2

Protocol No 3 on the Statute of the Court of Justice of the European Union is amended as follows:

1. The following article is inserted:

‘Article 50a

1. The General Court shall exercise at first instance jurisdiction in disputes between the Union and its servants referred to in Article 270 of the Treaty on the Functioning of the European Union, including disputes between all institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union.

⁶ The text is based on recital 7 in the preamble to Decision 2004/752 establishing the CST.

2. At all stages of the procedure, including the time when the application is filed, the General Court may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.’

2. The following article is inserted:

‘Article 62c

The provisions relating to the jurisdiction, composition, organisation and procedure of any specialised court established under Article 257 TFEU shall be contained in an Annex to this Statute.’

Article 3

Cases pending before the European Union Civil Service Tribunal on 31 August 2016 shall be transferred to the General Court. The General Court shall continue dealing with those cases as it finds them at that date. In the event of a case being transferred to the General Court after the oral part of the procedure has been closed, that part of the procedure shall be reopened.

Article 4

Articles 9 to 12 of Annex I to Protocol No 3 on the Statute of the Court of Justice of the European Union shall continue to apply to the appeals against decisions of the European Union Civil Service Tribunal of which the General Court is seised as at 31 August 2016 or which are brought after that date. If the General Court sets aside a decision of the European Union Civil Service Tribunal but considers that the state of the proceedings does not permit a decision, it shall refer the case to a chamber other than that which ruled on the appeal.

Article 5

This Regulation shall take effect on 1 September 2016.

It 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 Brussels, ...

For the European Parliament

The President

For the Council

The President