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NOTE

from:	Presidency
to:	Council
Subject:	Reform of the Statute of the Court of Justice - Appointment of additional judges for the General Court

1. On 28 March 2011, the Court of Justice of the European Union proposed to the European Parliament and the Council to increase the number of judges of the General Court by 12¹. This was within a series of proposed amendments to the Statute of the Court and Annex I thereto aimed at increasing the efficiency of the three courts making up the Court of Justice of the European Union, in a context marked by a steady increase in the workload.

¹ Draft amendments to the Statute of the Court of Justice of the European Union and to Annex I thereto (document 8787/11)

2. The Court's proposal was extensively discussed by the Court of Justice Working Party during 2011 and 2012. The proposed amendments concerning the Court of Justice and the Civil Service Tribunal were adopted by Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto². The proposed increase in the number of judges of the General Court remains the only outstanding issue pending before the Council.
3. In order to identify solutions to tackle delays arising from the General Court's increasing workload, Coreper mandated the Friends of the Presidency Group on 18 June 2012 to work on the basis of the Court's proposal of 28 March 2011 and in parallel to discuss measures that would enhance efficiency. Coreper requested the Group to report to it by December 2012.
4. The Group has held five meetings on 13 July, 7 September, 21 September, 5 October and 31 October 2012. Representatives of the Court of Justice of the European Union (both the Court of Justice and the General Court) participated in two meetings and provided valuable information relating in particular to the General Court's working methods, measures taken in order to improve the said Court's functioning as well as the foreseeable impact and cost of a potential increase in the number of its judges. In addition, the Presidency held bilateral consultations with all Member States.
5. On 7 November 2012, the Presidency reported the results of this preparatory work to Coreper and presented a compromise proposal³ consisting of an increase the number of judges by 9 and a system of rotation for the designation of the additional judges in which the six largest Member States were to designate a judge for two successive terms and those from other Member States for one term, the order of rotation of Member States being fixed by lot at the beginning of the process.

² OJ L 228 of 23 August 2012, p. 1.

³ Document 15342/12.

6. At the meeting of Coreper (Part II) on 7 November 2012, there was general agreement on the need to strengthen the general Court by adding new judges, and a wide majority of delegations expressed their readiness to accept the Presidency's proposal for 9 additional judges. However, on the system of designation of the additional judges, which has to be unanimously agreed the Presidency compromise proposal received only limited support.
7. In the light of the outcome of discussions outlined above, the Presidency intends to make a final attempt to arrive at a political agreement at ministerial level. To this end, building on its compromise proposal discussed at Coreper on 7 November 2012, the Presidency maintains its proposal to increase the number of judges at the General Court by 9 and proposes a system for the designation of these additional judges on the basis of two parallel systems of rotation.
 - a) Increase of the number of judges by 9
8. The Presidency proposes that the Council amends the Court of Justice's request by agreeing on the increase of the number of judges of the General Court by 9. This number, in addition to the existing 27, coupled with the effect of the measures already taken by the General Court to increase its efficiency and possible future measures in that direction, is likely to solve the General Court's current problems in the short to medium term, while taking into account the current budgetary constraints.
9. For securing the success of this structural reform, it is important that the General Court adopts further measures improving its efficiency, particularly in the context of its revised Rules of Procedure. Furthermore, in the context of the difficult current budgetary situation, a number of delegations expressed their concerns about the possible cost of the suggested increase in the number of the General Court judges.
10. In order to address both these issues of efficiency and costs, the Presidency proposes that, coupled with its approval of the increase in the number of judges, the Council makes a declaration, the suggested text of which appears in the annex to this note.

b) System for the designation of additional judges

11. The two parallel systems of rotation for the designation of the additional judges would be designed as follows : the six larger Member States would, by rotation, designate 4 judges, while the rest of the Member States would, by rotation, designate 5 judges. The order of Member States in both rotation groups would be fixed by lot at the beginning of the process. In the group of larger Member States, each Member State will designate a judge for two successive mandates. Given the number of Member States included in that group and the relatively large number of judges to be designated by them, the right to designate a judge for two successive mandates would favour stability in the General Court's composition.. In the group of smaller Member States, each will be designating a judge for a single mandate, thereby ensuring a regular rotation for the Member States concerned.
12. In order to reinforce stability, a phasing-in of the above system is proposed : five additional judges - two of them designated by larger Member States⁴ and three by smaller ones - would be appointed at the next partial renewal of the General Court in 2013 ; the remaining four - two of them designated by larger Member States and two by smaller ones - would be appointed three years later, i.e. in 2016 at the following partial renewal. Subsequent appointments will take place in three year intervals.
13. In the event that a judge's seat falls vacant before the normal end of his period of office, the Member State which designated him shall designate the candidate for his succession unless there is less than one year until the end of the mandate. In that case the next Member State in line shall designate the candidate. It should be noted that, in the group of larger Member States, the next Member State in line shall be the Member State which designated the judge whose seat fell vacant where the vacancy occurs during the first of the two successive mandates to which the said Member State is entitled to.

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⁴ The two larger Member States that would designate a judge at the next partial renewal of the General Court (i.e. in 2013) would do so, this first time, only for one mandate.

14. The Council is invited to give its political agreement on this proposal, which appears to be the most realistic compromises available to address the problem of the General Court's backlog of pending cases and the consequent delays and cost for European businesses and citizens.
15. In the event that it is not possible to agree on this compromise, it is necessary to refer this matter back to the Court. In that case the Council is asked to mandate the Presidency to write to the Court informing it that, notwithstanding exhaustive discussions, it has not been possible for the Council to agree the Court's proposal. The European Parliament should be similarly informed.

Draft Council statement

“The Council notes that the enlargement of the General Court should be met within the ceiling to be decided for Heading 5 of the Multiannual Financial Framework.

The Council welcomes the measures of internal reform that have been introduced by the General Court in the last years for the purpose of improving its efficiency and believes that additional measures should be introduced so that the General Court can take full advantage of its increased resources in order to limit the time necessary for the treatment of cases. In that conjunction, the Council looks forward to the discussion on the recast of the General Court’s Rules of Procedure, which will offer the opportunity to discuss measures to further improve efficiency.”
