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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION OPINION on the 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 document COM(2016) 81 final.

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COMMISSION OPINION

On the 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

OPINION OF THE COMMISSION

On the 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

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Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 257, first paragraph, and 281, second paragraph, thereof,

(1) By a request of 17 November 2015, the Court of Justice of the European Union proposed to the legislator the adoption of a regulation to dissolve the European Union Civil Service Tribunal (CST) and transfer to the General Court of the European Union jurisdiction at first instance in European Union civil service disputes.

(2) This proposal is the necessary extension of the reform of the General Court recently decided upon by the EU legislature in order to respond to the challenge of the increase in litigation before that court. When adopting Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015, the European Parliament and the Council opted for a progressive increase in the number of judges of the General Court in order to reach two judges per Member State by 2019, in particular by integrating the seven judges of the CST into that court by 1 September 2016.

(3) The Commission fully supported the initial requests of the Court of Justice for an increase in the number of judges of the General Court. The reasons for this position were set out in detail in the opinion adopted by the Commission on 30 September 2011 (COM(2011)596). The Commission subsequently also supported the solution finally adopted by the legislature, namely a gradual doubling of the number of judges of the General Court, in particular through the transfer of the posts of judges of the CST.

(4) Accordingly, the present proposal receives the full support of the Commission in so far as it allows implementation of the second phase of the reform and thus faithfully reflects the choices already made by the legislature.

(5) The Commission confines itself, beyond this, to making two additional comments.

(6) The first comment concerns the future procedural treatment of the cases that will be transferred to the General Court.

(7) Besides the principle of the dissolution of the CST on 1 September 2016 and the transfer to the General Court of all the cases pending before the CST on that date, the proposal contains temporary provisions intended to organise the arrangements for the transfer. It is provided in particular that the cases pending before the CST on 31 August 2016 will be transferred as they stand on that date.

(8) A comprehensive reading of the proposal of the Court of Justice and its accompanying explanatory memorandum suggests that the cases transferred in this manner will be governed, from the date they are transferred, by the provisions of the Rules of Procedure of the General Court, which will have been amended in the meantime.

(9) In this regard, the Commission is of the opinion that it would be advisable, in the interests of legal certainty, for the present Rules to contain an express provision confirming the application of the Rules of Procedure of the General Court to those cases. Moreover, with regard to the amendments to the Rules of Procedure of the General Court that will be necessary to take account of the transfer to the General Court of the European Union of jurisdiction in civil service disputes, the Commission would like already at this stage to express the importance it attaches to the General Court's incorporating in its Rules of Procedure the rules specific to civil service disputes as currently set out in the Rules of Procedure of the CST, in particular Articles 108 and 109.

(10) The Commission's second comment concerns the internal organisation of the General Court, once the the number of judges has been increased. The General Court is due to number 47 members as from 1 September 2016. It goes without saying that the way the General Court functions will have to be profoundly modified to cope with this new situation. Firstly, the increase could provide an opportunity for the General Court to assign a higher number of cases to larger benches (chambers of five judges, even the Grand Chamber), depending on their importance. This would ensure the coherence and quality of the case-law of the expanded General Court and help to avoid a growing number of appeals brought before the Court of Justice. Secondly, the new situation could foster reflection on the possibilities of adapting the rules and practices governing the allocation of cases by creating thematic synergies, in particular by taking into account the material connection between cases, while at the same time preserving the flexibility necessary to adapt the said rules and practices to the future evolution of litigation.

(11) Finally, the Commission invites the legislature to adopt the proposal of the Court of Justice as soon as possible. In addition to the deadline of 1 September 2016 already mentioned, the Commission would point out that after the legislation has been adopted, it will still be necessary to carry out the necessary adaptations to the Rules of Procedure of the General Court as well as the appointment of the new judges and the internal reorganisation of the General Court. It is only then that the Court will be equipped to resolutely set about reducing its backlog of cases.

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Conclusion

The Commission gives a favourable opinion on the proposal of the Court of Justice.

This opinion shall be forwarded to the European Parliament and the Council.

Done at Brussels,

By the Commission
Jean-Claude Junker
President of the Commission