COUNCIL OF THE EUROPEAN UNION

Brussels, 3 October 2011

14769/11

Interinstitutional File:
2011/0901 (COD)
2011/0902 (COD)

CODEC 1536
COUR 54
INST 437
JUR 470
PARLNAT 213

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 September 2011
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No Cion doc.:	COM(2011) 596 final
No prev. doc.	8786/11 CODEC 606 COUR 17 INST 196 JUR 159 PARLNAT 111 8787/11 CODEC 607 COUR 18 INST 197 JUR 160 PARLNAT 112
Subject:	- Amendment of the Statute of the Court of Justice of the European Union = Opinion of the Commission

Delegations will find attached Commission document COM(2011) 596 final.

Encl.: COM(2011) 596 final

EUROPEAN COMMISSION

Brussels, 30.9.2011
COM(2011) 596 final

COMMISSION OPINION

of 30.9.2011

on the requests for the amendment of the Statute of the Court of Justice of the European Union, presented by the Court

COMMISSION OPINION

of 30.9.2011

on the requests for the amendment of the Statute of the Court of Justice of the European Union, presented by the Court

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. In two requests of 28 March 2011, the Court of Justice of the European Union proposed several amendments to its Statute together with the adoption of a regulation concerning temporary judges of the Civil Service Tribunal. Following the entry into force of the Lisbon Treaty, these provisions should, for the first time, be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure.

2. The proposed amendments concern to varying degrees the three courts currently making up the Court of Justice of the European Union: the Court of Justice, the General Court and the Civil Service Tribunal.

3. In relation to the Court of Justice itself, the amendments are intended to establish the office of Vice-President of the Court and to determine the tasks to be entrusted to him/her (Articles 9a, new, and 39, second paragraph), to modify the composition of the Grand Chamber (Article 16, second paragraph), to increase the quorum for decisions by the Grand Chamber and the full Court (Article 17, third and fourth paragraphs), and to abolish the reading at the hearing of the report presented by the Judge-Rapporteur (Article 20, fourth paragraph).

4. In relation to the General Court, in order to cope with the increase in its caseload and the resulting increase in the time taken to handle cases, it is proposed that the number of judges be increased to 39 (Article 48).

5. In relation to the Civil Service Tribunal, the Court requests that it be assigned three temporary judges upon whom it could call in the event that a judge is prevented from attending for a long period of time (amendment of Article 62c and of Annex I to the Statute and adoption of a regulation specific to the Civil Service Tribunal).

6. Lastly, a final amendment is proposed that would affect the three courts in the same way, namely dropping the provision on periods of grace based on considerations of distance (deletion of Article 45, first paragraph), which would in fact result in the disappearance of the ten-day fixed period which is currently added to the procedural deadlines.

7. The Court proposes that all of these amendments should come into force immediately, in particular the increase in the number of judges at the General Court. Exceptionally, three changes relating to the Court of Justice – the establishment of the office of Vice-President, the modification of the composition of the Grand

Chamber and the adaptation of the quorum for decisions – cannot be applied until the first occasion when the Judges are partially replaced.

8. The Commission welcomes the Court's initiative in submitting amendments to its Statute to the EU legislature. Both the nature and the volume of litigation before the EU courts have changed radically in recent years, mainly because of the development of EU law in new areas and the increase in the number of Member States. The enlargement of the EU has also exerted considerable influence on the internal structure of the courts, mainly because of the increase in the number of their Members and in the number of languages that can be used in litigation. Lastly, other changes can be foreseen in the short and medium terms, in particular following the entry into force of the Lisbon Treaty. The organisation, resources and functioning of the courts need to be adapted so that they can cope with all these developments.

9. In the explanatory note accompanying its requests, the Court of Justice provides an in-depth analysis of the current situation, sets out the requirements for reform and puts forward solutions that could satisfy these requirements. The Commission agrees with this analysis to a very large extent.

10. However, the Court's proposals do call for thorough discussion as they are likely to influence the configuration of justice within the EU on a lasting basis. A change to the statute of a court is never insignificant as the legitimacy of the court's decisions is based on its statute. The statute must protect the independence, impartiality and authority of the court while ensuring effective access to justice by guaranteeing efficient and diligent acts.

11. The Commission sets out in detail below for the legislature's attention the reasons why it is supporting the Court's proposals, while at the same time suggesting changes and additions to certain points.

12. The Commission is aware of the budgetary consequences of the Court's proposals. Nevertheless, first it would like to stress that granting effective judicial protection, for instance in court judgments handed down within a reasonable period of time, is a crucial obligation. Second, while not as visible as a budget increase, the adverse financial consequences of inefficient justice are quite likely to cost more than such an increase.

Amendments relating to the Court of Justice

13. As regards the Court of Justice proper, the **establishment of the office of Vice-President** is justified. As the Court states, the President's workload has increased considerably with time and it would be useful if he could be replaced or assisted by a vice-president in carrying out his duties.

14. The President of the Court has a large number of responsibilities which are crucial to the smooth running of the Court. In this respect, the Commission would like to emphasise the importance of the diligent handling of proceedings for interim measures and appeals against interim measures, for which the President of the Court is mainly responsible. It is vital that applications for a stay of execution or other interim measures, whether at first instance or on appeal, should be dealt with as promptly as possible. Otherwise this may affect the conduct of economic operators,

Member States and EU institutions. It has happened that some appeals against the General Court's orders for interim measures were dealt with only after lengthy periods, sometimes over a year. Such long periods are difficult to reconcile with the principle of effective interim judicial protection. The establishment of the office of Vice-President should help improve the situation from this point of view.

15. A few comments must be made regarding the conditions under which the President of the Court could be replaced by the Vice-President. According to the Court's proposal, the President would be replaced "when he is prevented from attending, when the office of President is vacant or at the President's request". The wording of Article 9a implies that, in addition to cases where he is prevented from attending, the President would have discretion to request that he be replaced on an ad hoc basis, for all types of responsibilities – judicial, protocol or administrative. However, in the specific case of proceedings for interim measures, the new Article 39, second paragraph, as proposed by the Court, provides for replacement only "should the President be prevented from attending", and not at his request. This specific provision in Article 39 should probably be interpreted as a derogation from the general rule in Article 9a which permits the replacement of the President at his request.

16. In the Commission's view, it is justified that the choice of judge responsible for guaranteeing interim judicial protection should be an objective choice, namely the President, unless he is prevented from attending. It would be inappropriate for the President to decide in a discretionary manner and on an ad hoc basis to have himself replaced in proceedings for interim measures. The Commission considers, however, that this reasoning is valid for all the President's judicial acts (in other words, not only responsibility for giving an interim decision or a decision in appeals against interim measures, but also chairing hearings and deliberations by the full court and the Grand Chamber). By way of an additional guarantee against judicial bias, it would be preferable if litigation were to be allocated to the President and Vice-President in line with abstract, general principles decided in advance (the principle of "right to a lawful judge") rather than on a case-by-case basis. The Commission therefore suggests that the President should be replaced "at his request" only for his protocol and administrative responsibilities (including chairing general meetings of the Court). To this end it proposes that the second paragraph of Article 9a should be worded as follows:

> *The Vice-President shall assist the President of the Court. He shall take the latter's place when he is prevented from attending or when the office of President is vacant. He shall also take his place at the President's request, except in order to chair the full court and the Grand Chamber and for the responsibilities set out in Article 39.*

17. Lastly, as regards the arrangements for appointing the Vice-President, the Commission is in favour of the principle of an election for a renewable term of three years, as proposed by the Court. The Vice-President's term would thus be brought into line with that of the President of the Court.

18. The Court's second proposal concerns the **composition of the Grand Chamber**, which would be increased from 13 to 15 judges; the automatic participation of the Presidents of Chambers of five Judges would cease.

19. In the Commission's opinion, it is essential to have a Grand Chamber in the Court of Justice dealing with complex cases or cases which raise important questions of principle in order to ensure the harmonious development of the Court's case-law. Not only does this guarantee that the opinions of a large number of judges in the Court will be taken into account, but it also contributes to the continuity of case-law over time. Moreover, the permanent presence of the Presidents of Chambers of five Judges in the Grand Chamber and in the Chambers they chair contributes to maintaining a coherent case-law approach between these different formations of the Court.

20. In a Court consisting of 27 members, a Grand Chamber of 15 Judges could more easily fulfil the above-mentioned objectives. The same applies to the automatic presence of the Vice-President. These amendments must therefore be supported.

21. However, abolishing the automatic participation of the Presidents of Chambers of five Judges is a reform whose overall added value is more difficult to gauge. This development would admittedly relieve these Judges of part of their considerable workload. It would also allow the other Judges to take part more frequently in the work of the Grand Chamber, thus ensuring that more account is taken of the diversity of Member States and the variety of national legal systems. On the other hand, this reform would introduce a much bigger change than before in the composition of the Grand Chamber (only two permanent members out of fifteen instead of five out of thirteen, as is the case at the moment), with the ensuing risks in terms of the coherence and stability of the Grand Chamber's case-law. In addition, the Presidents of the Chambers of five Judges would no longer be fully informed of the deliberations within the Grand Chamber, on the occasions in which they no long take part in it.

22. In this respect, the Commission considers that it is possible to adapt the Court's proposal slightly to ensure more stability in the composition of the Grand Chamber, while at the same time achieving the objectives pursued by the reform.

23. This change would amount to keeping the composition suggested by the Court while adding a rule that three Presidents of Chambers of five Judges must always form part of this Grand Chamber.

24. The Rules of Procedure would contain conditions governing the participation of judges in each case, probably involving a system of two rotating lists (instead of a single list as is the case at the moment): one consisting of the Presidents of the Chambers of five Judges and the second one consisting of the other judges. The second paragraph of Article 16 would state:

> *The Grand Chamber shall consist of 15 Judges. It shall be presided over by the President of the Court. The Vice-President, three Presidents of Chambers of five Judges and other judges shall also form part of the Grand Chamber. The rules for appointing the three Presidents of Chambers of five Judges and the other judges are laid down in the Rules of Procedure.*

25. The Commission is in favour of **increasing the quorum** for decisions by the Grand Chamber (11 judges) and the full court (17 judges), as proposed by the Court.

26. Lastly, the amendment of Article 20 in order to abolish the reading at the hearing of the report presented by the Judge-Rapporteur would simply be abolishing a rule that is already obsolete. This would not raise any objections.

27. In conclusion, the Commission supports all the proposals made in relation to the Court of Justice, but would suggest:

- stating in which cases the President of the Court can be replaced by the Vice-President;

- ensuring more stability in the composition of the enlarged Grand Chamber.

Amendments relating to the General Court

28. The Court is aware of the need to make vigorous efforts to deal rapidly with the growing number of cases pending before the General Court and to reduce the time taken to handle cases. As it says in the explanatory note, the Court had to choose between the two routes to reform offered by the Treaties: increasing the number of judges or establishing one or more specialised courts. It is proposing to increase the number of judges at the General Court to 39.

29. Subject to the comments made below, the Commission agrees with the Court's choice. First, an urgent solution is needed for the considerable number of cases currently pending at the General Court. Only by immediately increasing the number of judges, using existing administrative structures, will it be possible to stem the flow of new cases and effectively tackle the backlog of cases. Creating one or more specialised courts would produce a result only after a considerable period of time[1]. Moreover, a flexible solution is needed to deal with the fluctuations in litigation which the General Court has to deal with. Developments in secondary legislation regularly generate new classes of litigation, the extent and stability of which it is difficult to foresee over time. While the REACH regulation, for instance, has been regularly cited in recent years as a potential source of considerable litigation, the highest rate of increase has in fact been in appeals against decisions concerning sanctions against people or entities based on mechanisms established under the Common Foreign and Security Policy. In the same way, it is difficult to foresee the effects in the medium term of the recent establishment of a number of agencies, particularly in the financial field. In view of this volatility, establishing specialised courts would not be enough to deal with these developments, at least at present. A more flexible solution would be to establish specialised chambers within the General Court itself, a matter that is discussed below in this opinion. Establishing specialised courts would not provide a lasting solution either to the problem of the General Court's excess workload, a problem which is affecting not only certain specific areas but also and above all complex cases such as those relating to competition and state aid.

---

[1] For example, over two years elapsed between the proposal for a decision establishing the Civil Service Tribunal (COM(2003) 705 of 19 October 2003) and the time it actually came into operation (Decision of the President of the Court of Justice recording that the European Union Civil Service Tribunal has been constituted in accordance with law**,** OJ L 325 of 12 December 2005).

30. Establishing the number of additional judges regarded as adequate necessarily involves some uncertainty. The proposal to add twelve judges to establish four additional chambers should be enough, however, to substantially increase the General Court's capacity to handle cases.

31. The proposed amendment of Article 48 of the Statut also requires a corresponding change in Article 47. The current wording of Article 47 makes several provisions of the Statute applicable to the General Court and its members, in particular the first paragraph of Article 9 which states that "When, every three years, the Judges are partially replaced, 14 and 13 Judges shall be replaced alternately." Once the number of judges at the General Court is no longer the same as at the Court of Justice, this provision can no longer be applied as it stands to the General Court. The Commission therefore suggests that the Court's proposal be modified as follows:

– add a point 6a worded as follows:

The first paragraph of Article 47 is replaced by the following:

Article 9a[2], Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17, and Article 18 shall apply to the General Court and its members.

– point 7 is reworded as follows:

Article 48 is replaced by the following:

"The General Court shall consist of 39 Judges.

When, every three years, the Judges are partially replaced, 20 and 19 Judges shall be replaced alternately."

32. In addition to this technical change, the addition of 12 judges raises two important questions: the organisation of a General Court extended to 39 judges, and the system of appointing judges. These two questions, which are partly related, are discussed below.

33. As regards the **internal organisation of the General Court**, the Commission thinks that it is necessary to adopt supplementary amendments to the Statute to enhance the impact that increasing the number of judges would have on the Court's efficiency. In addition, these amendments would result in corresponding adaptations of the General Court's Rules of Procedure.

34. The General Court is currently run on the basis of rigorous equality between the different Chambers, each of which is automatically assigned all classes of cases in turn. The President of the General Court can derogate from this system only in exceptional cases. This method of organisation forces all the judges to master areas of law as diverse as competition law, intellectual property law, agricultural litigation, etc. The composition of the Appeal Chamber is based on rotation.

---

[2] In relation to adding the reference to Article 9a, see point 39 of this opinion.

35. The Commission considers that these features could not be maintained in a court consisting of 39 judges. The large number of chambers would result in an even more fragmented distribution of the various classes of case. Out of the 600 cases and more that arrive each year, each Judge-Rapporteur would be allocated approximately 15 cases covering a very wide range of subjects.

36. Some subject-matter specialisation by several General Court chambers would thus appear to be necessary to ensure more efficient and rapid handling of cases, while preserving the necessary flexibility so as to adapt to emerging types of disputes.

37. While it is for the General Court to set down the details of such specialisation in its Rules of Procedure, the principle should be enshrined in the Statute itself to guarantee permanence. Specifically, it could be stated that the General Court is establishing an appropriate number of specialised chambers, and in any case at least two. To do this, Article 50 of the Statute could contain an additional paragraph inserted between the first and second paragraphs, which would read as follows:

> *"In the case of subjects for which a large volume of litigation exists, the General Court shall have an appropriate number of specialised chambers to which such cases are assigned. There cannot be fewer than two specialised chambers."*

38. The current system is designed in such a way that the President of the General Court is largely tied up with requests for interim measures and does not have enough time to devote to the general management of litigation. Moreover, he largely lacks the wherewithal for this type of management.

39. The Commission therefore recommends establishing the office of Vice-President of the General Court, as proposed for the Court of Justice. To do this, it might be enough to make the new Article 9a applicable to the General Court. A reference to this provision should therefore be added to the first paragraph of Article 47. At the same time, the General Court's Rules of Procedure should be modified to strengthen the President's powers in relation to the management of cases and, in particular, to the allocation of cases to judges.

40. To enhance the effectiveness of this change, the Vice-President could share with the President the task of managing applications for interim measures. In this case, the first paragraph of Article 47 would refer only to the first paragraph of Article 9a and a new Article 48a would be introduced, which would read as follows:

> *The Vice-President shall assist the President of the Court. He shall take the latter's place when he is prevented from attending or when the office of President is vacant. He shall also take his place for the tasks set out in Article 39 in line with the conditions provided for in the Rules of Procedure.*

41. Lastly, on a practical level, the Commission considers that, once an agreement in principle has been reached on increasing the number of judges, the General Court should receive the budget resources allowing it to recruit a significant number of additional legal secretaries, without waiting for the adoption and entry into force of the amendments to the Statute. These new legal secretaries, assigned to the current

Judges, could allow the latter to start handling pending cases until the new judges take up office. The legal secretaries could then be transferred to the new judges.

42. Once the number of judges at the General Court has been increased, the second question that arises concerns the **arrangements for nominating judges**. The rules for appointing judges to the General Court are laid down directly in the Treaties. As is the case for the Court of Justice, judges are appointed by common accord of the governments of the Member States for a term of six years (Article 19(2) TEU, and Article 254, second paragraph, TFEU). Article 254 also states that membership is to be partially renewed every three years. The only element that can be established by the Statute is the number of judges (first paragraph of Article 254 TFEU), provided that the General Court has at least one judge per Member State (Article 19(2), TEU).

43. Since the legislature is not responsible for supplementing these rules, the Member States must agree informally on arrangements for nominating judges. Given that the number of judges to be appointed does not correspond to the number of Member States or to a multiple of that number, it is essential to have such arrangements to ensure swift, non-conflicting appointments.

44. The Commission therefore asks the Member States, at the time of the approval of the amendments to the Statute by the legislature, to adopt a joint declaration setting out the nomination arrangements they have agreed. The declaration could be published in the *Official Journal of the European Union* for information purposes.

45. The Commission considers that the Member States should ensure that several fundamental objectives are borne in mind when adopting nomination arrangements. First, care must be taken to ensure the nomination of the most suitable people who are best qualified for carrying out the tasks concerned. This objective is already partly assured by the opinions given by the panel established pursuant to Article 255 TFEU. Then, a certain amount of stability in terms of the composition of the General Court must be guaranteed by maintaining as far as can be the possibilities of renewing the terms of judges. Given the technical nature of the subjects handled by the General Court and the increased need for specialisation there, it is important that the judges who have worked efficiently can possibly have their terms renewed. If the increase from 27 judges to 39 were to undermine this possibility, then this reform should be seriously reconsidered. At the same time, the Commission is aware that the Member States would like to have a system that would guarantee as far as possible that all national legal systems are properly represented in the composition of the General Court.

46. The increase from 27 judges to 39, with a partial replacement of 20 and 19 judges every three years, would undoubtedly make it more difficult to pursue these objectives simultaneously.

47. The Commission feels, however, that it is possible to find a balanced solution, and to this end it submits the following two alternative systems to the Member States for consideration.

48. The first model is designed to ensure strict equality between Member States by means of an egalitarian rotating system, while retaining the possibilities of renewal of terms as far as possible. The two basic principles involved would be that the

General Court must comprise at least one judge and at most two judges having the nationality of each Member State and, when two judges have the same nationality, their terms must be staggered over the three-year period (if the terms were to fall at the same time, this could undermine the independence of these judges, who would find themselves competing for the next term). In line with these two principles, judges would be appointed as follows:

- A rotation list would be drawn up covering the 27 Member States. The list could be established by drawing lots or following the order laid down in Article 3(3) of Protocol No 36 to the Treaties.

- Each time there is a partial replacement, the Member States which do not have a national among the 20 (or 19) judges who are halfway through their term are identified, and the corresponding number of judges with the nationality of those Member States are nominated as a priority. This may involve judges whose term has just expired (provided that this includes judges with the nationalities identified) or new judges.

- Then, in order to determine the nationality of the judges still to be nominated, the rotation list already drawn up would be followed, ensuring a maximum of two judges per Member State. Again, this may involve judges whose term has just expired (provided that this includes judges with the nationalities identified) or new judges.

- During the subsequent partial replacement, the same procedure would be followed, going down the rotation list (in other words, starting from the Member State directly following the one coinciding with the nationality of the last judge appointed the previous time).

- All the candidates thus identified are interviewed by the panel provided for in Article 255 TFEU. Regardless of the substance of the panel's opinion, the nomination system is followed without derogation. In other words, if an individual applicant is called into doubt, the Member State concerned should put forward another candidate.

49. The second model proposed by the Commission is designed to reflect a balance between the objective of ensuring the best possible representation of all national legal systems and the need to respond to the requirements of a General Court which is structured more in terms of specialised chambers for each subject. To this end, half of the new judges (in other words six) would be nominated in line with a procedure that meets this need for specialisation.

50. As in the first model, the basic principle would be that the General Court should comprise at least one judge and at most two judges having the nationality of each Member State. The judges would be nominated as follows:

- During each partial replacement, three judges would be selected, having regard to the judicial qualifications required to sit in one of the specialised chambers to be established by the General Court. To this end, each Member State can put forward one candidate. Selection from among these candidates is carried out by the Member States based on a prior opinion by the panel provided for in

Article 255 TFEU. The Member States must ask the panel to take into account in its opinion the candidates' qualifications in the area of the specialised chamber in question and to state an order of merit for the candidates whose suitability is confirmed. To avoid bottlenecks or delays in appointments, the Member States should agree beforehand on the position to be adopted following the panel's opinion.

- The other 16 or 17 judges would be appointed according to the rotation system set out in the first model, with one slight change: when, following a selection process taking account of specialisation, a national of a Member State has been appointed in the context of the partial replacement in question, this Member State will not be able, during the same replacement exercise, to exercise the right to nominate a judge which it would have by virtue of the rotation list.

51. The arrangements for the first-time nomination of the twelve additional judges should also be specified. Given the urgency of the present situation, it is not advisable to wait until the next partial replacements of the composition of the General Court in 2013 and 2016 in order to add to it two successive groups of six judges. On the contrary, the 12 new judges must be appointed as quickly as possible following the entry into force of the amendment to the Statute. At the same time, the terms of these new judges must be brought into line with those of the current judges to comply with Article 254 TFEU, which provides for a partial replacement every three years. To do this, the Commission suggests bringing the term of office of the new judges into line with the frequency of the partial renewal of the General Court by extending its effective duration as necessary. Concomitant compliance with all these requirements means, by necessity, that the first new judges will have to perform their duties for a period that does not correspond to the six-year term set down in the Treaties.

52. Given this, the Commission considers that, for reasons of legal certainty, a transitional provision must be added to the Court's proposal. It would state that the new judges will take up their posts immediately before their first six-year term has formally started. It would also determine the effective duration of terms of each new judge. This rule could be inserted as a new paragraph 3 of Article 3:

> *3. The 12 judges appointed following the entry into force of this regulation shall take up their posts immediately once they have taken the oath. Six of them shall be drawn randomly and their term shall end six years after the first partial replacement of the General Court following the entry into force of this regulation. The term of the other six judges shall end six years after the second partial replacement of the General Court following the entry into force of this regulation.*

53. The Commission suggests that the nationality of the first 12 additional judges might be determined by drawing lots or in line with the order set out in Article 3(3) of Protocol No 36 to the Treaties.

Amendments relating to the Civil Service Tribunal

54. The Court proposes making provision for the possibility of attaching temporary Judges to the specialised courts to allow them to replace judges prevented from attending for an extended period of time. In fact, this possibility can only be applied in relation to the Civil Service Tribunal, and a specific regulation is proposed for this court. According to the regulation, the Council would appoint three temporary judges from among former Members of the Court of Justice. A temporary judge would be required to perform judicial duties in the event of the actual or foreseeable absence of a judge of the Tribunal for at least three months.

55. The Commission is aware of the fact that, in a court comprising a small number of judges, the prolonged absence of one or more members can cause considerable practical difficulties. The solution proposed to remedy this appears to be appropriate.

56. The Civil Service Tribunal's Rules of Procedure would have to be amended following the adoption of this regulation, in particular to adapt the rules on the composition of the chambers and the assignment of cases. Temporary judges would exercise their prerogatives solely in the context of dealing with cases to which they were assigned, which means that they would not take part in the rotation system set out in the Rules of Procedure.

57. Several comments must be made about Articles 2 and 5 of this draft regulation.

58. In the case of Article 2, it would be appropriate to lay down the order in which the three temporary judges are required to undertake judicial duties when, in accordance with the conditions laid down, one of the member judges is unable to attend. The Commission recommends defining this order in the Council decision containing the list of temporary judges. This could be done by adding the following sentence to the end of the first paragraph of Article 2(1):

> *The list determines the order in which temporary judges are called to perform judicial duties, in line with the second paragraph of Article 2(2).*

59. In addition, the words "in the order laid down" should be inserted after the words "the President of the Tribunal shall call upon a temporary Judge" in Article 2(2), second paragraph.

60. A single term is used in the French version of Article 5 ("cessation des fonctions" of temporary judges) [*Translator's note: the English version uses two different terms, "cease" and "end"] to deal with what is in fact two quite separate sets of circumstances: the first and third paragraphs concern definitive removal from the list, while the second paragraph concerns the end of the actual period during which a temporary judge performs judicial duties; in this case the temporary judge remains on the list but stops performing his duties because of the return of the judge who was absent. The Commission suggests distinguishing more clearly between these two situations by setting them out in two separate articles.

61. Moreover, in the event of the return of the judge who was absent, the Tribunal (all the permanent judges of the Tribunal or those forming part of the relevant formation of the Tribunal?) can decide on a discretionary basis that a temporary judge should

continue to perform his duties until the cases in which he has been sitting are completed (entirely or partly?). The Commission has some criticism to make about this approach since it could weaken the independence of temporary judges given that the permanent judges with whom they work would decide whether or not they continue to perform their duties. For this reason, it considers that it would be more appropriate to adopt an objective criterion to determine the cases which the temporary judge would continue to handle even after the return of the judge he is replacing. It suggests that temporary judges should continue to perform their duties until all the cases to which they have been assigned have been completed. This would ensure greater stability in the composition of court formations. The Commission therefore recommends rewording Article 5 of the Regulation as follows:

Article 5

A temporary judge's name shall be removed from the list provided for in the first subparagraph of Article 2(1) on his death or resignation, or by decision to deprive him of his office as provided by the first and second subparagraphs of Article 6 of the Statute.

Any temporary judge whose name is removed from the list provided for by the first subparagraph of Article 2(1) shall be replaced, in accordance with the procedure under that provision, for the remainder of the period of validity of the list.

Article 5a

The duties of a temporary judge shall end when the Judge whom he has replaced is no longer prevented from acting. However, the temporary Judge shall continue to perform his duties until the cases to which he has been assigned are completed.

Amendments relating to all three Courts

62. Lastly, the Court proposes dropping the provision on the ten-day fixed period of grace based on considerations of distance on the grounds that it is no longer justified in this era of new technology.

63. It is true that the ten-day fixed period no longer fulfils the objective for which it was created, namely compensation for the time needed to send correspondence to the courts. Nevertheless, this additional period of time is sometimes valuable in allowing the parties and those concerned to lodge their pleadings and comments in time.

64. The Commission considers that this amendment is not a priority; for its part, it is quite satisfied with the current arrangements. On the other hand, it would make no objection should the consideration of distance be dropped.

65. If the ten-day grace period is dropped, the Commission would recommend extending some specific periods set down in the Statute[3]:

[3] Periods specified directly in the Treaties cannot be changed, such as the two-month period for lodging an action for annulment (Article 263 TFEU) and the one-month period set down in Article 269 TFEU.

- The two-month period for submitting written observations on cases referred to the Court of Justice (Article 23, second paragraph, of the Statute) should be extended to ten weeks given the complex preparation which these observations often require, in particular for the Member States and institutions.

- The two-month period for appealing against certain decisions of the General Court (Article 56, first paragraph) and of the Civil Service Tribunal (Article 9, first paragraph, of Annex I) should also be extended to ten weeks as within this period, the parties must in turn adopt the decision in principle to bring an appeal (which can take a certain amount of time for reasons relating to internal procedures) and draft the said appeal.

- The two-week period for appealing against a decision of the General Court or Civil Service Tribunal dismissing an application to intervene (Article 57, first paragraph, and Article 10, first paragraph, of Annex I) should be increased to three weeks.

66. Other periods set by the Rules of Procedures of the three Courts should also be extended:

- Seven days for an application to submit a reply or rejoinder following a response in an appeal (Article 117(1) and (2), last sentence, RP Court of Justice, and Article 143(1) and (2), last sentence, RP General Court);

- One month to lodge observations on the questions subject to review (Article 123e, second paragraph, RP Court of Justice);

- Two months to lodge observations on references for a preliminary ruling (EFTA) (Article 123g, third paragraph, RP Court of Justice).

67. Lastly, it would be desirable if, in return for dropping the considerations of distance, the procedural deadlines were suspended during the first two weeks of August and between 20 December and 3 January. During these periods of judicial vacations, it would be particularly difficult to comply with short ten-day deadlines.

Conclusion

The Commission hereby issues a favourable opinion on the amendment of the Statute proposed by the Court of Justice subject to the changes set out in points 16, 23 and 24, 31, 37, 40, 52, 58, 59, 61 and 65 of this opinion, and provided that arrangements for nominating the judges to the General Court are adopted concomitantly by the Member States.

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