



Council of the
European Union

Brussels, 24 June 2015
(OR. en)

**Interinstitutional File:
2011/0901B (COD)**

9375/1/15
REV 1 ADD 1

JUR 341
COUR 21
INST 181
CODEC 797
PARLNAT 70

STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
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

- Statement of the Council's reasons
- Adopted by the Council on 23 June 2015

I. INTRODUCTION

1. On 28 March 2011, the Court of Justice submitted a legislative initiative¹ under the second paragraph of Article 281 TFEU to amend the Protocol on the Statute of the Court of Justice, which included *inter alia* an increase of the number of judges at the General Court by 12. While the other proposed amendments were adopted on 11 August 2012, it was impossible to find an agreement within the Council as to the increase of the number of judges.
2. The European Parliament adopted at its plenary session on 15 April 2014 its position at first reading on the Court's proposal, supporting an increase of the number of judges at the General Court by 12.
3. Against this background, and taking into account the important increase of the caseload of the General Court since the initial proposal was made, the Court of Justice suggested on 13 October 2014² that the co-legislators amend it so as to double the number of judges at the General Court in three stages by 2019, including the integration of the Civil Service Tribunal in the General Court, resulting in a net increase of the number of judges by 21 additional judges.
4. On that basis, Coreper reached on 11 December 2014 an agreement in principle on the essential elements of the reform, as set out in document 16576/14 of 8 December 2014.
5. During the first semester of 2015, the Presidency has been trying to enter into informal discussions with the European Parliament's Legal Affairs Committee in a quadrilogue format, with the participation of the Court of Justice and the Commission, with a view to achieving an "early second reading agreement" on the reform, whereby the Council would adopt its position at first reading on the basis of a pre-negotiated text which the European Parliament could then approve under Article 294(7)(a) TFEU. However, these efforts have not been crowned by success.

¹ Document 8787/11.

² Document 14448/14 + COR 1.

6. In these circumstances, the Council decided to adopt its position at first reading under Article 294 (5) TFEU and to communicate it to the European Parliament together with the present statement of reasons.

II. OBJECTIVE

7. As a consequence of the progressive expansion of its jurisdiction, the number of cases brought before the General Court has been steadily increasing over the years, resulting over time in an increase in the number of cases pending before that court. This has an impact on the duration of proceedings, which is not acceptable from the point of view of litigants and incompatible with the Union's obligation to ensure that a judgment is given within a reasonable time, as laid down in Article 47 of the Charter of Fundamental Rights of the European Union. This is a reason for concern particularly in the areas of competition and state aid.
8. Considering the important increase of the caseload of the General Court since 2011, the Court of Justice, as mentioned in point 3 above, suggested on 13 October 2014 that the co-legislators amend its initial proposal so as to double the number of judges at the General Court in three stages by 2019, including the integration of the Civil Service Tribunal in the General Court, in order to attain the following objectives :
- dispose of the same number of cases as the number of new cases brought, thus halting the increase in the number of pending cases;
 - clear the backlog of pending cases;
 - reduce the length of proceedings before the General Court, and thus also the risks of the European Union being held in breach of Article 47 of the Charter;
 - simplify the judicial architecture of the European Union, and promote the consistency of the case-law;

- have greater flexibility in dealing with cases, by allowing the General Court, in the interests of the proper administration of justice, to assign a greater or lesser number of Judges to one or more Chambers, depending on changes in the caseload, or to make certain Chambers responsible for hearing and determining cases falling within certain subject areas;
- solve the recurring problems linked to the appointment of Judges of the Civil Service Tribunal and prevent similar ones that could appear for the appointment of additional Judges at the General Court;
- restore to the Court of Justice the power to rule on appeal in disputes between the Union and its servants, thus rendering superfluous both the review procedure (the implementation of which has proved somewhat complex) and the office of temporary Judge at the Civil Service Tribunal.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

9. The Council's position at first reading corresponds in essence to the suggestion of the Court of Justice of 13 October 2014 (see point 3 above), albeit with reduced costs. It foresees an increase of the number of judges at the General Court to 56 in three stages :
- from September 2015 (or the date of entry into force of the amending Regulation, if posterior to 1 September 2015) : increase of the number of judges by 12 ;
 - from September 2016 : transfer of first instance jurisdiction in Union civil service cases to the General Court and integration of the 7 posts of judges of the Civil Service Tribunal into the General Court, on the basis of a future legislative request by the Court of Justice, subject to its adoption by the European Parliament and by the Council.
 - from September 2019 : increase of the number of judges by 9.

10. During phases 1 and 2, each of the additional judges would have three legal secretaries. However, as set out in Recital n° 9 and agreed with the Court of Justice, the third phase should not entail any additional administrative costs (no recruitment of additional legal secretaries and assistants).
11. Furthermore, as part of the political compromise, the Court of Justice will present yearly figures on its judicial activity, including on the evolution of appeal cases, and, if necessary, propose appropriate measures. It is also agreed that 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, 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. Finally, the General Court is expected to proceed to a review of its internal organization and its Rules of Procedure and, on that basis, adopt necessary measures and submit appropriate proposals for approval by the Council in time before the final phase of its enlargement in 2019.
12. The Council considers that this reform of the General Court is necessary, since the backlog of pending cases and excessive duration of proceedings in 2015 are much higher than in 2011, when the Court tabled its initial legislative initiative of 12 additional judges. In 2010, the number of new cases was 636. In 2014, there were 912 new cases, which represents an increase by about 43 % in 4 years. This has led to a situation where parties are waiting sometimes more than four years before obtaining a judgment, especially economic operators in competition and state aid cases, during which important sums are blocked and therefore cannot be injected in the European economy. Furthermore, late judgments have already given rise to claims for damages against the Union. Besides the reputational damage to the European Union for not respecting its own Charter of fundamental rights, the absence of a reform of the General Court thus causes considerable costs for the European economy and taxpayers.

13. Against that background, an increase of the number of judges by 21 is justified. Compared to an increase of the caseload by 43%, the Council's position at first reading amounts to an additional increase in the number of judges by only 22% (from 40 to 49), if one excludes the 7 posts transferred from the Civil Service Tribunal, which will be neutral as regards the capacity of the General Court since the workload for civil service cases (between 150 to 200 cases per year) will also fall upon the General Court from 2016. In addition, new legislation already adopted or currently under discussion is likely to lead to a further increase of the number of cases brought before the General Court.
14. The reduction of the number of jurisdictions to two instead of three will bring a simplification of the judicial system, enhance the coherence of case law and entail economies of scale. The reform will allow for specialization of chambers within the General Court, with obvious positive consequences for its productivity. It will also allow the General Court to improve the depth of its deliberations by deciding more often in chambers of five judges instead of three and, if necessary, by calling upon Members of the General Court to perform the task of an Advocate-General.
15. The costs of the reform which would result from the Council's position at first reading (see points 10 and 11 above) would amount to yearly additional costs of 13,5 million € in net figures at cruise speed, to be compared to the initial proposal evaluated at 11,2 million € for 12 additional judges which has already been accepted by the European Parliament in its position at first reading. The Council's position at first reading thus represents an increase of the overall cost of the reform by 20% compared to the 2011 proposal, while at the same time the number of new cases per year at the General Court increased by 43%. Taking into account also the cost of non-reform, these costs appear to be modest and justified.

IV CONCLUSION

16. The reform which is foreseen by the Council's position at first reading 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.
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