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## **INFORMATION NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Protocol n° 3 on the Statute of the Court de Justice of the European Union - Outcome of the European Parliament's second reading (Strasbourg, 26 to 29 October 2015)

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### **I. INTRODUCTION**

The Rapporteur, Mr Antonio MARINHO e PINTO (ALDE-PT), presented a report on behalf of the Committee on Legal Affairs, consisting of eleven amendments (amendments 1-11).

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament, the Commission and the Court of Justice with a view to reaching an agreement on this dossier at second reading, thereby avoiding the need for a conciliation procedure.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the EPP, S&D and Greens/EFA political groups, presented two compromise amendments (amendments 13 -14) to the position of the Council at first reading. These amendments had been agreed during the informal contacts referred to above.

At the same time, in view of the plenary, the Rapporteur tabled, on behalf of the ALDE political group, eight further amendments (amendments 16-23), the ENF political group tabled one amendment (amendment 15) and the EFDD tabled twelve amendments (amendments 24-35).

## II. VOTE

When it voted on 28 October 2015, the plenary reached the necessary absolute majority and adopted the two compromise amendments (amendments 13 and 14) to the position of the Council at first reading.

No other amendments were adopted. The text of the amendments adopted and the European Parliament's legislative resolution<sup>2</sup> are set out in the Annex hereto.

The amendments adopted correspond to what was agreed between the four institutions and ought therefore to be acceptable to the Council. Consequently, once the Legal-Linguistic Experts have examined the text, the Council should be in a position to adopt the legislative act.

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<sup>2</sup> The amendments are presented in the form of a consolidated text where added wordings are highlighted in bold and italics, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

(28.10.2015)

**Court of Justice of the European Union: number of judges at the General Court  
\*\*\*II**

**European Parliament legislative resolution of 28 October 2015 on the Council position 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 (09375/1/2015 – C8-0166/2015 – 2011/0901B(COD))**

**(Ordinary legislative procedure: second reading)**

*The European Parliament,*

- having regard to the Council position at first reading (09375/1/2015 – C8-0166/2015),
  - having regard to its position at first reading<sup>3</sup> on the request from the Court of Justice submitted to Parliament and the Council (02074/2011),
  - having regard to the undertaking given by the Council representative by letter of 21 October 2015 to approve Parliament's position at second reading, in accordance with Article 294(8)(a) of the Treaty on the Functioning of the European Union,
  - having regard to Article 294(7) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 69 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs (A8-0296/2015),
1. Adopts its position at second reading hereinafter set out;
  2. Approves the joint statement by Parliament and the Council annexed to this resolution;
  3. Instructs its President to forward its position to the Council, the Court of Justice, the Commission and the national parliaments.

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<sup>3</sup> Texts adopted of 15.4.2014, P7\_TA(2014)0358.

**Position of the European Parliament adopted at second reading on 28 October 2015 with a view to the adoption of Regulation (EU, Euratom) 2015/... of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union\***

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 254 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,

Having regard to the opinion of the European Commission,

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

Acting in accordance with the ordinary legislative procedure<sup>4</sup>,

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\* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

<sup>4</sup> Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and position of the Council at first reading of 23 June 2015 (OJ C 239, 21.7.2015, p. 14). Position of the European Parliament of 28 October 2015.

Whereas:

- (1) As a consequence of the progressive expansion of its jurisdiction since its creation, the number of cases before the General Court *is now constantly* increasing ■ .
- (2) At present, the duration of proceedings does not appear to be acceptable from the point of view of litigants, particularly in the light of the requirements set out in Article 47 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (3) The situation in which the General Court finds itself has ■ causes relating, *inter alia*, to the increase in the number and variety of legal acts of the institutions, bodies, offices and agencies of the Union, as well as to the volume and complexity of the cases brought before the General Court, particularly in the areas of competition, State aid *and intellectual property*.

- (4) *The option of setting up specialised courts as provided for in Article 257 TFUE has not been taken up.*
- (5) Consequently, *suitable measures of an organisational, structural and procedural nature, including in particular an increase in the number of Judges*, should be taken to address this situation. Making use of the possibility provided for by the Treaties of increasing the number of Judges of the General Court would allow for a reduction within a short time of both the volume of pending cases and the excessive duration of proceedings before the General Court.

- (6) Taking into account the evolution of the workload of the General Court, the number of Judges should be fixed at 56 at the end of a three-stage process, ***two judges being appointed upon a proposal by each of the Member States***, it being understood that at no point of time can there be more than two Judges sitting at the General Court appointed upon proposal by the same Member State.
- (7) ***The panel provided for in Article 255 TFEU takes into account in particular independence, impartiality, expertise and the professional and personal suitability of the candidates.***
- (8) In order to rapidly reduce the backlog of pending cases, twelve additional Judges should take office ***upon entry into force of this Regulation.***

- (9) In September 2016, first instance jurisdiction in **European Union** civil service cases ■ and the seven posts of the Judges sitting at the ■ Civil Service Tribunal ■ should be transferred to the General Court, on the basis of *the legislative request already announced* by the Court of Justice.

*This request will consider the modalities of the transfer of the seven posts of Judges of the Civil Service Tribunal, including staff and resources.*

- (10) In September 2019, the remaining nine ■ Judges should take office. In order to ensure cost-effectiveness, this should not entail the recruitment of additional legal secretaries or other support staff. Internal re-organisation measures within the institution should *make sure* that efficient use be made of existing human resources, *which should be equal for all Judges, without prejudice to the decisions taken by the General Court concerning its internal organisation.*



- (11) *It is of high importance to ensure gender balance within the General Court. In order to achieve that objective, partial replacements in that Court should be organised in such a way that the Governments of Member States gradually begin to nominate two Judges for the same partial replacement with the aim therefore of choosing one woman and one man, provided that the conditions and procedures laid down by the Treaty are respected.*
- (12) It is necessary to adapt accordingly the provisions of the Statute of the Court of Justice of the European Union on the partial replacement of Judges and Advocates-General that takes place every three years.
- (13) *As the Court of Justice of the European Union has already announced, it will, as a follow-up to the reform of the General Court, present yearly figures on its judicial activity and, if necessary, suggest appropriate measures. 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, notably in terms of administrative expenditure of the Court.*
- (14) Protocol No 3 on the Statute of the Court of Justice of the European Union should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

## *Article 1*

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

- (1) Article 9 is replaced by the following :

### *"Article 9*

When, every three years, the Judges are partially replaced, one half of the number of Judges shall be replaced. If the number of Judges is an uneven number, the number of Judges who shall be replaced shall alternately be the number which is the next above one half of the number of Judges and the number which is next below one half.

The first paragraph shall also apply when the Advocates-General are partially replaced, every three years."

(2) Article 48 is replaced by the following:

*"Article 48*

The General Court shall consist of:

- (a) 40 Judges as from ...\*;
- (b) 47 Judges as from 1 September 2016;
- (c) two Judges per Member State as from 1 September 2019."

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\* OJ: *please insert the date of entry into force of this Regulation.*

## Article 2

The term of office of the additional Judges of the General Court to be appointed pursuant to Article 48 of Protocol No 3 on the Statute of the Court of Justice of the European Union shall be as follows:

- (a) The term of office of six of the twelve additional Judges to be appointed as from ...\* shall end on 31 August 2016. Those six Judges shall be chosen ***in such a way that the governments of six Member States nominate two Judges for the partial replacement of the General Court in 2016.*** The term of office of the other six Judges shall end on 31 August 2019;

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\* OJ: *please insert the date of entry into force of this Regulation.*

- (b) The term of office of three of the seven additional Judges to be appointed as from 1 September 2016 shall end on 31 August 2019. Those three Judges shall be chosen *in such a way that the governments of three Member States nominate two Judges for the partial replacement of the General Court in 2019*. The term of office of the other four Judges shall end on 31 August 2022;
- (c) The term of office of four of the nine additional Judges to be appointed as from 1 September 2019 shall end on 31 August 2022. Those four Judges shall be chosen *in such a way that the governments of four Member States nominate two Judges for the partial replacement of the General Court in 2022*. The term of office of the other five Judges shall end on 31 August 2025.

### Article 3

1. *By ... \* at the latest, the Court of Justice shall draw up a report, using an external consultant, for the European Parliament, the Council and the Commission on the functioning of the General Court.*

*In particular, this report shall focus on the efficiency of the General Court, the necessity and effectiveness of the increase to 56 judges, the use and effectiveness of resources and the further establishment of specialised chambers and/or other structural changes.*

*Where appropriate, the Court of Justice shall make legislative proposals to amend its Statute accordingly.*

2. *By ... \*\* at the latest, the Court of Justice shall draw up a report for the European Parliament, the Council and the Commission on possible changes to the distribution of competence for preliminary rulings under Article 267 of the Treaty on the Functioning of the European Union. The report shall be accompanied, where appropriate, by legislative proposals.*

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\* OJ: please insert the date: *five years after the entry into force of this Regulation.*

\*\* OJ: please insert the date: *two years after the entry into force of this Regulation.*

*Article 4*

This Regulation shall enter into force on the day 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 ..., on ...

*For the European Parliament*

*For the Council*

*President*

*President*

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Joint statement by the European Parliament and the Council

At the end of the reform process, the General Court will consist of two Judges per Member State. Therefore, in order to achieve equality between women and men, which is an objective of the European Union according to Article 3 TEU, the governments of the Member States should, to the greatest possible extent, in the process of appointing candidates as Judges at the General Court pursuant to Article 254 TFEU, ensure an equal presence of women and men.