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Response to the invitation from the Italian Presidency of the Council to present new proposals in order to facilitate the task of securing agreement within the Council on the procedures for increasing the number of Judges at the General Court

The Court of Justice wishes to thank the Italian Presidency of the Council for having taken the initiative, by its letter dated 3 September 2014, to invite new suggestions regarding the procedures for increasing the number of Judges at the General Court.

I. The background to the current situation

Increasing the number of Judges at the General Court is part of the legislative initiative to reform the Statute of the Court of Justice of the European Union which the Court of Justice submitted to the EU legislature on 28 March 2011. Having been favourably received by the Commission, the increase was approved by the Parliament on a first reading. At the Council, while an agreement in principle has been established, it has not proved possible to overcome differences of opinion as to the method of appointment of additional Judges. In regard to that last point, the Greek Presidency of the Council in the first half of 2014 concluded that, while the Court of Justice would have to consider other options, any solution involving fewer Judges than the number of Member States, and, consequently, requiring a choice to be made between Member States, would encounter the same difficulties as those which, in recent years, have prevented agreement from being reached in the Council.

Furthermore, the difficulties which the Council has recently encountered on a number of occasions when it has been called upon to appoint Judges to the Civil Service Tribunal (CST) have a certain amount in common with the situation outlined above. Both last year and this, the need to make a choice on account, on the one hand, of the limited number of positions to fill, owing to the small size of the CST, and, on the other, of the desire to achieve a balance between the principles of stability and rotation, has given rise to long and difficult discussions, so much so that, as matters stand, the appointments that were to have been made for 30 September 2014 owing to the expiry of the terms of office of two Judges of the CST, including its President,

have still not been made. The negative impact of this impasse on the proper functioning of the CST is already becoming evident, as the uncertainty regarding its composition is clearly not conducive to efficient case-management.

So far as the workload of the General Court is concerned, the situation is even more serious than it was when the legislative initiative of the Court of Justice was put forward. While the number of pending cases before the General Court at that time was approximately 1 300, that figure will shortly rise to 1 600, which, moreover, is double the number of pending cases before the Court of Justice. As regards the number of new cases brought before the General Court, that figure, which was 636 in 2010 and 722 in 2011, will probably reach 1 000 in 2014.

It must also be noted that the first actions for damages, in consequence of the Court of Justice's finding of a breach by the General Court of the reasonable time principle, have now been brought (T-479/14 *Kendrion v Court of Justice of the European Union*; T-577/14 *Gascogne Sack Deutschland GmbH and Gascogne v Court of Justice of the European Union*). In other cases, currently pending before the Court of Justice, the issue of the General Court's breach of the duty to adjudicate within a reasonable time has been raised by the applicants. Taken together, these cases, including those still at a pre-litigation stage (submission to the Court of Justice and/or the Commission of a claim for compensation for damage), involve claims for damages of close to 20 million euro.

II. Proposal to double the number of Judges at the General Court in three stages, and to transfer first-instance cases relating to the EU civil service to the General Court

In these circumstances, the Court of Justice considers that the procedure for increasing the number of Judges at the General Court must be managed in such a way as to enable the General Court's judicial capacity to be reinforced in the very near future, so that it is in a position to achieve a rapid and substantial reduction both in the duration of proceedings before it and in the backlog of pending cases.

That is why the Court of Justice proposes to raise the number of Judges at the General Court to two per Member State, while at the same time providing, on the one hand, for such an increase to be phased in so as to ensure that it proceeds in parallel with the growing number of new cases brought before that court, and, on the other, for first-instance cases relating to the EU civil service to be transferred to the General Court.

This proposal thus not only meets the immediate needs of the General Court but, looking much further ahead, is also intended to provide a structural and lasting

response to the difficulties encountered, one which provides a longer term solution to the issue of how cases brought before the General Court should be dealt with, by enabling that court to cope with the increase in its workload that is to be anticipated.

- The first stage would consist of an increase in the number of Judges of the General Court by 12, and would provide the General Court with the immediate reinforcements it urgently requires. That figure, which is the figure originally proposed in 2011, is justified now more than ever by the growing workload of the General Court, and would not generate costs in excess of those already envisaged in that respect under the 2011 legislative initiative, which have, in principle, been approved by the EU legislature.
- The second stage would consist of an increase in the number of Judges of the General Court by 7, and would include the transfer to the General Court of first-instance cases relating to the EU civil service. It could take place in 2016 (a year in which the General Court will be partially renewed), on the basis of a legislative initiative to that effect which the Court of Justice would prepare. Where a national of a Member State is performing the duties of Judge at the CST, that Member State will have the opportunity to propose his appointment as a Judge of the General Court, provided that it did not participate in the first stage.
- The third stage would consist of an increase in the number of Judges of the General Court by 9, and would coincide with the partial renewal of the General Court in 2019.

This proposal has been discussed internally, first of all with the President and the Vice-President of the General Court and the President of the CST. It was subsequently approved by the general meeting of the Court of Justice, and the plenary meeting of the CST expressed itself to be in favour of the proposal, whereas the plenary meeting of the General Court stated its preference for the establishment of a specialised trade mark court and for the status quo to be maintained as regards the CST, after which the President and the Vice-President of the Court of Justice, having been invited to take part in a special plenary meeting of the General Court, were able to explain to the Members of the General Court why the Court of Justice is proceeding with the current proposal.

In those circumstances, the Court of Justice hopes that its proposal will, as soon as possible, be given a favourable reception by the EU legislature.