Court of Justice of the European Union: statute (amend. Protocol and Annex I)

2011/0901A(COD) - 28/03/2011 - Legislative proposal

PURPOSE: to submit to the EU legislature draft amendments to the Statute of the Court of Justice and Annex I thereto.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

LEGAL BASIS: Article 19(2), second paragraph, of the Treaty on the Functioning of the European Union. (TFUE); first paragraph of Article 254, the first and second paragraphs of Article 257 and the second paragraph of Article 281 TFEU; Article 106a(1) of the Treaty establishing the European Atomic Energy Community.

CONTENT: the **Court of Justice submits to the European Union legislature** draft amendments to the Statute of the Court of Justice and its Annex I. This single text incorporates separate proposals in respect of each of the three jurisdictions which comprise the Court of Justice of the European Union.

1) Proposals relating to the Court of Justice: the Court considers it desirable to establish the office of Vice-President of the Court of Justice and to amend the rules relating to the composition of the Grand Chamber.

The current structure of the Grand Chamber and the rules determining how it operates – a quorum of nine Judges together with the participation in every case of the President of the Court and the Presidents of the Chambers of five Judges – are the product of amendments introduced by the Treaty of Nice, which entered into force on 1 February 2003.

Since that date, there have been a number of changes affecting the work of the Court: (i) the accession of 12 new Member States; (ii) the transition from two to three Chambers of five Judges in May 2004 and to four Chambers of five Judges in October 2006; (iii) the introduction of the urgent preliminary ruling procedure in March 2008; and (iv) the introduction of the review procedure following the establishment of the Civil Service Tribunal.

At present, the President of the Court and the Presidents of the Chambers of five Judges have a very heavy workload, whereas other Judges sit in relatively few cases assigned to the Grand Chamber.

The proposal provides for :

- **broader participation by the Judges in cases assigned to the Grand Chamber**, allowing them to sit far more frequently than at present (in almost half, instead of a third, of all cases). That would be achieved by the amendment of Articles 16 and 17 of the Statute so as to increase to 15 the number of Judges constituting the Grand Chamber and to end the automatic participation of the Presidents of Chambers of five Judges in Grand Chamber cases. Corresponding adjustments must be made to the rules relating to the quorum of the Grand Chamber and of the full Court;
- the **establishment of the office of Vice-President**: the latter would sit, like the President, in every case assigned to the Grand Chamber. The permanent presence of two persons, together with the more frequent participation of the other Judges in the work of the Grand Chamber, would ensure that its case-law is consistent. In addition to sitting in every Grand Chamber case, the Vice-President would also assist the President of the Court in his duties.

2) Proposals relating to the General Court: for several years now, the number of cases disposed of by the General Court has been lower than the number of new cases, so that the number of pending cases is rising constantly. At the end of 2010, there were 1 300 cases pending, whereas, in the same year, 527 cases were disposed of.

In addition to the number of cases currently pending, the likely increase in the number of cases brought before the General Court must be taken into account: there was an **increase of 65% between 2000 and 2010**. In addition to those areas of litigation, further litigation will be generated by the application of the numerous regulations establishing European Union agencies, in particular the REACH Regulation **The current increase in workload is due to** (i) the devolution of jurisdiction, since 2004, to rule on certain classes of action or proceedings brought by the Member States; (ii) to the increase in litigation following the 2004 and 2007 accessions; (iii) to the litigation engendered by the increase, resulting from greater European integration, in the number and variety of legislative and regulatory acts of the institutions, bodies, offices and agencies of the EU; and (iv) to the growth of litigation relating to Community trade mark applications.

The Court of Justice believes that a structural solution is urgently required. The Treaties offer **two possible routes to reform**:

(a) to establish specialised courts with jurisdiction to hear and determine direct actions in a specific area, in accordance with the first paragraph of Article 257 TFEU. The field of intellectual property has been mooted in that regard; (b) increasing the number of Judges of the General Court by means of an amendment to Article 48 of the Statute in accordance with the mechanism provided for in the second paragraph of Article 281 TFEU.

Having weighed up the two options at length, **the Court of Justice has come to the conclusion that an increase in the number of Judges is clearly preferable to the establishment of a specialised court in the field of intellectual property**. Its reasons relate to the effectiveness of the proposed solution, the urgency of the situation, the flexibility of the measure envisaged and the consistency of European Union law.

The Court of Justice therefore considers that **an increase in the number of Judges by at least 12**, bringing the number of General Court Judges to **39**, is necessary.

3) Proposals relating to the Civil Service Tribunal: the European Union Civil Service Tribunal comprises seven Judges. Owing to that limited composition, the functioning of the Tribunal can be seriously affected if one of its members, for an extended period of time, is prevented on medical grounds from performing his duties, without however suffering from disablement within the meaning of Article 10 of Council Regulation No 422/67/EEC, No 5/67/Euratom.

In order to ensure that the Civil Service Tribunal is not placed in a situation of difficulty such as to prevent it from carrying out its judicial functions, it is proposed to amend Article 62c of the Statute of the Court by providing, in general terms, for the **possibility of attaching temporary Judges** to the specialised courts.

The rules governing the appointment of temporary Judges, their rights and obligations, the conditions under which they are to perform their duties and the circumstances in which they will cease to perform those duties are laid down in a separate draft regulation, which would supplement Annex I to the Statute.