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

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The Commission presents its Opinion on the requests for the amendment of the Statute of the Court of Justice of the EU, presented by the Court in two requests on 28 March 2011. 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. The Court also proposes an amendment that would affect the three courts in the same way, namely dropping the provision on periods of grace based on considerations of distance, which would in fact result in the disappearance of the ten-day fixed period which is currently added to the procedural deadlines. 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.

Court of Justice: 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;
- modify the composition of the Grand Chamber;
- increase the quorum for decisions by the Grand Chamber and the full Court;
- abolish the reading at the hearing of the report presented by the Judge-Rapporteur.

The Commission supports all the proposals made in relation to the Court of Justice, but suggests:

- 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. The Commission suggests a rule that three Presidents of Chambers of five Judges must always form part of this Grand Chamber. 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 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. The Commission approves the amendments, subject to comments and proposals regarding:

- the replacement of judges;
- the number of specialised chambers, with a minimum of two;
- the need for an office of Vice-President of the General Court, as proposed for the Court of Justice;
- a transitional provision stating that the new judges will take up their posts immediately before their first six-year term has formally started, and . also determining the effective duration of terms of each new judge;

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. The Commission approves the amendments, subject to comments on the need 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 Court proposes that in the event of the return of the judge who was absent, 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. 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.

Amendments relating to all three Courts: 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. The Commission states that if the ten-day grace period is dropped, it would recommend extending some specific periods set down in the Statute, amongst them, the period set down for submitting written observations on cases referred to the Court of Justice, and the period for appealing against certain decisions of the General Court and of the Civil Service Tribunal.