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from: Presidency

to: Friends of the Presidency Group (Reform of the Court of Justice of the European Union)

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Subject: **Reform of the General Court**  
– Factual information

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**I. Introduction**

1. In its meeting on 21 September 2012, the Friends of the Presidency Group discussed the possible solutions set out in document 13797/12. While a large majority of delegations agreed on the principle that an increase of the number of Judges is necessary in order to address the problems faced by the General Court, it became clear that most delegations were unable to pronounce themselves on concrete numbers without more detailed information relating in particular to -
  - the impact of the increase of the number of Judges by, respectively, 6, 9, 12 or 15 Judges<sup>1</sup> on the backlog of pending cases and the average duration of proceedings ;
  - the budgetary implications of each of these options ;

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<sup>1</sup> As it was explained during the meeting, once the new Croatian judge will be appointed in 2013, the General Court would have 28 Judges. Given that its President does not sit in a Chamber, the remaining 27 Judges are assigned to 9 Chambers. Hence, the appointment of 6, 9, 12, or 15 new Judges would allow the creation of, respectively, 2, 3, 4 or 5 new Chambers.

- the way in which the General Court envisages to integrate the additional Judges from an organizational point of view ;
- any other measures taken or planned by the General Court to further increase its efficiency.

2. The present document, drawn up mainly on the basis of elements submitted by the representatives of the Court of Justice of the European Union, aims to provide the requested information.

## **II. Impact of the increase of the number of Judges on the backlog of pending cases and the average duration of proceedings**

3. It follows from the statistical data submitted by the Court that there is a growing gap between the number of new cases brought before the General Court and the number of cases completed.<sup>2</sup> This unavoidably has repercussions on the average duration of proceedings, which is not only a function of the complexity of a case and the necessary procedural steps, but is also linked to the backlog, which can be defined as the number of cases that the General Court is not able to handle within the timeframe set by its internal timetables and deadlines. These deadlines currently aim at ensuring that the average duration of proceedings in cases completed by way of judgments (as opposed to orders) is less than 24 months on average and less than 36 months on average in competition cases. In that sense the backlog is the number of cases which are in a state of proceedings to be dealt with and in which the internal deadlines for issuing the preliminary report are exceeded and in which the latter document has still not been issued<sup>3</sup> due to a lack of capacity of the reporting Judge and/or the respective Chamber.

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<sup>2</sup> See document 13797/12, paragraph 2.

<sup>3</sup> On 31 August 2012, there were more than 350 cases where the written procedure has been closed for more than a year.

4. The number of pending cases represents the global workload of the General Court, including cases that are not in a state to be dealt with (for procedural reasons) and cases which are being dealt with in due time. That number does not correspond, as such, to the backlog, but is meaningful when put in relation to the output which the General Court is able to deliver<sup>4</sup>. Indeed, the aim of the measures discussed in the Friends of the Presidency Group should be to achieve a situation where there are no delays and all cases are treated by the General Court within a reasonable time. The analysis of the average duration of proceedings should be based on an appropriate ratio between the stock of pending cases and the turnover. If the objective is an average duration of proceedings of 18 months (which corresponds to the situation between 1995 and 1998), this implies a ratio of 1.5.
5. As regards more specifically the situation in competition cases, on 31 August 2012 there were 223 pending cases. On average over the last 5 years, 48.4 competition cases were completed per year, which means that on average competition cases remain on the stock for 4.6 years.
6. As requested by a number of delegations in the meeting of 21 September 2012, calculations have been made and the resulting figures are presented below, aiming at providing a rough estimation of the impact of the increase of the number of Judges on the General Court's output and on the average duration of proceedings. These calculations are based on the following premises and assumptions:
- Annual increase in new cases: experience during the last 10 years, as well as the last 5 years,<sup>5</sup> shows that the number of new cases brought to the General Court increases at an average rate of 6%-7% per year. In order to take into account possible variations of this important factor, two scenarios - of 5% annual increase and 10% annual increase in new cases - are presented for each number of additional Judges;
  - Number of Judges taken into account: 27 existing Judges + 1 Croatian Judge + x number of additional Judges (the working hypotheses are 6, 9, 12 and 15 additional Judges);

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<sup>4</sup> If for example the General Court had 1000 pending cases and completed 800 cases a year, the ratio between pending cases and completed cases would be 10:8, which would mean that the average stay of a case in the stock would be 1.25 years.

<sup>5</sup> i.e. After the enlargements of the Union in 2004 and 2007 and after the creation of the Civil Service Tribunal which started functioning in December 2005.

- Number of cases completed by each Judge per year: the internal target of the General Court is 25 cases completed/Judge/year. With the exception of 2011, for which the representatives of the Court informed the Friends of the Presidency Group that the high number of completed cases was due to exceptional and non recurring circumstances, the actual number of cases completed is significantly lower than the target.<sup>6</sup> Nevertheless, the calculations presented below rely on the assumption that, from the third year onwards (i.e. after the end of the phasing in period), the output will be 25 cases per year for all Judges, old and new, so as to take into account the potential efficiency gains to be expected from further procedural and internal measures to be introduced by the General Court;
- Pending, new and completed cases in year zero are the latest three-year averages for such cases (i.e. averages from years 2009, 2010, 2011), namely 1267 pending cases, 642 new cases and 599 completed cases;
- Phasing in period: concerns completed cases, lasts for two years after the arrival of the new Judges and is calculated as follows-
  - Year 1 = 15 cases/x additional judge + 15 cases for the Croatian judge + 599 cases for the current 27 Judges<sup>7</sup>
  - Year 2 = 20 cases/x additional judge + 20 cases for the Croatian judge + 599 cases for the current 27 Judges
  - Year 3 = 25 cases/Judge (for all the Judges)

Example for 6 judges:

- a. For Year 1:  $(6 \times 15) + 15 + 599 = 704$  cases completed in Year 1 with 6 additional Judges
- b. For Year 2:  $(6 \times 20) + 20 + 599 = 739$  cases completed in Year 2 with 6 additional Judges
- c. For Year 3:  $34 \times 25 = 850$  cases completed in Year 3 with 6 additional Judges, the phasing in period for new Judges having ended and the measures for enhancing efficiency having borne fruit.

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<sup>6</sup> The average number of cases completed per Judge was 22.4 in 2008, 20.5 in 2009 and 19.5 in 2010.

<sup>7</sup> 599 is the average number of cases completed in 2009, 2010 and 2011.

## Results :

- a) 6 additional Judges and 5% annual increase in incoming cases:  
As from Year 3 (i.e. after the end of the phasing in period), the General Court would complete approximately 850 cases per year  
By Year 3, the ratio of pending cases to completed cases would be less than 1.5  
By Year 6, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 10.
- b) 6 additional Judges and 10% annual increase in incoming cases:  
As from Year 3, the General Court would complete approximately 850 cases per year  
The ratio of pending cases to completed cases would be at its lowest in Year 3 and it would never be less than 1.5.
- c) 9 additional Judges and 5% annual increase in incoming cases:  
As from Year 3, the General Court would complete approximately 925 cases per year  
By Year 2, the ratio of pending cases to completed cases would be less than 1.5  
By Year 8, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 13.
- d) 9 additional Judges and 10% annual increase in incoming cases:  
As from Year 3, the General Court would complete approximately 925 cases per year  
By Year 2, the ratio of pending cases to completed cases would be less than 1.5  
By Year 4, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 6.
- e) 12 additional Judges and 5% annual increase in incoming cases:  
As from Year 3, the General Court would complete approximately 1000 cases per year  
By Year 2, the ratio of pending cases to completed cases would be less than 1.5  
By Year 10, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 16.
- f) 12 additional Judges and 10% annual increase in incoming cases:  
As from Year 3, the General Court would complete approximately 1000 cases per year  
By Year 2, the ratio of pending cases to completed cases would be less than 1.5  
By Year 5, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 8.
- g) 15 additional Judges and 5% annual increase in incoming cases:  
As from Year 3, the General Court would complete approximately 1075 cases per year  
By Year 1, the ratio of pending cases to completed cases would be less than 1.5  
By Year 10, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 19.

h) 15 additional Judges and 10% annual increase in incoming cases:

As from Year 3, the General Court would complete approximately 1075 cases per year

By Year 2, the ratio of pending cases to completed cases would be less than 1.5

By Year 6, the ratio of pending cases to completed cases would start rising again and would be above 1.5 by Year 10.

### III. Costs

7. The costs of a reform of the General Court should be looked at in the broader context of expenditure under Heading 5 of the Financial Perspectives. The table below<sup>8</sup> shows that, while the share of the Court of Justice (all three judicial bodies taken together) in the total expenditure under Heading V increased from 2007 to 2009 because of significant investments in buildings (the new Palais complex), that share is decreasing in 2010, and more still in 2012 because of the strict approach followed by the Court in its request for appropriations and posts. In 2013, it would again be greatly lessened if the appropriations relating to two major structural changes (Croatia's accession and the amendment of the Statute of the Court of Justice) were left out of account.<sup>9</sup>

	2006	2007	2008	2009	2010	2011	2012	2013
Heading 5*	6.708	7.115	7.457	7.603	7.962	8.173	8.607	9.181
Court of Justice Budget*	250	272	294	315	329	341	348	357
<b>Court of Justice share of Heading 5</b>	3,73%	3,82%	3,94%	4,14%	4,13%	4,17%	4,04%	3,89%

\*Figures are in millions of Euros.

8. Together with the draft amendments to the Statute of the Court of Justice of the European Union, the Court has submitted a Financial Statement on the impact of the creation of 12 additional Judges at the General Court<sup>10</sup>. It follows from that document that the total cost of 12 new Judges, their chambers and Registry staff, comprising in particular remunerations and allowances for new Members and additional chambers and registry staff as well as overhead costs for buildings and office infrastructure, would have a net budgetary impact of 13 647 000 €. This amounts to 3,92 % of section IV - Court of Justice of the European Union - of the general budget for the year 2012, which provides for appropriations for expenditure of 348 335 000 € for all three judicial bodies.

<sup>8</sup> The figures and their explanation given in this paragraph are taken from the draft budget for the year 2013, OJ 15.06.2012, p. IV/8.

<sup>9</sup> For years 2010 and 2012 the Court did not ask for any new posts, whilst for the 2013 budget the Court only asked for posts related to the Croatian accession.

<sup>10</sup> Documents 8787/11 and 8787/11 ADD 1.

9. Accordingly, the budgetary impact of the creation of, respectively, 6, 9, 12 or 15 additional Judges would be as follows :
- 6 additional Judges : 6 823 500 €(= 1,96 % of the Court's budget for 2012);
  - 9 additional Judges : 10 235 250 €(= 2,94 % of the Court's budget for 2012);
  - 12 additional Judges : 13 647 000 €(= 3,92 % of the Court's budget for 2012);
  - 15 additional Judges : 17 058 750 €(= 4,80 % of the Court's budget for 2012);
10. However, it should be borne in mind that the Commission, in its proposal on the review of the Staff Regulations<sup>11</sup> currently discussed within the relevant Council Working Party, proposes an across the board reduction of staff in all institutions by 5 % over a period of five years. The savings from the eventual implementation of this measure over the next multiannual financial framework are estimated at around 850 million € Furthermore, the overall annual expenditure of all institutions for administration must not exceed the ceiling set by Heading 5 of the Multiannual Financial Framework.
11. When assessing the costs of additional Judges, account should be taken also of the costs of not taking any action, which would further increase the General Court's backlog of pending cases and the duration of proceedings. As the representatives of the Court pointed out in the Friends of the Presidency Group's meeting on 7 September 2012, the costs relating to the duration of the proceedings are not always a material and immediately quantifiable element<sup>12</sup> and are thus difficult to estimate. However, it is quite clear that there are at least indirect costs : delays caused by long proceedings are an obstacle to an efficient strategic planning for undertakings (for instance in the field of mergers and public procurement); they can also have an impact on public health (for example in cases concerning the marketing authorisation of chemical substances) or public policies (e.g. in the fields of state aid and agricultural funds), as well as on the rights of individuals (e.g. restrictive measures imposed on natural persons). Overall, long proceedings adversely affect legal certainty and, incidentally, the legitimacy of the judicial institutions of the Union.

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<sup>11</sup> Document 18638/11 and attached proposal of 13.12.2011 (COM(2011) 890 final).

<sup>12</sup> However, in some cases there are direct costs, like cost of a bank guarantee subscribed by an undertaking instead of paying the fine imposed by the Commission, for which the bank charges a fee corresponding to a certain percentage of the total amount guaranteed. Consequently, if the fine is set at 100 million € and the bank fees are 0.5 % per year, each year of delay generates a cost of 0.5 million € So, if the duration of the proceedings is 4 years instead of 2 years, the associated cost for the undertaking is 1 million €

12. In the opinion of the European Parliament's Committee on Budgets<sup>13</sup>, it was underlined that *"the rapporteur is very well aware of the consequences of the Court of Justice's proposals on the EU budget, especially given the current difficult economic situation facing the majority of the Member States and the extreme constraints on the EU budget. It should, however, be pointed out that not only is the granting of effective judicial protection, including in court judgments handed down within a reasonable period of time, a crucial obligation, but, whilst not as visible as a budget increase, the adverse financial consequences of inefficient justice are quite likely to cost more than such an increase."*

#### **IV. Relevant parameters in the possible integration of additional judges within the General Court**

13. As stated above (see footnote 1), the appointment of 6, 9, 12, or 15 new Judges would allow the creation of, respectively, 2, 3, 4 or 5 new Chambers composed of 3 sitting Judges. In the formation of Chambers, it appears from the analysis of the assignment of Judges as published in the OJ (26/6/2004 C 168/5 and 10/11/2007 C 269/40) that care is taken to ensure a balanced composition of the Chambers, taking into account a number of criteria, among which geographical balance, past experience and seniority within the General Court.
14. It appears also that the composition of Chambers is anyway partly, sometimes substantially, modified on the occasion of each partial renewal, due to the election of new Presidents of Chambers and the arrival of new Judges. The designation of additional Judges would probably entail such a reassignment of Judges among the Chambers. Two models are possible:
- the model followed in 2004 (Chambers composed of 5 Judges, sitting in two Sub-Chambers of 3 Judges, each of them including the President of Chamber and two Judges); advantages : more coordination, coherence and better integration ; drawbacks : less efficient due to the higher workload imposed on Presidents of Chamber and scheduling constraints.

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<sup>13</sup> Opinion of 27 January 2012, enclosed the Report of the Committee on Legal Affairs of 5 June 2012 on the draft regulation amending the Statute of the Court of Justice, A7-0185/2012, page 14.



- the present model (Chambers composed of 3 Judges, each of them with a President of Chamber) ; advantages and drawbacks inverted as compared to the model followed in 2004.

The choice between these models (or any other possible model to be elaborated after further reflection by the General Court), as well as the question whether the Vice-President will be a sitting Judge or not, belong to the autonomous organizational competence of the General Court and will ultimately depend on the number of additional Judges.

## **V. Efficiency measures**

15. At the meeting of the Working Party on 7 September 2012, the representatives of the Court of Justice gave an overview on internal measures taken by the General Court to increase its efficiency.
16. In 2007, the General Court became aware of the seriousness of the situation and, since then, has deeply changed its organization and working methods. These evolutions have progressively borne fruit, culminating in the exceptional 2011 results. The approach followed has been exposed by the Registrar of the General Court at the meeting of the Working Party on the Court of Justice on 14 October 2011 and have been further described in a document addressed by the Court to the Polish Presidency on 7 November 2011.
17. The first important decision, from a structural point of view, was to abandon in 2007 the previous judicial organization. Instead of the initial five Chambers of 5 Judges, the CFI was thus composed of 8 Chambers of 3 Judges, and of a ninth Chamber dealing exclusively with appeal cases against decisions of the Civil Service Tribunal. The various measures that have followed this new organization pursued three key objectives: monitoring, rationalising and simplifying.

a) Monitoring

18. Productivity objectives have been set, with the aim of not only matching the incoming cases but also reducing the backlog. Furthermore, online and real time statistics on completed cases per Judge, delays, and pending procedural issues have been put at the disposal of all members of the General Court. Provisional timetables are drawn up by the cabinets and communicated to both the President of the relevant Chamber and the President of the General Court. Each trimester, the conference of the Presidents of Chambers examines the reports prepared by the President concerning delayed cases and progress made in order to handle them, statistics about delays, completed cases and newly allocated cases. A computer-based system sends automatic warnings about deadlines to the cabinets.

b) Rationalising

19. As regards the organization of work, cases are allocated on the basis of a broad interpretation of a related actions criterion (actions which touch upon similar issues). The management of the hearing schedule was improved to allow hearings to take place five days a week, with the possibility to pre-schedule. The timetables for cases are shared among the various services in order to promote better planning. Computer applications have allowed for the dematerialisation of internal documents streams through a secured application. Further elements in this context are the recent entry into force of E-Curia and the remote access to internal databases, which allow a better management of urgency and facilitate seamless decision-making.
20. Also the judicial work has been streamlined: judgment models proposing text modules for reasoning on recurring issues have been elaborated, as well as a document summarizing all internal procedures and working methods.

c) Simplifying

21. The internal procedures of the General Court have been streamlined in order to avoid redundancies and to adapt the quality control to the various types of cases. A strict policy concerning the length of the written pleadings has been implemented, as well as new drafting methods aiming at reducing the length of documents drawn up by the General Court (internal preliminary report, report for the hearing and decisions). Increased use is made of article 135a) of the Rules of Procedure, allowing to rule without a hearing (more than 50% of IP cases dealt with by way of judgment are based on art. 135a) – 97 cases in 2011).

d) Further measures to be introduced

22. A reflection on the issue of specialization will take place within the General Court in the context of the reform of the Rules of Procedure. Under the premise that the General Court would be composed, according to the Court's request, of 39 (or 40) members, a certain specialization of Chambers is likely to be envisaged, albeit preferably on a partial basis given the necessity to preserve a certain flexibility.
23. In the context of its process of internal preliminary deliberations on possible changes to its Rules of Procedure, the General Court made clear through a letter to the Council on 18 July 2012, as well as during the meeting of the Friends of the Presidency Group on 21 September 2012, that it would welcome input from the Council. The meeting of the Group on 5 October 2012 was devoted to an exchange of views on this subject, with emphasis on suggestions aiming at enhancing efficiency. As a result of this exchange of views, a letter to the General Court containing suggestions for amendments to be made to the Rules of Procedure and for measures to be included therein was sent on 11 October 2012.

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