Follow-up to the observations or recommendations in the discharge resolution of the European Parliament of 29 April 2015 pertaining to 2013

10. Recommends that the institution be reorganised in such a way as to make a clearer separation between legal and administrative functions, thus bringing the setup more closely in line with Article 6 of the European Convention on Human Rights so that judges no longer run the risk of having to rule on appeals against acts in which their authorities have been directly involved

It must be noted that, under Article 18 of the Protocol on the Statute of the Court of Justice of the European Union, '[n]o Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity'. This requirement of impartiality, which also stems from case-law of the EU judicature drawing directly on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, is strictly observed in the judicial practice of the Court of Justice.

Furthermore, the internal arrangements, and the possibilities of delegation for which they provide, strictly circumscribe the participation of Judges other than the Presidents of the three jurisdictions in the adoption of administrative decisions.

11. Recalls that in its response to the discharge resolution 2012 the Court of Justice indicates that holding more hearings and issuing more judgments would not increase productivity significantly; points out that on the other hand, the Court of Justice asked to increase the number of judges; urges the Court of Justice to request an external peer review in order to be provided with external instruments to identify possible solutions to the problems raised by the Court of Justice

The courts' productivity cannot and must not be measured by reference to the criterion of the number of hearings arranged since, for example, the courts can and do rule without an oral procedure in various situations so as to give rulings more swiftly, where the circumstances of the case permit it.

As regards improvements in their working methods with the aim of providing litigants with a good-quality judicial service within a reasonable timeframe, the courts regularly examine ways of increasing their productivity and improving their functioning.

In that context, the Court of Justice always welcomes external contributions whenever necessary or helpful in the light of the specific nature of its judicial activity, on the one hand, and of the cases brought before its constituent courts, on the other. Thus, for example, the Court has for a long time maintained regular contact with administrative, judicial and constitutional courts through forums or programmes of visits to the Court or in the Member States, organising frequent and productive contacts with its peers, notably through its involvement in the work of associations (International Association of Supreme Administrative Jurisdictions, Association of the Councils of State and Supreme Administrative Jurisdictions, for example).

12. Highlights the particular importance of respect for multilingualism in the Court of Justice since it must guarantee not only equal access to the Court of Justice's case-law but also equal opportunities for the parties involved in litigation before the Court of Justice

The utmost vigilance is exercised in ensuring respect for multilingualism, since each of the official languages is capable of being chosen as the language of a case, and, moreover, on account of the Court's mission (to ensure compliance with and the uniform interpretation of EU law), which requires that the case-law be made available in all languages.

That obligation, which varies according to the specific nature of the proceedings brought before the courts (for example in the case of requests for a preliminary ruling, translation into all the languages so that Member States can submit observations, interpretation for oral procedures, or the dissemination of the case-law), means that the budgetary authority must be made aware of the consequences of its decisions if appropriations that would enable the obligation to be fulfilled in all respects were to be reduced.

13. Regrets the insufficient information received during the discharge procedure regarding the list of external activities pursued by the Judges; asks the Court of Justice to publish on its homepage a register which includes detailed information on the outside activities of each judge with an impact on the Union budget

The Court is currently reflecting on the publicity to be given to the activities of the Members in relation to the various aspects of performance of their office (judicial activity, other representational or information-giving activities, external activities). In any event, the Court of Justice is prepared to communicate, in the context of the discharge procedure, the list of external activities with an impact on the Union budget.

14. Calls on the Court of Justice, in the case of the two retired staff translators who were awarded translation contracts, to submit a report making it possible to verify that the situation meets the requirements of the Staff Regulations of Officials of the European Union as regards both conflicts of interest and pay

A report is attached (Annex 1)

15. Asks the Court of Justice to consider a consolidation of the Registries of the Court of Justice into one Registry in order to ensure a better coordination of procedural actions between the Courts

The Court of Justice of the European Union is composed of three courts, each of which has its own Registry.

Each Registry is engaged, on behalf of its respective court, in performing three essential tasks: ensuring the efficient conduct of proceedings and that the court files are kept in good order; communicating with the parties' representatives and the Members' chambers (Judges and, where applicable, Advocates General); actively assisting the Members and their staff.

- The fact that each court has its own Registry is due first of all to the applicable texts (fifth paragraph of Article 253 TFEU, fourth paragraph of Article 254 TFEU, first sentence of Article 6(2) of Annex I to the Protocol on the Statute of the Court of Justice of the European Union, in primary law; the courts' rules of procedure);

  The Registries, which implement the decisions taken by the Judges and communicate with the representatives of the parties to disputes, carry out tasks that are closely linked to the courts to which they are attached.

- The applicable texts reflect the functional requirements.

  The Registry of each court is headed by a Registrar, elected by the Members of his court and acting under the authority of its President. Each Registrar is therefore accountable for the activities of his department to the Members of the court who elected him for a term of six years. The position of the Registries thus differs from that of the institution's other departments. The common services, placed under the authority of the Registrar and of the President of the Court of Justice, provide support to each Registry for the purpose of judicial activities.

  The Registries perform tasks of judicial assistance. It is therefore essential that, as extensions of the respective court, a registry retains a degree of functional autonomy that allows it to serve its court, meeting its needs as best it can and, if appropriate, with the necessary urgency. The jurisdiction, which is different for each court, determines certain operational differences arising, on the one hand, from the characteristics of the particular court and, on the other, from the specific features of the disputes brought before each court and the procedural provisions applicable.

- The rules and practice applied do not, however, preclude administrative collaboration between the three Registries.

  Notwithstanding the special status conferred on them by the texts in order to ensure that the specific needs of each court are best met, the Registries collaborate effectively and take advantage of their similarities to develop synergies.

  The area in which the close collaboration that has existed since 2006 has proved highly fruitful is in developments in information technology: the Registries of the three courts are seeking to use

shared IT tools and not to request the development of tools that differ from one Registry to the other.

The results show that that collaboration has been beneficial, since a number of successful IT applications enabling procedures to be managed and information to be exchanged have been developed and implemented ('Prodoc', [1] 'Registre électronique' (electronic register), [2] 'Gestion des audiences' (management of hearings), [3] 'Dossier électronique' (electronic file) [4] and 'DICO' [5]).

In November 2011, the e-Curia application, which is common to all the Registries and enables procedural documents to be served and lodged electronically, was launched after a period of extensive design and development, numerous tests and presentations to the Member States, the institutions and the CCBE. It is a remarkable example of collaboration between the Registries.

The Registries have also modernised their judicial statistics.

Lastly, the Registries are closely involved in work underway to develop existing applications.

Whilst it best demonstrates collaboration between the Registries, the area of IT and new technologies is not the only area in which the search for synergies continues.

In other areas of activity, the synergies between the Registries take the form of – sometimes very close – consultation for the purposes of drawing up statements of views or contributions, such as in relation to risk analysis, business continuity and the annual activity report of the authorising officer by delegation. The Registries are continuing their efforts to strengthen cooperation in relation to the recruitment and training of staff.

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1 The 'Prodoc' application, rolled out to the Registry of the Court of Justice in 2004 and to the Registries of the General Court and the Civil Service Tribunal in 2006, ensures the largely automated production of documents prepared by the Registries in a case-management context in any official language of the European Union. It provides the Registry user with marked benefits, allowing as it does for the centralised management of standard letters, the use of 'Word' word-processing, enabling corrections and additions to be made to each letter processed, the uniform management of addresses and of agents or lawyers, the creation of correctly-addressed labels, decentralised inputting into 'Litige' (the Registry's procedural database) and the automatic insertion of data from 'Litige' into the documents produced.

2 The 'electronic register', rolled out to the Registry of the General Court in 2006, to the Registry of the Court of Justice in 2009, and to the Registry of the Civil Service Tribunal in 2010, enables all procedural documents to be registered in the language chosen by the person entering them, with automatic translation into the language of the case or the working language, and enables lists of the documents registered in each case to be produced. The electronic register also enables statistics to be generated with regard to documents registered, according to different search criteria (type of document, language of the case, person processing the document, etc.) and thus constitutes a service management tool.

3 The 'management of hearings' application has been in operation in the Registries of the three courts since 2007. It enables hearings of the various formations of court to be fixed taking into account, on the one hand, the availability of the members of the competent formation and of the parties' representatives, and, on the other, any interpreting needs and the availability of courtrooms. This application is routinely used by the presidents of the formations of the court.

4 The 'electronic file' application has been in operation in the General Court since 2009 and in the Civil Service Tribunal since 2012. It was subsequently made available to the Court of Justice. It alerts the Chambers to procedural documents lodged and provides them with access to the electronic version of those documents.

5 The 'DICO' application is an electronic document distribution system relating to certain committees of each court. The system has a search function that provides quick access to the documents sought.

- With a view to pursuing ever more efficient collaboration, respecting the specific features of each court, the internal auditor is currently carrying out a study to identify opportunities for enhanced administrative synergies between the Registries of the three jurisdictions.

16. Takes note of the improvements made in the e-Curia application; acknowledges that the application has not yet achieved its full potential; recommends that the Court of Justice establish a plan to encourage all the Member States to use it

The Court of Justice has – with some success – made a substantial effort to persuade the relevant departments of the Member States to use the e-Curia application (IT application common to all three jurisdictions, enabling procedural documents to be lodged and served electronically); thus at present only two States are not among the users (almost 3 000 users and more than three quarters of lodgments) of that application, (one of them being on the point of joining the system following a test period, the second being in the process of obtaining further information, in particular technical information). Use of that application should increase further thanks to developments envisaged in the short and medium term.

20. Recognises that the quality of interpretation at the Court of Justice is fundamental and it is not possible to control the number of hearings; believes, however, that a more efficient planning of the hearings' calendar is possible; suggests that the Court of Justice, in its inter-institutional relations, looks for best practices undertaken by other institutions on this matter

The Court shares the view of the European Parliament that the close cooperation which already exists in this area at European and international level is of paramount importance.

The interpreting service of the Court of Justice is provided pursuant to the statutory rules and according to real needs. In 2012, the Court adopted a number of additional efficiency measures taking into account the decisions and practices undertaken by other institutions. One of these was to spread the fixing of hearings more evenly over the days of the week, following the example of the European Parliament's Bureau with regard to the calendar of parliamentary committee meetings.

Whilst the work patterns of the Court of Justice, being a judicial institution, are specific to its several jurisdictions, the fixing of hearings has been adapted taking account of the fact that the number of available courtrooms doubled in 2013. Notwithstanding the increase in the number of sessions requiring interpretation between 2012 and 2014, the number of freelance interpreter assignments was reduced over the same period.

21. Notes the Court of Justice's policy of giving preference to the use of internal resources, in particular within the translation services; understands the difficulties in finding some language combinations with a legal expertise background; is deeply concerned however with the very high unused appropriations - EUR 2 200 000 - allocated to freelance translation; considers therefore that outsourcing, if needed, should also lead to further savings

At the end of 2011, the Court of Justice adopted a number of additional measures to decrease the number of pages to be translated. Namely the Court greatly increased the number of unpublished decisions therefore requiring translation only into the language of the case and not into all other languages; introduced the possibility of publication by extracts of decisions of the General Court; limited the average number of pages of Opinions of Advocates General; abandoned the production of reports for the hearing at the Court of Justice; and intensified its practice of summarising requests for preliminary rulings before translation.

The positive impact of these measures, being a heavy reduction of the number of pages to be translated, appeared almost immediately i.e. in 2012 and continues to this day. However, the budgetary request of the Court of Justice had been established at the beginning of 2011, before the abovementioned measures had been discussed and adopted. Therefore it was tailored to a situation of much greater pressure on the translation service. Since 2012 of course, the structural increase of the workload has continued, and despite the abovementioned methods of constant economy, the number of pages has increased from 891 500 pages in 2012 to 1 100 000 pages in 2014.

As welcomed by the European Parliament in Observation No 25 of its resolution on the 2012 discharge and also noted in Observation No 21 of its resolution on the 2013 discharge, the Court of Justice indeed gives preference to the use of internal resources, in particular within the translation services.

As soon as the aforementioned measures had been adopted, the Directorate-General for Translation reduced the level of externalisation of translations. Its constant policy of making the best use of the taxpayer's money drove it to continue to concentrate as much translation work as reasonably possible on its internal resources i.e. its lawyer-linguists. Appropriations for freelance translation were therefore spent only in so far as translation work could not be absorbed by its in-house lawyer-linguists. The result was indeed a leftover of EUR 2.2 million out of the EUR 9 950 000 which had been awarded by the budgetary authority at a time when it could not yet be known that the institution would adopt the measures of economy described above.

22. Asks the Court of Justice to consider implementing a system of translation 'on demand' for specific cases and to make more frequent use of technological based translation tools

23. Asks the Court to verify on a case by case basis the necessity of translation if there is a limited relevance for Union citizens

Documents are translated at the Court of Justice only 'on demand'.

The Members of the jurisdictions of the Court of Justice come from all Member States of the Union. Although Article 39 of the Rules of Procedure of the Court of Justice provides that '[t]he Registrar shall, at the request of any Judge, of the Advocate General or of a party, arrange for anything said or written in the course of the proceedings before the Court to be translated into the languages chosen ...', the Judges and Advocates General waived this possibility in order to gain time and resources.

For these reasons of efficiency and in order to avoid the necessity of simultaneous interpretation in Chamber meetings, it is essential to have a common working language within the Chamber which is mastered by all Judges of the Chamber, i.e. the language of the deliberations. This language is used not only in the context of the deliberations but also in the drafting of decisions.

Translation of the written pleadings of the parties

Therefore, the Registries systematically send the pleadings filed by the parties in any official language of the Union (see, for the Court of Justice, Article 36 et seq. of the Rules of Procedure) for translation on the one hand into the language of the case (Article 38 of the Rules of Procedure of the Court of Justice), and on the other hand into the language of the deliberations. This allows the Judges and Advocates General not only to study and discuss the written pleadings in detail, but also to retrieve terminology and extracts from the translations in order to ultimately draft their judgments in the language of deliberation. Nevertheless, procedures have been set up in order to promote direct contacts between lawyer-linguists and the Chambers of the Members to examine on a case-by-case basis the possibility of abstaining from translating all or part of appendices of such written pleadings, which are sometimes very long.

Translation of the Opinions of the Advocates General and of the judgments of the Court

As regards the judgments of jurisdictions of the Court of Justice, these are drafted in the language of the deliberations of the Chamber and translated, on the one hand, into the language of the case for procedural purposes (Article 41 of the Rules of Procedure of the Court of Justice) and, on the other hand, into all other official languages in order to ensure the indispensable multilingual dissemination of case-law by way of publication in the Case-law Reports (Article 40 of the Court's Rules of Procedure). However, the jurisdictions apply an active policy of selective publication by which they agree to put aside multilingual translation wherever possible, nevertheless bearing in mind the particular importance of multilingualism at the Court of Justice as indicated in Observation No 12. The General Court also applies an intermediate solution which is to publish only extracts of certain judgments and therefore to refrain from requesting translations of unselected extracts in languages other than the language of the case.

The Directorate-General for Translation makes use of the same advanced technological tools as the translation services of the other institutions, like IATE, Euramis, DocFinder or Quest, which it co-

finances. It also co-finances MT@EC which is a system of machine-based statistical translation it is currently testing.

After having ensured a system of human pretreatment of documents, the Directorate-General for Translation is also migrating to the 'SDL Trados Studio', which is a 'CAT-Tool', i.e. a dedicated translation environment, on the basis of a contract signed following an interinstitutional procurement procedure. This new environment allows direct connection of the abovementioned tools (IATE etc.) as well as the Court's own databases of legal terminology (CuriaTerm) to the work environment of the lawyer-linguist. Using this CAT-Tool will ensure more convergence with the working methods of the translation services of other institutions and yield economies in a framework of interinstitutional cooperation.

The Directorate-General for Translation acknowledges the invitation of the Parliament to make more frequent use of technological based translation tools and is itself convinced it must follow closely technological progress in order to provide the best and most efficient service possible.

24. Observes with concern the enormous disparities in translation costs for the different Union institutions; asks consequently that the Interinstitutional Working Group on Translation identify the causes of these disparities and put forward solutions that will bring this imbalance to an end and produce harmonised translation costs that fully respect quality and linguistic diversity; notes, with this in mind, that the Working Group should relaunch collaboration between the institutions in order to share best practice and outcomes and identify those areas in which cooperation or agreements between institutions may be strengthened; notes that the Working Group should also aim to establish a unified methodology for presentation of translation costs which all the institutions can use, in order to simplify the analysis and comparison of these costs; notes that the Working Group should present the results of this work before the end of 2015; calls on all the institutions to play an active part in the work of the Interinstitutional Working Group; recalls in this regard the fundamental importance of respect for multilingualism in the Union institutions in order to guarantee equal treatment and equal opportunities for all Union citizens

The Court of Justice is willing to participate in the development of a unified methodology for presentation of translation costs which all the institutions can use, in order to simplify the analysis and comparison of these costs. It is important to bear in mind that the interinstitutional Executive Committee for Translation has already developed Key Interinstitutional Activity and Performance Indicators (Kiapi) which propose a uniform presentation of several aspects of the performance of the institutions' translation services (see *Letter from the interinstitutional Executive Committee for Translation to the European Parliament* on this subject – Annex 2).

The reasons why, until now, the Court has been able to participate only as an observer are twofold.

On the one hand, the very nature of the work of a lawyer-linguist of the Court of Justice is very different from that of a translator in any other institution, not only because of the legal complexity and importance of all translated documents and the effective coverage in 552 language combinations, but also because lawyer-linguists carry out many highly specialised and time-consuming tasks to support the legal functioning of the institution.

On the other hand, formal compliance with the Kiapi methodology in the particular situation of the Court would require modification of well established procedures and stable IT systems at a very high cost in terms of financial and human resources in times of severe budgetary restrictions.

Despite its differences, the work currently in progress in the Executive Committee for Translation should allow for full participation of the Court of Justice.

25. Considers that at a time of crisis and budgetary cuts in general, the cost of 'away days' for staff at the Union institutions has to be reduced and that these should take place, where possible, on the institutions' own premises as the added value derived from these away days does not justify such high costs

It must be emphasised that the Court organises relatively few 'away days' (three in 2013 at a total cost of EUR 14 043).

Nevertheless, the Court takes note of the European Parliament's request that such days be organised where possible on the institutions' own premises.

26. Expects that the Court of Justice will continue to look for new in-house synergies, in particular in the areas of translation and interpretation

The Court of Justice will redouble its efforts to look for synergies in the key areas of the Court's administrative operation (training, terminology, quality, technology) and particularly in the areas of translation and interpretation.

27. Reiterates the request to have the agenda of the Court of Justice meetings included as an annex in the annual activity report of the corresponding year

See tables in Annex 3.

29. Regrets the fact that the Member States which acceded the Union after 2004 are not represented in the top management of the institution; reiterates the need for a greater geographical balance at all levels within the administration

It is important to note that the number of senior management posts at the Court is quite limited (currently 4 Directors General and 13 Directors).

Selection is strictly on the basis of candidates' qualifications, and thus on merit.

It must be pointed out that a new Director, of Estonian nationality, selected in accordance with the abovementioned principle, took up his post on 1 January 2015.

30. Is concerned by the shortage of women in positions of responsibility at the Court of Justice (70% - 30%); calls for an equal opportunities plan to be set in motion, particularly in relation to management posts, with the aim of correcting this imbalance as soon as possible

The Court of Justice of the European Union pays particular attention to equal opportunities in access to management posts and notably to the representation of women, who currently occupy 35% of positions of responsibility at the Court.

While that figure, which rises to almost 40% for middle-management posts, places the Court above the average for European institutions in this respect, a process of reflection is underway on any obstacles there may be to women's access to management posts, both before and after the selection procedures, and, moreover, on what measures the institution could take to remove those obstacles, encourage women to apply, and permanently increase their representation.

31. Takes note that the rules applied by the Court of Justice governing the private use of official cars are similar to those applied in other institutions; is of the opinion that those rules should be updated in order to reduce costs, notably in the case of private use

32. Calls on the Court of Justice to reduce the number of official cars at the disposal of the Members and staff and to report to Parliament on the savings made; is of the opinion that a revision of post assignments for drivers will thus be required; points out that the cost of the extended private services provided by drivers is borne by Union taxpayers

The Court of Justice is currently engaged in a process of reflection with the Court of Auditors regarding the updating of the existing rules on the availability of official cars, their use and the activities of drivers. The outcome of those reflections will be communicated to the European Parliament.

35. Finds the amount of contracts concluded under negotiated procedure quite high; requests to be thoroughly informed of the reasons behind those decisions

In general terms, the overall value of contracts awarded by negotiated procedure was relatively low in 2013 (EUR 2.8 million out of total public contracts concluded of close to EUR 30 million, that is 9.7%).

As in previous years, the Court of Justice has had no choice but to use a negotiated procedure in certain areas subject to a public monopoly, as in the case of water and energy supply (the Court is linked to a cogeneration facility which is environmentally very efficient), notably with the City of Luxembourg. In that context, four negotiated procedures were conducted for a total amount of EUR 0.9 million.

The negotiated procedure was also used, twice, for a total amount of EUR 0.4 million, for the upkeep and maintenance of interpretation/multimedia equipment, services which, for technical reasons, could only be performed by the original equipment supplier.

Furthermore, one feature of the financial year 2013 was the continuation and completion of a significant renovation project involving certain buildings (Annexes A, B and C) forming part of the buildings complex of the Court of Justice. In that context, and for certain works ancillary to the renovation project itself – responsibility for which lay with the Luxembourg State as contracting authority – the Court of Justice also had to resort to negotiated procedures, as, for example, in the case of adjustments to partitioning, or essential works to the individual access control facilities, since, for technical reasons, those works could only be carried out by the original equipment supplier. Three negotiated procedures were conducted for a total of almost EUR 1.2 million.

It would be useful to point out that the statistics in relation to the negotiated procedures annexed to the AAR 2014 show a significant reduction in the value of contracts awarded by negotiated procedure, compared with 2013. That value was EUR 1.3 million in 2014 (as against EUR 2.8 million in 2013), which represents only 4.8% (as against 9.7% in 2013) of the total of public contracts awarded by the Court of Justice in the financial year (EUR 26.7 million in 2014).

36. Calls on the Court of Justice to include in its annual activity reports, in compliance with the existing rules on confidentiality and data protection, the results and consequences of closed OLAF cases, where the institution or any of the individuals working for it were the subject of the investigation

As has already been stated in Title IV of the 2014 annual activity report of the authorising officer by delegation in relation to the follow-up to the observations made in the context of earlier discharges, the Court does not consider itself authorised, under the legislation, to disclose information on OLAF investigations.

Report on the compatibility of the award of translation contracts to two retired lawyer-linguists

In Observation 14 of the EP resolution on 2013 discharge – Court of Justice – the European Parliament calls on the Court of Justice, in the case of the two retired staff translators who were awarded translation contracts, to submit a report making it possible to verify that the situation meets the requirements of the Staff Regulations of Officials of the European Union as regards both conflicts of interest and pay.

Indeed the two retired lawyer-linguists referred to have been awarded framework contracts for legal translation. These framework contracts have been awarded by virtue of a public procurement procedure published in the *Official Journal of the European Union*, in application of Article 135(1)(e) of the Rules of Application of the Financial Regulation.[6] This means they have been placed on cascade lists with other contractors selected in the framework of this procurement procedure to whom specific translations from language A to language B are entrusted following their ranking in that list. The ranking is the result of the price/quality ratio proven by each contractor in the list. Each list is periodically re-evaluated in order to reflect the effective performance of contractors, meaning ranking varies during the lifespan of the framework contracts.

The question raised by the European Parliament can be examined from various angles.

The applicable provisions are Articles 11a and 16 of the Staff Regulations, Article 40 of Annex VIII to the Staff Regulations, Article 107 of the Financial Regulation, and Article 57 of the Financial Regulation as implemented by Article 32 of the Rules of Application.

1. The right of EU retirees to take up an occupational activity

In accordance with Article 16 of the Staff Regulations:

'...

Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof using a specific form. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The appointing authority shall, after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.
In the case of former senior officials as defined in implementing measures, the appointing authority shall, in principle, prohibit them, during the 12 months after leaving the service, from engaging in

[6] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012, OJ L 362 of 31 December 2012, p. 1.

lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

...'

This provision thus allows retirees to take up occupational activities. However, retired lawyer-linguists willing to take up translation activities related to their former activity must inform their institution if they have retired within 2 years before taking up this occupational activity. Once this information has been provided, the appointing authority has the right to forbid this activity only if it sees that this activity conflicts with the legitimate interest of the institution.

In this case however, the two retirees referred to by the EP retired more than two years before signature of the legal translation framework contract concerned and even more than two years before publication of the contract notice in the Official Journal. They therefore had no reason to inform the appointing authority, nor would the appointing authority have had reason to forbid the activity even if they had done so.

2. Exclusion of concurrent payment of a retirement pension and a salary payable from the general budget of the EU

The second paragraph of Article 40 of Annex VIII to the Staff Regulations provides that:

'A retirement pension or invalidity allowance shall not be paid concurrently with the salary payable from the general budget of the European Union or by one of the agencies nor with the allowance payable under Articles 41 and 50 of the Staff Regulations. Similarly, they shall be incompatible with any remuneration derived from a post in one of the institutions or agencies.'

It is worth noting that the purpose of this paragraph is not at all to forbid concurrent occupational activities, but only to ensure that under certain conditions the whole or part of the retirement pension is no longer paid to the retiree.

The first sentence limits payment of retirement pension in the case of a salary payable from the general budget of the European Union. [7] A salary being the remuneration paid to workers in the framework of an employment contract, it does not apply to self-employed workers as is the case of Freelancers.

The second sentence limits payment of retirement pension in the case of remuneration derived from a post in one of the institutions or agencies. Indeed in this case one could consider that a remuneration is paid to the self-employed worker in exchange for the invoiced services. However this remuneration is in no case derived from a post, as the Freelancer does not occupy any post at all. It is also clear both from the ratio and the wording of the provision that the post from which the remuneration is derived cannot mean the Freelancer's old post. For instance the French-language version speaks of 'rémunération versée au titre d'un emploi', which is clearer still.

Article 40 of Annex VIII to the Staff Regulations does not forbid self-employed retirees of the EU to enter into a contractual relationship for the provision of services to an institution of the EU.

[7] Cf. Case T-111/89 *Scheiber* v *Council* [1990] ECR II-429, paragraph 28.

Incidentally, in the present case there is not even any reason to limit payment of retirement pensions to such retirees either.

3. Exclusion criteria in the Financial Regulation – Conflict of interest of the retiree

Article 107 of the Financial Regulation provides that:

'A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for that contract:

(a) are subject to a conflict of interests;

...'.

Contrary to Article 16 of the Staff Regulations, this provision does not regulate a potential conflict between the interest of the retiree and that of the institution, but a conflict of interest between two activities or qualities of the same person.

Such would be the case for instance if an IT company were awarded a first contract to provide IT services to an institution and a second contract to control proper execution of the first contract. Obviously proper execution of the second contract could involve this company acting against its own interests, which it might hesitate to do.

Also in the field of Freelance translation for the Court of Justice, a conflict of interest could be imagined for instance if the same person, when it was still an active member of staff, had drafted the selection criteria of the procurement contract notice and later, as a retiree, applied for the same procurement procedure. The selection criteria could then have been drafted in view of the drafter's future application in the framework of this procedure.

Such a situation does not exist at all as regards the retirees who were awarded Freelance translation framework contracts by the Court of Justice.

4. The right of active officials to participate in decisions regarding retired tenderers – Conflict of interest of active officials vis-à-vis retirees

Staff Regulations

Article 11a(1) of the Staff Regulations provides that *'An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests'*.

The mere fact of having worked in the same service as the retiree cannot justify a presumption, in the absence of any other indication, that there is a conflict of interest such as to impair independence, in particular in the absence of any family or financial interest. In practice, no such family or financial interests were involved.

Financial Regulation

In accordance with Article 57(2) of the Financial Regulation, *'a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient'.*

Article 32 of the Rules of Application, which implements Article 57 of the Financial Regulation, defines in its first paragraph acts likely to be affected by a conflict of interests:

'1. Acts likely to be affected by a conflict of interests within the meaning of Article 57(2) of the Financial Regulation may, inter alia, take one of the following forms without prejudice of their qualification as illegal activities under Article 141:

(a) granting oneself or others unjustified direct or indirect advantages;

(b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;

(c) committing undue or wrongful acts or failing to carry out acts that are mandatory.

Other acts likely to be affected by a conflict of interests are those which may impair the impartial and objective performance of a person's duties such as, inter alia, the participation in an evaluation committee for a public procurement or grant procedure when the person may, directly or indirectly, benefit financially from the outcome of these procedures'.

This paragraph clearly concerns the decision-making side and not the retiree. The conditions of a conflict of interest are indeed very close to those set out in Article 11a of the Staff Regulations for active members of staff. Such conditions involve family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient, of such intensity that impartial and objective exercise of the functions of a financial actor or other person is compromised. Such cannot be the case of an authorising officer or an official participating in a committee evaluating tenders for the conclusion of multiple cascade framework contracts one of which might be awarded to a retiree having worked in the remote past in the same unit.

In contrast, the second paragraph of Article 32 refers to the candidate or tenderer:

'2. A conflict of interest shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation in the procedure has been authorised in advance by his superior'.

Clearly, a retired official is no longer a member of staff nor does he have a superior. This paragraph concerns active members of staff participating in a call for tenders on the results of which they might potentially exercise some influence.

5. <u>The absence of any legal base allowing for exclusion of retirees from the Freelance translation market</u>

Having ascertained that none of the applicable provisions of the Staff Regulations or of the Financial Regulation and its Application Rules forbids retirees, under abovementioned conditions, to participate in procurement procedures or to enter into translation framework contracts with EU institutions, it is worth evaluating the potential consequences of excluding retirees from the market.

The first risk that comes to mind is the loss of high level competences and restriction of competition, all to the detriment of the EU budget.

But there would also be a judicial risk in excluding a retiree from participation in procurement procedures as a matter of principle. If a retiree were to challenge an exclusion decision before the General Court of the European Union, it would be possible for the institution concerned to lose the case and, if so requested by the applicant, compensation would have to be paid.

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It follows from the above that there is no provision which would justify the exclusion of former officials from those procedures.

As to the remainder, it should be stated, first of all, that it is very difficult to find legal translators who are really competent in translating complex legal documents. Wherever possible, priority is given to freelancers holding a law degree. Retired lawyer-linguists per definition hold a law degree and have in-depth linguistic knowledge. Moreover they have unique expertise as they have translated and revised such complex legal documents for decades and are usually able to provide excellent value for money. The loss of high level competences and restriction of competition, all to the detriment of the EU budget, would be highly regrettable.

EUROPEAN UNION
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COMITÉ INTERINSTITUTIONNEL DE LA TRADUCTION ET DE L'INTERPRÉTATION
INTERINSTITUTIONAL COMMITTEE FOR TRANSLATION AND INTERPRETATION

COMITÉ EXÉCUTIF DE LA TRADUCTION
EXECUTIVE COMMITTEE FOR TRANSLATION

Luxembourg, 26 October 2015
DGT.DIR.D/GH/JV/sk – (2015) 4938388
ECT 15-058 Final

Mr Martin Schulz
The President of the European Parliament

Mr Ioan Mircea Paşcu
Vice-President of the European Parliament

Ms Ingeborg Grässle
Chair of the European Parliament Committee on Budgetary Control

Subject: Reply of the translation services of the EU institutions to the EP discharge procedure for the financial year 2013

In the course of the discharge procedure for the 2013 budget of the European Union, the European Parliament made a number of more or less identical observations on translation-related expenditure at a number of European institutions (Council and European Council, Court of Justice, Court of Auditors, European Economic and Social Committee). In the texts adopted in plenary, the European Parliament

- *Observes with concern the enormous disparities in translation costs for the different Union institutions;*
- *Asks ... that the Inter-institutional Working Group on Translation identify the causes of these disparities and put forward solutions that will bring this imbalance to an end ...;*
- *Notes ... that the Working Group should re-launch a collaboration between the institutions in order to share best practices and outcomes and identify those areas in which cooperation or agreements between the institutions may be strengthened;*
- *Notes that the Working Group should ... aim to establish a unified methodology for presentation of translation costs ... in order to simplify the analysis and comparison of these costs;*

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- *Notes that the Working Group should present the results of this work before the end of 2015;*
- ...[1]

Translation expenditure has repeatedly been subject of concern at European level. Following Special Report N° 9/2006 of the European Court of Auditors concerning 'Translation expenditure incurred by the Commission, the Parliament and the Council'[2] the different institutions intensified their cooperation activities and put in place an interinstitutional Executive Committee for Translation as a dedicated subcommittee of the then already longstanding Interinstitutional Committee for Translation and Interpretation. With respect to translation expenditure, an interinstitutional Working Group on Key Interinstitutional Activity and Performance Indicators (KIAPI), covering amongst other matters the costs of internal and external translations, was created and took up its activities in 2009. Some six years later, the heads of the translation services of the different European institutions concluded in spring 2015 that the methodology proposed by this KIAPI Working Group was mature enough for interinstitutional comparisons. Though not all institutions are yet providing data according to this harmonised methodology – the Court of Justice is currently following developments as an observer[3] – data are meanwhile available for the majority of the institutions for the years 2011 onwards, and for fewer years for some others.
The Executive Committee for Translation therefore concludes that the request of the European Parliament "to establish a unified methodology for presentation of translation costs ... in order to simplify the analysis and comparison of these costs" has already been fulfilled. It might be interesting to note in this respect that the report of the European Parliament on the Committee of the Regions concludes that the European Parliament "notes that a common methodology with other institutions has been agreed to calculate and compare translation costs and other indicators"[4].

Although data on translation costs and other indicators are nowadays calculated on the basis of a harmonised methodology guaranteeing comparable figures across the participating institutions this does not mean that those figures are the same for all institutions. On the contrary, harmonised calculation methods enable users to see the existing differences between the translation services of the different institutions. In the case of the cost figures, they reflect the differences between the institutions with respect to their roles, their positions in the legislative process and their tasks. The Commission is at the beginning of the legislative process requiring the translation of the basic legal proposals, which often requires extensive terminology work. The European Parliament, the Council and the Committees follow later in this process presenting amendments to the proposed legal acts. They work in a completely different way dominated by peaks related to the sessions of the European Parliament, the meetings of the Council and

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[1] See for example EP document P8_TA(2015)0122, page 4, point 12, concerning the Council and the European Council. The corresponding texts for the other institutions concerned are more or less identical. Please see http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+20150429+TOC+DOC+XML+V0//EN&language=EN for all the EP decisions on the 2013 discharge procedure.

[2] OJ 2006/C 284/01 of 21 November 2006, page 1.

[3] The Court of Justice is currently examining with its ECT partners ways forward to meet its last concerns and allow for its full participation in the KIAPI methodology.

[4] See P8_TA(2015)0127, page 4, point 14.

European Council and the plenary sessions of the Committees, with differing requirements concerning broad language combinations and confidentiality, and tight deadlines.

The Court of Justice and the Court of Auditors play an important role in the legal order of the EU, but come into play after the adoption of legal acts. Their tasks and way of working, including their translation services, therefore differ substantially from those of the other institutions.

The fact that the different institutions diverge with respect to their roles and tasks does not mean that there is no need for enhanced cooperation. Indeed, as mentioned above, cooperation (particularly on IT tools but also for example on terminology and training) is already well established and a number of projects are currently being implemented. In the current work programme of the Executive Committee for Translation, covering the years 2015 and 2016, priority is given to

a) increased cooperation between the language communities of the institutions involved in the ordinary legislative procedure;
b) easier exchange of information and feedback between translators and lawyer-linguists of the different institutions, including the development of a new, more powerful tool to support this exchange, and a further strengthening of quality assurance and terminology work; and
c) monitoring the evolution, steering the financing and fostering further improvements of IT tools for example in the areas of translation memories, machine translation and translation support software.

With all these measures, the translation services of the different institutions believe that they are on the right track to fulfil the requirements of the European Parliament as expressed in the related observations on the discharge procedure for the 2013 European Union budget.

Rytis Martikonis
ECT Chair

Copy to: **Ms Carmen Castillo del Carpio**, Secretariat of the European Parliament Committee on Budgetary Control

ECT members:
Mr Valter Mavrič (European Parliament)
Mr Astérios Zois (Council of the European Union)
Mr Thierry Lefèvre (Court of Justice of the European Union)
Ms Gailė Dagilienė (European Court of Auditors)
Ms Ineta Strautina (Joint Services of the European Economic and Social Committee and of the Committee of the Regions)
Mr Benoît Vitale (Translation Centre for the bodies of the European Union)
Ms Rossana Villani (European Central Bank)
Mr Hugo J. Woestmann (European Investment Bank)

37 Meetings of the Court of justice in 2013

General meetings in 2013	Number of Court of justice members	Number of Court of justice members present at each meeting
8 January	36	34
15 January	36	34
22 January	36	35
29 January	36	34
5 February	36	33
19 February	36	34
26 February	36	34
5 March	36	35
12 March	36	33
19 March	36	36
9 April	36	35
16 April	36	36
23 April	36	35
30 April	36	33
7 May	36	35
14 May	36	34
28 May	36	36
4 June	36	35
11 June	36	33
18 June	36	35
25 June	36	36
2 July	36	36
9 July	37	37
4 September	37	34
10 September	37	33
17 September	37	34
24 September	37	35
1 October	37	33
8 October	37	36
15 October	37	35
22 October	37	36
5 November	38	37
12 November	38	36
19 November	38	38
26 November	38	37
3 December	38	38
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25 March	38	38
1 April	38	38
8 April	38	37
29 April	38	35
6 May	38	37
13 May	38	36
20 May	38	37
3 June	38	36
10 June	38	37
17 June	38	35
24 June	38	38
1 July	38	37
8 July	38	37
15 July	38	35
3 September	38	38
9 September	38	36
16 September	38	36
23 September	38	36
7 October	38	37
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21 October	38	35
4 November	38	37
11 November	38	36
18 November	38	37
25 November	38	37
2 December	38	38
9 December	38	38