



EUROPSKI PARLAMENT

2009 - 2014

Dokument s plenarne sjednice

A7-0252/2013

10.7.2013

*****|
IZVJEŠĆE**

o nacrtu Uredbe Europskog parlamenta i Vijeća o izmjeni Protokola o Statutu
Suda Europske unije povećanjem broja sudaca Općeg suda
(02074/2011 – C7-0126/2012 – 2011/0901B(COD))

Odbor za pravna pitanja

Izvjestiteljica: Alexandra Thein

Oznake postupaka

- * Postupak savjetovanja
- *** Postupak suglasnosti
- ***I Redovni zakonodavni postupak (prvo čitanje)
- ***II Redovni zakonodavni postupak (drugo čitanje)
- ***III Redovni zakonodavni postupak (treće čitanje)

(Navedeni se postupak temelji na pravnoj osnovi predloženoj u nacrtu akta.)

Izmjene nacrta akta

U amandmanima Parlamenta izmjene nacrta akta označene su **podebljanim kurzivom**. *Obični kurziv* naznaka je tehničkim službama da se radi o dijelovima nacrta akta za koje se predlaže ispravak prilikom izrade konačnog teksta (na primjer o očitim pogreškama ili izostavcima u danoj jezičnoj verziji). Za predložene ispravke potrebna je suglasnost dotičnih tehničkih službi.

Zaglavljje svakog amandmana na postojeći akt koji se želi izmijeniti nacrtom akta sadrži i treći redak u kojem se navodi postojeći akt te četvrti redak u kojem se navodi odredba akta na koju se izmjena odnosi. Dijelovi teksta odredbe postojećeg akta koju Parlament želi izmijeniti, a koja je u nacrtu akta ostala nepromijenjena, označeni su **podebljanim slovima**. Za moguća brisanja u tim dijelovima teksta koristi se oznaka [...].

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NACRT ZAKONODAVNE REZOLUCIJE EUROPSKOG PARLAMENTA

**o nacrtu Uredbe Europskog parlamenta i Vijeća o izmjeni Protokola o Statutu Suda
Europske unije povećanjem broja sudaca Općeg suda
(02074/2011 – C7-0126/2012 – 2011/0901B(COD))**

(Redovni zakonodavni postupak: prvo čitanje)

Europski parlament,

- uzimajući u obzir zahtjev Suda podnesen Europskom parlamentu i Vijeću (02074/2011),
- uzimajući u obzir prvi stavak članka 254. i drugi stavak članka 281. Ugovora o funkcioniranju Europske unije, na osnovu kojih je nacrt akta podnesen Parlamentu (C7-0126/2012),
- uzimajući u obzir članak 294. stavke 3. i 15. Ugovora o funkcioniranju Europske unije,
- uzimajući u obzir mišljenje Komisije (COM(2011)0596),
- uzimajući u obzir dopis Suda od 8. svibnja 2012.,
- uzimajući u obzir dopis Komisije od 30. svibnja 2012.,
- uzimajući u obzir stavke 2. i 3. svoje zakonodavne Rezolucije od 5. srpnja 2012. o nacrtu uredbe Europskog parlamenta i Vijeća o izmjeni Protokola o Statutu Suda Europske unije¹ i njegov Prilog I.,
- uzimajući u obzir članak 55. Poslovnika,
- uzimajući u obzir izvješće Odbora za pravna pitanja (A7-0252/2013),
 1. usvaja sljedeće stajalište u prvom čitanju;
 2. nalaže svojem predsjedniku da stajalište Parlamenta proslijedi Vijeću, Sudu, Komisiji i nacionalnim parlamentima.

Amandman 1

AMANDMANI EUROPSKOG PARLAMENTA*

¹ Usvojeni tekstovi, P7_TA(2012)0294.

* Amandmani: novi ili izmijenjeni tekst označuje se podebljanim kurzivom; a brisani tekst oznakom █ .

Uredba Europskog parlamenta i Vijeća o izmjeni **Protokola o Statutu Suda Europske unije povećanjem broja sudaca Općeg suda**

EUROPSKI PARLAMENT I VIJEĆE EUROPSKE UNIJE,

uzimajući u obzir Ugovor o Europskoj uniji, a posebno njegov članak 19. stavak 2.,

uzimajući u obzir Ugovor o funkcioniranju Europske unije, a posebno njegov članak 254. prvi stavak i članak 281. drugi stavak,

uzimajući u obzir Ugovor o osnivanju Europske zajednice za atomsku energiju, a posebno njegov članak 106.a stavak 1.,

uzimajući u obzir zahtjev Suda,

uzimajući u obzir mišljenje Komisije,

u skladu s redovnim zakonodavnim postupkom,

budući da:



- (5) kao rezultat postupnog proširenja nadležnosti od osnivanja Suda, broj predmeta pred Općim sudom stalno raste;
- (6) broj predmeta pred Općim sudom **godinama postojano raste**, što je s vremenom dovelo do povećanja broja predmeta o kojima taj sud rješava i do produženja trajanja postupaka;
- (7) produženje trajanja postupaka nije prihvatljivo s točke gledišta strana u sporu, posebno u svjetlu uvjeta iz članka 47. Povelje Europske unije o temeljnim pravima i članka 6. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda;
- (8) stanje u kojem se Opći sud našao ima strukturne uzroke povezane s povećanjem broja i vrste zakonodavnih i regulatornih akata institucija, tijela, ureda i agencija

Europske unije te s opsegom i složenošću predmeta pred Općim sudom, posebno onih koji se odnose na tržišno natjecanje i državne potpore;

- (9) zbog toga bi trebalo poduzeti odgovarajuće mjere za poboljšanje stanja, a mogućnost povećanja broja sudaca Općeg suda, što je predviđeno Ugovorima, jedna je od mjera da se količina predmeta o kojima se trenutačno rješava i pretjerano trajanje postupaka pred Općim sudom smanje u kratkom roku;
- (9a) *tim mjerama bi također trebalo osigurati trajno rješenje pitanja država članica porijekla sudaca budući da se sadašnje rješenje, po kojem se iz svake države članice imenuje po jedan sudac, ne može primijeniti u slučaju kad je broj sudaca veći od broja država članica;*
- (9b) *na osnovi članka 19. stavka 2. Ugovora o Europskoj uniji, Opći sud uključuje najmanje jednog suca iz svake države članice. Kako to već osigurava odgovarajuću zemljopisnu ravnotežu i zastupljenost nacionalnih pravnih sustava, dodatne suce trebalo bi imenovati isključivo na temelju profesionalnih i osobnih razloga, vodeći računa o njihovom poznavanju pravnih sustava Europske unije i država članica. Unatoč tome, iz iste države članice smjela bi biti najviše dva suca,*

DONIJELI SU OVU UREDBU:

Članak 1.

Protokol o Statutu Suda Europske unije mijenja se kako slijedi:

6a. *Prvi stavak članka 47. zamjenjuje se sljedećim:*

„Članak 9.a, članci 14. i 15., članak 17. stavci prvi, drugi, četvrti i peti i članak 18. primjenjuju se na Opći sud i njegove članove.

7. *Članak 48. zamjenjuje se sljedećim:*

„Opći sud sastoji se od po jednog suca iz svake države članice i 12 dodatnih

sudaca. Iz iste države članice mogu biti najviše dva suca.

Svi suci imaju isti status i ista prava i obveze.

Kada se svake tri godine provodi djelomična zamjena sudaca, naizmjence se izmjenjuje polovica sudaca ako je broj sudaca paran, a ako je broj sudaca neparan naizmjence se izmjenjuje paran i neparan broj sudaca, pri čemu ovaj posljednji odgovara parnom broju sudaca minus jedan.

7a. Umeće se sljedeći članak:

„Članak 48.a

Za suce koje imenuju države članice pravo imenovanja ima vlada dotične države članice.

7b. Umeće se sljedeći članak:

„Članak 48.b

- 1. Dodatni suci imenuju se bez obzira na državu članicu porijekla kandidata.*
- 2. U postupku imenovanja jednog ili više 12 dodatnih sudaca, prijave mogu podnosići sve države članice. Osim toga, sudac koji se povlači s dužnosti iz Općeg suda može sam sebe kandidirati pisanim podneskom upućenim predsjedniku odbora iz članka 255. Ugovora o funkcioniranju Europske unije.*
- 3. Tijekom postupka imenovanja jednog ili više 12 dodatnih sudaca, odbor iz članka 255. Ugovora o funkcioniranju Europske unije daje mišljenje o prikladnosti kandidata za obavljanje dužnosti suca Općeg suda. Odbor tom mišljenju prilaže popis kandidata s najprikladnijom visokom razinom iskustva sastavljen prema redoslijedu prikladnosti. Popis sadrži imena najmanje dvostrukog broja kandidata u odnosu na broj sudaca koji treba imenovati suglasnošću vlada država članica, pod uvjetom da postoji dovoljan broj prikladnih kandidata.*

Članak 3.

1. *Ova Uredba stupa na snagu prvog **dana u mjesecu** nakon objave █ u Službenom listu Europske unije.*
2. *Dvanaest dodatnih sudaca imenovanih na temelju ove Uredbe, a nakon njezina stupanja na snagu, preuzimaju dužnost odmah nakon polaganja prisege.*

Mandat šestorice tih sudaca, odabranih ždrijebom, traje šest godina od prve djelomične izmjene sastava Općeg suda nakon stupanja na snagu ove Uredbe.

Mandat ostale šestorice sudaca traje šest godina od druge djelomične izmjene sastava Općeg suda nakon stupanja na snagu ove Uredbe.

Ova je Uredba u cijelosti obvezujuća i izravno se primjenjuje u svim državama članicama.

Sastavljen u

Za Europski parlament

Za Vijeće

Predsjednik

Predsjednik

EXPLANATORY STATEMENT

1. Dividing the legislative procedure into two parts

This report constitutes the second part of the legislative procedure to amend the Statute of the Court of Justice. With regard to some of the amendments proposed – increasing the number of judges – it became clear in spring 2012 that there would be no agreement in the Council. There is agreement in principle that the number of judges must be increased. As the number of additional judges will be less than 27, however, not all Member States will be able to appoint an additional judge. Inevitably, therefore, because of the selection criteria, only some Member States will be able to appoint two judges. The criteria for selecting the additional Judges are correspondingly disputed.

The Committee on Legal Affairs therefore decided to divide the proposal for a regulation into two parts. The undisputed part concerning amendments to the Statute was put to the vote before summer 2012 and has become law. The aim now, in the second part to be considered, is to find a solution concerning the number of, and selection criteria for, the additional judges at the General Court (of first instance).

2. The General Court's constantly increasing workload

In recent years, the number of cases disposed of by the General Court was lower than the number of new cases. Consequently, the number of cases pending rose constantly. That trend was not interrupted until 2012, when, in total, 617 cases were pending and 688 disposed of. Overall, as at 31 December 2012, there were precisely 1 237 cases pending. In 2007, in comparison, 522 cases were brought and 397 disposed of. As at 31 December 2007, 1 154 cases were pending. The figures show, firstly, that there is an upwards trend in the number of cases and, secondly, that there has been a considerable increase in the General Court's productivity because of internal organisational reforms.

The General Court - in spite of its substantial efforts - can no longer handle the growing workload. The figures do not show the number of applications for use of the accelerated procedure or the number of applications for interim measures; but both those areas are resource-intensive.

The present increase in workload stems from (a) the increase in the number of admissible classes of action; (b) the increase in litigation following the 2004 and 2007 accessions; (c) 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 (d) the growth of litigation relating to Community trade mark applications. It should be pointed out that many of these causes were not foreseen.

3. The General Court's response

The General Court has not remained inactive in the face of this additional burden. Firstly, its Rules of Procedure have been amended to allow it to dispense with the oral procedure in intellectual-property cases. Those cases can now be wound up more quickly.

In 2007, secondly, the General Court was reorganised into eight different chambers plus an appeals chamber. It has also introduced a dynamic case management system. Thirdly, the report for the hearing is now produced in summary form for all cases. Fourthly, the President can now allocate new cases to chambers which are already dealing with other cases raising similar legal issues. Fifthly, more efficient methods for drafting judgments and orders have been introduced. Sixthly, new high-performance computerised applications have been introduced to make documentation available instantly and to permit rapid exchanges both between cabinets and between cabinets, the registry and the various departments of the General Court.

4. Possible way forward

Despite the procedural improvements set out above, the General Court believes that a structural solution is urgently required. The Treaties offer two possible routes to reform:

- (a) establishment of specialised courts;
- (b) an increase in the number of judges at the General Court by amending Article 48 of the Statute.

During the first part of the legislative procedure, the Court of Justice rejected the establishment of specialised chambers for the General Court. Accordingly, the General Court's workload can be dealt with only by increasing the number of judges.

In this connection, the rapporteur went to Luxembourg on 17 January 2013 to discuss these questions with the President, Registrar and Judges of the General Court and with the President of the Court of Justice. A hearing was also held in Brussels on the issue on 24 April 2013.

5. Number of additional judges

The Court of Justice has proposed that the number of judges at the General Court be increased by 12 to 39. In the rapporteur's opinion, the General Court's need for additional judges has been established. It is hard to determine and substantiate precisely how many. The analysis by the Committee on Budgets¹ has shown that for each additional judge, including the costs of the respective legal secretaries etc., the annual cost would be about EUR 1 million. Despite the EU's and Member States' budgetary position, which is more than stretched, the rapporteur regards 12 additional judges as appropriate. The judiciary must be in a position to discharge its oversight responsibilities; and it must be able to do so within a reasonable period of time. That is what citizens expect in order to safeguard the principle of the rule of law.

6. The problem of selecting the Judges

In the proposal, the Court of Justice makes no comment as to how the additional judges should be selected (before they are appointed). Traditionally, this is a matter for the Member States, the Treaty merely providing in Article 19(2) TFEU that there must be at least one judge per Member State. The negotiations to date have made it clear that, for the Member States, this is an extremely sensitive question of status.

¹ Opinion of 27 January 2012 (rapporteur: Angelika Werthmann).

Essentially, there are two possible ways forward. Firstly, there is the possibility - as has been the case so far - of selecting judges on the basis of their Member State of origin. Since, as explained above, not all Member States can appoint an additional judge, there would have to be a rotation system.

Secondly, there is the possibility of nominating judges solely on the basis of their professional suitability. That is also the Commission's preferred approach.

7. Possible rotation systems

In the rapporteur's opinion, a solution is urgently needed. Quickly providing additional judges for the General Court is more important than the question of what selection method is used. She is therefore open to all compromise proposals, in particular from the Court of Justice or the General Court. However, she would like to make the following comments on the two approaches.

In the discussions between the institutions and the Member States, a host of different rotation models have been put forward:

- (a) rotation based on full equality, with all Member States being equally entitled to provide a second judge;
- (b) rotation depending on Member State size: large Member States would provide a second Judge more often than small Member States;
- (c) rotation involving all Member States, albeit with judges from large Member States being appointed for two periods of office;
- (d) mixed rotation: large Member States would always provide a second judge; small Member States would do so at certain times only;
- (e) rotation 'by draw': for each additional judge to be provided, lots would be drawn so as to determine which Member State was entitled to make the appointment;
- (f) one of the above systems, though the additional offices of judge would initially be established for a specified period only, e.g. six years.

8. Professional suitability - the forgotten criterion

It should be pointed out that none of the above rotation systems is persuasive. The point of the current arrangement enshrined in law – each Member State provides a judge – is to preserve a degree of balance between Member States and legal cultures. That is justified, too, to some extent.

What is ultimately crucial, however, for the office of judge, is that not only should suitable jurisconsults from a particular Member State be nominated, but, rather, that those who appear to be the most suitable from anywhere in the EU should be nominated. Citizens in particular must be able to depend on the fact that their concerns are ruled on by the most suitable judges

(and not only by suitable judges).

This has already been laid down for the selection of Civil Service Tribunal judges. Under Article 3(4) of the Annex to the Statute, the relevant selection committee not only gives an opinion on candidates' suitability; rather, it also appends to its opinion a list of candidates having the most suitable high-level experience.

In future, such a list for the General Court could be drawn up by the panel referred to in Article 255 TFEU. To date, that panel's sole task has been to verify the suitability of Member States' nominees. In individual cases, nominees have been found to be unsuitable. Member State governments are not bound by the panel's recommendations; but, to date, they have followed them in all instances. It would indeed be difficult to appoint a judge regarded as unsuitable.

Nor is it likely that, overall, more than two judges would be nominated by a Member State. That can be seen from how the list of nominees for the Civil Service Tribunal has been dealt with. The fact that, under Article 253 TFEU, there has to be agreement among the Member State governments means that, should several nominees from one Member State appear to be the most suitable on the list, only one would be appointed, however, and the others on the list would simply be passed over. For that reason, in addition, the list must contain the names of more than just the necessary number of nominees.

9. The rapporteur's proposal

In the rapporteur's opinion, the system should operate as follows: one judge per Member State would be appointed under the current arrangements, thus meeting the requirement of geographical balance and taking sufficient account of national legal systems; the 'additional' judges should be selected, regardless of their nationality, solely in order of their suitability; all Member State governments should be allowed to submit nominations, which is objectively justified and reflects what citizens want.

To ensure that the experience of retiring judges is not lost - because, for example, as their Member States of origin see matters, they have proved too independent for their governments' liking - the rapporteur furthermore proposes that retiring judges should be able to nominate themselves in direct submissions to the panel.

The possible future role of the Article 255 panel under these proposals was discussed with the current President of the panel, Jean-Marc Sauvé, at a hearing on 30 May 2013. The President was generally supportive of the idea, whilst making some suggestions for improvement which have largely been addressed in the final report.

10. The rapporteur's final assessment

In the rapporteur's opinion, the General Court's arguments are persuasive and the need for additional judges has been established. It is extremely important that the General Court be in a position to deliver judgments within a reasonable period.

Appointing the judges is the big problem, however. Because of this issue, delays were caused when the first attempt at legislating was made. In this report, the rapporteur is making a

specific proposal which disregards the additional judges' nationality. Member States' concern about where posts go must not be allowed to put a strain on the rule of law in the EU.

In the interests of reaching agreement quickly, however, the rapporteur proposes that Parliament should be receptive to compromise proposals from the Council or the Court of Justice, since an increase in the number of judges is urgently needed. Any agreement is better than further delay. Because court proceedings are now protracted, the European Human Rights Convention is in danger of being further violated.

The committee therefore requests the Council to respond as quickly as possible to the proposals in this draft report and not, through further procrastination, to do harm to the efficiency of the EU judiciary.

POSTUPAK

Naslov	Proposal for a regulation of the European Parliament and of the Council amending the Statute of the Court of Justice of the European Union by increasing the number of judges at the General Court			
Referentni dokumenti	02074/2011 – C7-0126/2012 – 2011/0901B(COD)			
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Zastupnici nazočni na konačnom glasovanju	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Tadeusz Zwiefka			
Zamjenici nazočni na konačnom glasovanju	Sergio Gaetano Cofferati, Eva Lichtenberger, Angelika Niebler			
Zamjenici nazočni na konačnom glasovanju prema čl. 187. st. 2.	Frédérique Ries, Nikolaos Salavrakos, Jacek Włosowicz			
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