



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Constitutional Affairs

2011/0901(COD)

11.11.2011

AMENDMENTS

5 - 36

Draft opinion
Morten Messerschmidt
(PE470.092v01-00)

Proposal for a regulation of the European Parliament and of the Council
amending the Statute of the Court of Justice of the European Union
(02074/2011 – C7-0090/2011 – 2011/0901(COD))

AM\883510EN.doc

PE475.880v02-00

EN

United in diversity

EN

AM_Com_LegOpinion

Amendment 5
Andrew Duff, Alexandra Thein

Proposal for a regulation
Recital 1

Draft by the Court of Justice

(1) In order to **increase the** participation of all the Judges in **the decisions of** the Grand Chamber of the Court of Justice, there should be an increase in the number of Judges who may participate in the Grand Chamber, and the automatic participation of the Presidents of Chambers of five Judges should cease.

Amendment

(1) In order to **provide for broader** participation **by** all the Judges **and to allow them to sit more frequently** in **cases assigned to** the Grand Chamber of the Court of Justice, there should be an increase in the number of Judges who may participate in the Grand Chamber, and the automatic participation of the Presidents of Chambers of five Judges should cease.

Or. en

Amendment 6
Marietta Giannakou

Proposal for a regulation
Recital 1 a (new)

Draft by the Court of Justice

(1a) Increased resources could provide an opportunity for reorganisation of proceedings in the 'other cases' category by order of priority, in particular competition cases, where special care must be taken to adhere to a reasonable deadline.

Amendment

Or. el

Amendment 7
Marietta Giannakou

Proposal for a regulation
Recital 1 b (new)

Draft by the Court of Justice

Amendment

(1b) An increase in the number of judges is not enough to remedy delays. It is also necessary for some of the chambers to be run on more specialised lines, improving flexibility and output in the General Court.

Or. el

Amendment 8
Marietta Giannakou

Proposal for a regulation
Recital 9

Draft by the Court of Justice

Amendment

(9) Consequently, the necessary measures should be taken to address this situation, and the possibility, provided for by the Treaties, of increasing the number of Judges of the General Court is such as to enable both the volume of pending cases and the excessive duration of proceedings before the General Court to be reduced within a short time.

(9) Consequently, the necessary measures should be taken to address this situation, and the possibility, provided for by the Treaties, of increasing the number of Judges of the General Court is such as to enable both the volume of pending cases and the excessive duration of proceedings before the General Court to be reduced within a short time. ***Similarly the more effective allocation of the General Court's caseload to the appropriate chambers could significantly limit delays in proceedings.***

Or. el

Amendment 9
Andrew Duff, Alexandra Thein

Proposal for a regulation
Recital 9

Draft by the Court of Justice

(9) Consequently, the necessary measures should be taken to address this situation, and the possibility, provided for by the Treaties, of increasing the number of Judges of the General Court is such as to enable both the volume of pending cases and the excessive duration of proceedings before the General Court to be reduced within a short time.

Amendment

(9) Consequently, the necessary measures should be taken to address this situation, and the possibility, provided for by the Treaties, of increasing the number of Judges of the General Court **from 27 to 39** is such as to enable both the volume of pending cases and the excessive duration of proceedings before the General Court to be reduced within a short time.

Or. en

Amendment 10
Alexandra Thein

Proposal for a regulation
Recital 9 a (new)

Draft by the Court of Justice

Amendment

(9a) There should be the possibility for a Judge to announce, during the Court's deliberations, that he intends to deliver a dissenting opinion as to the judgment or the reasons on which it is based, to be published together with the judgment. This possibility, which exists in numerous constitutional courts of Member States of the European Union and in the European Court of Human Rights, ensures that the public is aware of the fact that there is not a sole answer to the question before the Court and that legally sound alternatives are conceivable, and may thus have an influence on future judicial practice. It contributes, moreover, to a better understanding and, in a legal system which is largely based on case-law such

as that of the European Union, to a better interpretation and application of the Court's findings. Dissenting opinions must be utilised in a way that ensures the necessary authority of the Court and does not compromise the secrecy of deliberations. They must be the sole initiative and responsibility of the Judge concerned. At the same time, they enable the majority to give the reasons for their decision in a clear and straightforward manner. Experience has shown that they do not undermine the reputation of those courts in which they are delivered, as the modalities of their delivery are entirely a matter for the court concerned.

Or. en

Amendment 11
Paulo Rangel

Proposal for a regulation
Recital 9 a (new)

Draft by the Court of Justice

Amendment

(9a) Once the number of Judges of the General Court has been increased, the question of their appointment will naturally arise. Regarding the system for appointing Judges, Member States should agree on rules offering every guarantee as regards the independence and impartiality and the competence and suitability of the persons appointed, as well as making for equality and balance in terms of their home Member States.

Or. pt

Amendment 12
Andrew Duff, Alexandra Thein

**Proposal for a regulation
Recital 9 a (new)**

Draft by the Court of Justice

Amendment

(9a) The arrangement for nominating judges to the General Court should be modified to reflect a balance between the objective of ensuring the best possible representation of all national legal systems and the need to respond to the requirements of a General Court which is structured more in terms of specialised chambers for each subject. To that end, half of the new Judges (in other words, six of them) should be nominated in line with a procedure that meets this need for specialisation.

Or. en

**Amendment 13
Morten Messerschmidt
on behalf of the EFD Group**

**Proposal for a regulation
Recital 9 a (new)**

Draft by the Court of Justice

Amendment

(9a) In cases of major importance before the Court of Justice, namely cases concerning fundamental questions pertaining to the legal order of the European Union, there should be the possibility for a Judge to announce, during the Court's deliberations, that he intends to deliver a dissenting opinion as to the judgment or the reasons on which it is based, to be published together with the judgment. This possibility, which exists in numerous constitutional courts of Member States of the European Union and in the European Court of Human Rights, ensures that the public is aware of the fact that there is not a sole answer to

the question before the Court and that legally sound alternatives are conceivable, and may thus have an influence on future judicial practice. It contributes, moreover, to a better understanding and, in a legal system which is largely based on case-law such as that of the European Union, to a better interpretation and application of the Court's findings. Dissenting opinions must be utilised in a way that ensures the necessary authority of the Court and does not compromise the secrecy of deliberations. They must be the sole initiative and responsibility of the Judge concerned. At the same time, they enable the majority to give the reasons for their decision in a clear and straightforward manner. Experience has shown that they do not undermine the reputation of those courts in which they are delivered, as the modalities of their delivery are entirely a matter for the court concerned.

Or. en

Amendment 14
Paulo Rangel

Proposal for a regulation
Recital 9 b (new)

Draft by the Court of Justice

Amendment

(9b) To enable the General Court to operate more efficiently and ensure that proceedings can be dealt with and adjudicated on within a reasonable time, the General Court may set up specialised Chambers where this is warranted by the number of proceedings in a given field.

Or. pt

Amendment 15
Andrew Duff, Alexandra Thein

Proposal for a regulation
Recital 9 b (new)

Draft by the Court of Justice

Amendment

(9b) The basic principle should be that the General Court should comprise at least one Judge and at most two Judges having the nationality of each Member State.

Or. en

Amendment 16
Paulo Rangel

Proposal for a regulation
Recital 9 c (new)

Draft by the Court of Justice

Amendment

(9c) As regards the internal organisation of the General Court, the office of Vice-President should, following the approach adopted for the Court of Justice, be established for the purpose of assisting the President.

Or. pt

Amendment 17
Paulo Rangel

Proposal for a regulation
Recital 9 d (new)

Draft by the Court of Justice

Amendment

(9d) In proceedings before the Court of Justice, a Judge should be permitted to announce, during the Court's deliberations, that he intends to deliver a

dissenting opinion as to the judgment or the reasons on which it is based, to be published together with the judgment. That possibility exists in several national and international courts, and their reputation and authority have not been undermined as a result. On the contrary, this is a solution which helps to advance judicial practice, offers guarantees of greater transparency, and serves to strengthen the democratic legitimacy of the courts, as it is particularly important to do in this instance, given that the judicial system concerned is one with a strong case law component.

Or. pt

Amendment 18
Roberto Gualtieri

Proposal for a regulation
Recital 10

Draft by the Court of Justice

Amendment

(10) In order to enable the specialised courts to continue to function satisfactorily in the absence of a Judge who, while not suffering from disablement deemed to be total, is prevented from participating in judicial business for an extended period of time, provision should be made for the possibility of attaching temporary Judges to those courts.

deleted

Or. it

Amendment 19
Paulo Rangel

Proposal for a regulation
Recital 10

PE475.880v02-00

10/20

AM\883510EN.doc

Draft by the Court of Justice

(10) In order to enable the specialised courts to continue to function satisfactorily in the absence of a Judge who, while not suffering from disablement deemed to be total, is prevented from participating in judicial business for an extended period of time, provision should be made for the possibility of attaching temporary Judges to those courts.

Amendment

(10) In order to enable the specialised courts to continue to function satisfactorily in the absence of a Judge who, while not suffering from disablement deemed to be total, is prevented from participating in judicial business for an extended period of time, provision should be made for the possibility of attaching temporary Judges to those courts. ***The appointment of temporary Judges should offer every guarantee as regards the independence and impartiality and the competence and suitability of the persons appointed, as well as making for equality and balance in terms of their home Member States.***

Or. pt

Amendment 20
Morten Messerschmidt
on behalf of the EFD Group

Proposal for a regulation
Recital 10 a (new)

Draft by the Court of Justice

(10a) In order to avoid any doubts as to the authority of the temporary Judges, it is of the utmost importance that they be elected in a way which does not compromise the authority of the Court and which ensures their total independence,

Or. en

Amendment 21
Paulo Rangel

Proposal for a regulation

Article 1 – paragraph 1 – point 1 - subparagraph 2

Draft by the Court of Justice

The Vice-President shall assist the President of the Court. He shall take the latter's place when he is prevented from attending, when the office of President is vacant *or at the President's request*.

Amendment

The Vice-President shall assist the President of the Court. He shall take the latter's place when he is prevented from attending *or* when the office of President is vacant. *He may also take the President's place at the President's request, except where the tasks to be performed are those referred to in Article 39 or that of presiding over the full Court and the Grand Chamber.*

Or. pt

Amendment 22

Andrew Duff, Alexandra Thein

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Draft by the Court of Justice

Amendment

1a. The first paragraph of Article 9 shall be replaced by the following:

'When, every three years, the Judges are partially replaced, 20 and 19 Judges shall be replaced alternately.'

Or. en

Amendment 23

Paulo Rangel

Proposal for a regulation

Article 1 – paragraph 1 – point 4 a (new)

Draft by the Court of Justice

Amendment

4a. The following paragraph shall be

added to Article 35:

‘Where a Judge has declared, in the deliberations of the Court of Justice, that he disagrees with the judgment to be delivered or the reasons on which that judgment is based, he shall be entitled to deliver a dissenting opinion. That opinion shall be published together with the judgment. Implementing rules relating to the admissibility, and the detailed procedure for the delivery, of such opinions shall be laid down in the Rules of Procedure of the Court of Justice.’

Or. pt

Amendment 24
Morten Messerschmidt
on behalf of the EFD Group

Proposal for a regulation
Article 1 – paragraph 1 – point 4 a (new)

Draft by the Court of Justice

Amendment

4a. The following paragraph shall be added to Article 35:

‘In cases concerning fundamental questions pertaining to the legal order of the European Union, where a Judge has declared, in the deliberations of the Court of Justice, his disagreement with the judgment to be delivered or the reasons on which that judgment is based, he shall be entitled to deliver a dissenting opinion. That opinion shall be published together with the judgment. Implementing rules relating to the admissibility, and the detailed procedure for the delivery, of such opinions shall be laid down in the Rules of Procedure.’

Or. en

Amendment 25
Paulo Rangel

Proposal for a regulation
Article 1 – paragraph 1 – point 6 a (new)

Draft by the Court of Justice

Amendment

6a. The first paragraph of Article 47 shall be replaced by the following:

Articles 9a, 14, and 15, Article 17, first, second, fourth, and fifth paragraphs, and Article 18 shall apply to the General Court and its members.

Or. pt

Amendment 26
Paulo Rangel

Proposal for a regulation
Article 1 – paragraph 1 – point 7

Draft by the Court of Justice

Amendment

7. *In* Article 48, *the figure* ‘27’ shall be replaced by the *figure* ‘39’.

7. Article 48 shall be replaced by the *following*:

‘The General Court shall consist of 39 Judges.

When, every three years, the Judges are partially replaced, 20 and 19 Judges shall be replaced alternately.’

Or. pt

Amendment 27
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 7 a (new)

Draft by the Court of Justice

Amendment

7a. The following paragraph shall be added to Article 48:

The Council shall draw up an asymmetrical rotation list for the election of the additional Judges. Six of the 12 Judges' posts shall be allocated to the biggest Member States on a permanent basis, the remaining ones shall be allocated to the remaining Member States on a rotating basis.

Or. en

Amendment 28
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 7 b (new)

Draft by the Court of Justice

Amendment

7b. The following paragraph shall be added to Article 48:

Member States shall be represented by at least one Judge but by no more than two Judges of their nationality.

Or. en

Amendment 29
Paulo Rangel

Proposal for a regulation
Article 1 – paragraph 1 – point 7 a (new)

Draft by the Court of Justice

Amendment

7a. The following new second paragraph shall be added to Article 50:

To deal with matters in which there is a high volume of pending cases, the General Court may set up an appropriate number of specialised Chambers to which proceedings in the matters in question shall be assigned. The number of specialised Chambers may not be less than two.

The present second and third paragraphs of Article 50 shall become the third and fourth paragraphs.'

Or. pt

Amendment 30
Roberto Gualtieri

Proposal for a regulation
Article 1 – paragraph 1 – point 8

Draft by the Court of Justice

Amendment

8. The following paragraph shall be added to Article 62c:

deleted

'The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties.'

Or. it

Amendment 31
Tadeusz Zwiefka

Proposal for a regulation
Article 1 – paragraph 1 – point 8

Draft by the Court of Justice

The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties.

Amendment

The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties. ***In order to guarantee the uncompromised authority of the Court's judgments, those provisions shall ensure, moreover, that the temporary Judges enjoy the same rights regarding their professional activities as permanent Judges.***

Or. en

Amendment 32
Andrew Duff

Proposal for a regulation
Article 1 – paragraph 1 – point 8

Draft by the Court of Justice

The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are

Amendment

The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are

prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties.

prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties. ***Those provisions shall ensure, moreover, that the temporary Judges enjoy comparable rights and are entitled to assume the same functions as permanent Judges, in order to guarantee the uncompromised authority of the Court's judgments.***

Or. en

Amendment 33

Morten Messerschmidt

on behalf of the EFD Group

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Draft by the Court of Justice

The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties.

Amendment

The Parliament and the Council, acting in accordance with Article 257 TFEU, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in judicial business for an extended period of time. In that event, the Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties. ***Those provisions shall ensure, moreover, that the temporary Judges enjoy the same rights and are entitled to assume the same functions as permanent Judges, in order***

*to guarantee the uncompromised
authority of the Court's judgments.*

Or. en

(This amendment replaces Amendment 4 of the draft opinion (PE 470.092 v01-00))

Amendment 34
Roberto Gualtieri

Proposal for a regulation
Article 2

Draft by the Court of Justice

Amendment

In Article 2 of Annex I to the Protocol on the Statute of the Court of Justice of the European Union, the current text shall form paragraph 1 and the following paragraph 2 shall be added:

deleted

‘2. Temporary Judges shall be appointed, in addition to the Judges referred to in the first subparagraph of paragraph 1, in order to take the place of those Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the judicial business for an extended period of time.’

Or. it

Amendment 35
Roberto Gualtieri

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 1

Draft by the Court of Justice

Amendment

Points 4, 6, 7 **and 8** of Article 1 **and Article 2** shall enter into force on the first day of the month following that of the publication of this Regulation in the

Points 4, 6 **and 7** of Article 1 shall enter into force on the first day of the month following that of the publication of this Regulation in the Official Journal of the

Amendment 36

Andrew Duff

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Draft by the Court of Justice

Amendment

2a. The 12 judges appointed following the entry into force of this Regulation shall take up their posts immediately once they have taken the oath. Six of them shall be chosen at random and their term of office shall end six years after the first partial replacement of the General Court following the entry into force of this Regulation. The term of office of the other six Judges shall end six years after the second partial replacement of the General Court following the entry into force of this Regulation.