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from:	Mr V. SKOURIS, President of the Court of Justice of the European Union
dated:	4 April 2011
to:	Mr J. MARTONYI, President of the Council of the European Union
Subject:	Draft Regulation of the European Parliament and of the Council relating to temporary judges of the European Union Civil Service Tribunal

Delegations will find attached a letter forwarded by Mr V. SKOURIS, President of the Court of Justice of the European Union, to Mr J. MARTONYI, President of the Council of the European Union, the above draft from the Court of Justice of the European Union and an explanatory note accompanying the draft.

The draft amendments to the Statute of the Court of Justice of the European Union and to Annex I thereto, referred to in the attached letter, is set out in 8787/11.

Luxembourg, 28 March 2011

*Mr János Martonyi
President of the Council of the
European Union
175, rue de la Loi*

B – 1048 BRUSSELS

Dear President,

With reference to the second paragraph of Article 281 of the Treaty on the Functioning of the European Union and Article 106a(1) of the EAEC Treaty, I hereby submit to you the draft amendments to the Statute of the Court of Justice set out in the attached document.

The proposed amendments concern the three courts composing the Court of Justice of the European Union, and are intended, in essence, to amend the rules relating to the composition of the Grand Chamber and to establish the office of Vice-President of the Court of Justice, to increase the number of Judges of the General Court and to provide for the possibility of attaching temporary Judges to the specialised courts.

The proposed amendments are accompanied by an explanatory note, to which reference should be made.

These amendments, which are also being submitted to the President of the European Parliament, are enclosed in all the official languages.

A statement enabling the financial impact of the proposed amendments to be assessed will be sent to you as soon as possible.

Yours faithfully,

Vassilios SKOURIS

1. DRAFT REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL RELATING TO TEMPORARY JUDGES OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Explanatory note

In accordance with the second paragraph of Article 62c of the Protocol on the Statute of the Court of Justice of the European Union ("the Statute") and Article 2(2) of Annex I to the Statute,¹ which are included in a draft amendment to the Statute and to Annex I thereto, submitted separately, the present draft regulation lays down the rules governing the appointment of temporary Judges to the European Union Civil Service Tribunal, their rights and duties and the conditions under which they will perform and cease to perform their duties.

It appears prudent to provide in that regard for the Council of the European Union, on a proposal from the President of the Court of Justice, to appoint three temporary Judges to the Civil Service Tribunal.

Temporary Judges should be appointed from among former Members of the Court of Justice, the General Court and the Civil Service Tribunal. It might have been envisaged that temporary Judges would be designated from among those candidates on the list adopted by the selection committee pursuant to Article 3(4) of Annex I to the Statute who have not been appointed as Judges by the Council. However, there are certain disadvantages to that solution. In order to ensure that a temporary Judge is fully effective, it is important that the persons appointed should be in a position to perform the duties of Judge at the Civil Service Tribunal immediately, and thus to be operational as soon as they are designated. Furthermore, candidates who are not appointed but are on the selection committee's list are normally professionally occupied and would therefore be unlikely to have the requisite availability to meet the needs of the Civil Service Tribunal.

The procedure for the actual designation of temporary Judges on the basis of the list drawn up by the Council should be as straightforward as possible to ensure that replacement is flexible and effective.

¹ OJ L 333, 9.11.2004, p. 7, with corrigendum OJ L 103, 20.4.2007, p. 54.

Specifically, where the Civil Service Tribunal determines that a Judge is or will be prevented, on medical grounds, from participating in judicial business; that the situation in question will be or is likely to be of at least three months' duration; and that he is not suffering from disablement deemed to be total within the meaning of Article 10 of Council Regulation No 422/67/EEC, No 5/67/Euratom of 25 July 1967 determining the emoluments of the President and Members of the Commission, of the President, Judges, Advocates General and Registrar of the Court of Justice, of the President, Members and Registrar of the General Court and of the President, Members and Registrar of the European Union Civil Service Tribunal ² ("Regulation No 422/67/EEC and No 5/67/Euratom"), the Tribunal could decide to avail itself of the assistance of a temporary Judge, in which case it would be for the President of the Tribunal to call upon him to undertake active judicial duties, on the basis of the list adopted by the Council.

The temporary Judge would take over, at least in part, the judicial work of the Judge who is prevented from acting. Accordingly, he would take over that Judge's case-files in a certain number of cases designated by the President of the Civil Service Tribunal, and would take that Judge's place when new cases are allocated.

The independence and impartiality of temporary Judges who are called upon to undertake judicial duties would be guaranteed by the fourth paragraph of Article 257 TFEU and by a reference to Articles 2 to 6 and 18 of the Statute, in the same way as the provision made under Article 5 of Annex I thereto in relation to the permanent Judges of the Civil Service Tribunal.

The effect of Article 3 of the draft regulation is that temporary Judges would be able to perform only strictly judicial duties and would not be entitled to participate in the administration of the Civil Service Tribunal or in the election of the President of the Tribunal or Presidents of Chambers. It also means that they would not be entitled to appoint their own staff.

Provision must also be made for the emoluments of temporary Judges who are called upon to undertake judicial duties. It is proposed to do so in Article 4 of the draft regulation, in order to maintain homogeneity in the rules governing temporary Judges.

Article 4(1) of the draft regulation provides that, under the supervision of the President of the Civil Service Tribunal, temporary Judges would be entitled to remuneration, for each day actually worked, of an amount equal to 1/30th of the basic monthly salary payable to Judges under Article 21c(2) of Regulation No 422/67/EEC and No 5/67/Euratom. This method of calculating the remuneration of temporary Judges has been taken over *mutatis mutandis* from Article 12(1) of Resolution CM/Res(2009)5 of the Committee of Ministers of the Council of Europe of 23 September 2009 on the status and conditions of service of judges of the European Court of Human Rights and of the Commissioner for Human Rights.

Temporary Judges would also be entitled to reimbursement of their travel and hotel expenses, as well as to payment of a daily subsistence allowance, in respect of journeys to Luxembourg in the course of their duties. However, the reimbursement of hotel expenses and the daily subsistence allowance could be omitted, if necessary.

² OJ, English Special Edition 1967, p. 222.

It is apparent, moreover, from the first subparagraph of Article 4(2) of the draft regulation that the pension provided for under Article 8 of Regulation No 422/67/EEC and No 5/67/Euratom would be capped in so far as it was drawn concurrently with the remuneration referred to above. This arrangement is based on that provided for by Article 7(3) of Regulation No 422/67/EEC and No 5/67/Euratom. That provision should, moreover, be applied if a transitional allowance were paid to a former Member of the Court of Justice of the European Union called upon to undertake judicial duties as a temporary Judge.

Finally, having regard to Article 11 of Regulation No 422/67/EEC and No 5/67/Euratom, which envisages various situations in which former Members are entitled to benefits under the social security scheme for officials, on condition that they are not in gainful employment, the fourth subparagraph of Article 4(2) of the draft regulation specifies, in that respect, that the office of temporary Judge should not be taken into consideration for the purposes of entitlement under that scheme.

Article 5 of the draft regulation outlines the circumstances in which temporary Judges would cease to perform their duties. Other than in the case of death, the duties of a temporary Judge should cease when he resigns or on a decision to deprive him of his office if he no longer fulfils the requisite conditions or meets the obligations arising from his office (Articles 5 and 6 of the Statute) or, as the case may be, when the Judge whom he has replaced is no longer prevented from acting. However, in the interests of the proper administration of justice, a temporary Judge will, in principle, continue to perform his duties until the cases in which he has been sitting are completed. It should be borne in mind in that regard that the Tribunal could, in those circumstances in particular, review the level of benefits of the person concerned.

By contrast, it is apparent from the above that expiry of the period of validity of the list of temporary Judges adopted by the Council should not affect the performance of their duties by those temporary Judges designated by the President of the Tribunal on the basis of the list applicable at the time when they were called upon to take up their duties; they would thus continue to deal with cases already assigned to them.

Furthermore, the name of any temporary Judge who has died, resigned or been deprived of his office would be removed from the aforementioned list, which would then be supplemented for the remainder of the period of its validity.

Since the draft regulation is intended to provide the Civil Service Tribunal with occasional assistance on as economical a basis as possible, it is appropriate, finally, to summarise the measures which ought to limit the budgetary impact of the proposal:

- first, recourse to temporary Judges would be limited to cases where
 - a Judge of the Tribunal is prevented, on medical grounds, from participating in judicial business;
 - the situation is, or is likely to be, of at least three months' duration; and
 - the Judge in question is not suffering from disablement deemed to be total within the meaning of Article 10 of Regulation No 422/67/EEC and No 5/67/Euratom;
- second, the temporary Judges' emoluments would depend on the number of days actually worked, as recorded by the President of the Civil Service Tribunal;
- third, the capping mechanism provided for under Article 7(3) of Regulation No 422/67/EEC and No 5/67/Euratom would apply;
- fourth, a similar capping mechanism is provided for in the event of a temporary Judge drawing his salary concurrently with a pension in his capacity as a former Member of the Court of Justice of the European Union.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 257 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 62c thereof and Article 2(2) of Annex I thereto,

Having regard to the request of the Court of Justice,

Having regard to the opinion of the European Commission,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) It is necessary, in accordance with the second paragraph of Article 62c of the Statute and Article 2(2) of Annex I thereto, to lay down the rules governing the appointment of temporary Judges to the European Union Civil Service Tribunal, their rights and duties, the conditions under which they may perform their duties and the circumstances in which they would cease to perform those duties.**
- (2) Temporary Judges should be chosen from among persons who are capable of performing the duties of Judge at the Civil Service Tribunal immediately. The appointment of former Members of the Court of Justice, of the General Court or of the Civil Service Tribunal can ensure that those requirements are met.**
- (3) In view of the circumstances in which temporary Judges would be designated, the process must have the requisite flexibility. To that end, the Council should be responsible for drawing up a list of three persons capable of being designated as temporary Judge. Should it become necessary to replace, on a temporary basis, a Judge who, on health grounds, is prevented from acting, the Civil Service Tribunal would take the decision to avail itself of the assistance of a temporary Judge. Pursuant to that decision, the President of the Civil Service Tribunal would call upon one of the persons whose names are included on the list adopted by the Council to undertake judicial duties.**
- (4) The method of remuneration of temporary Judges must also be provided for, as must the question of the effects of their duties and of that remuneration on the emoluments to which they are entitled as former Members of the Court of Justice of the European Union.**
- (5) Finally, it is important to make provision for the cessation of the temporary Judges' duties.**

HAVE ADOPTED THIS REGULATION:

Article 1

In this Regulation:

- **"Statute" means the Protocol on the Statute of the Court of Justice of the European Union;**
- **"Civil Service Tribunal" means the European Union Civil Service Tribunal;**
- **"Regulation No 422/67/EEC and No 5/67/Euratom" means Council Regulation No 422/67/EEC, No 5/67/Euratom of 25 July 1967 determining the emoluments of the President and Members of the Commission, of the President, Judges, Advocates General and Registrar of the Court of Justice, of the President, Members and Registrar of the General Court and of the President, Members and Registrar of the European Union Civil Service Tribunal;³**
- **"President of the Tribunal" means the President of the European Union Civil Service Tribunal.**

Article 2

1. **On a proposal from the President of the Court of Justice, the Council of the European Union, acting unanimously, shall draw up a list of three persons to be temporary Judges within the meaning of the second paragraph of Article 62c of the Statute.**

Temporary Judges shall be chosen from among former Members of the Court of Justice of the European Union who are able to place themselves at the disposal of the Civil Service Tribunal.

Temporary Judges shall be appointed for a period of four years and may be reappointed.

2. **The Civil Service Tribunal may decide to avail itself of the assistance of a temporary Judge if it determines that a Judge is or will be prevented, on medical grounds, from participating in judicial business and that the situation will be or is likely to be of at least three months' duration, and if it takes the view that that Judge is nevertheless not suffering from disablement deemed to be total.**

³ OJ, English Special Edition 1967, p. 222.

Pursuant to the decision referred to in the first subparagraph, the President of the Tribunal shall call upon a temporary Judge referred to in the first subparagraph of paragraph 1 to undertake judicial duties. He shall inform the President of the Court of Justice accordingly.

Where a Judge will foreseeably be prevented from acting and the Civil Service Tribunal takes a prospective decision, the temporary Judge may not take up his duties or participate in judicial business until the Judge whom he is to replace is actually prevented from acting.

3. Articles 2 to 6 and 18 of the Statute shall apply to temporary Judges. The oath provided for by Article 2 of the Statute shall be taken when the temporary Judge first takes up his duties.

Article 3

Temporary Judges who are called upon to take up their duties shall exercise the prerogatives of a Judge solely in the context of dealing with cases to which they are assigned.

They shall be assisted by the services of the Civil Service Tribunal.

Article 4

1. Temporary Judges shall receive remuneration of an amount equal to 1/30th of the basic monthly salary allocated to Judges under Article 21c(2) of Regulation No 422/67/EEC and No 5/67/Euratom for each day, duly recorded by the President of the Tribunal, during which they perform their duties.

Article 6 [or Article 6(a) and (b)] of Regulation No 422/67/EEC and No 5/67/Euratom shall apply to temporary Judges who are required to travel away from their place of residence in order to perform their duties.

2. The amount by which the remuneration provided for in the first subparagraph of paragraph 1 together with the pension provided for in Article 8 of Regulation No 422/67/EEC and No 5/67/Euratom exceeds the remuneration, before deduction of taxes, which the temporary Judge was receiving as a member of the Court of Justice of the European Union shall be deducted from that pension. The remuneration provided for in paragraph 1 shall also be taken into account for the purposes of the application of Article 7(3) of that regulation.

A temporary Judge shall not be entitled to a transitional allowance or pension under Articles 7 and 8 of Regulation No 422/67/EEC and No 5/67/Euratom.

Article 19 of Regulation No 422/67/EEC and No 5/67/Euratom shall apply to the remuneration provided for in the first subparagraph of paragraph 1.

Temporary Judges shall not be entitled, in that capacity, to benefit under the social security scheme provided for in the Staff Regulations of Officials of the European Union. Performance of the duties of temporary Judge may not be treated as gainful employment or occupation within the meaning of Article 11 of Regulation No 422/67/EEC and No 5/67/Euratom.

3. The remuneration provided for in the first subparagraph of paragraph 1 shall be subject to the tax provided for by Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Union.

Article 5

The duties of a temporary Judge shall cease, and his name shall be removed from the list provided for in the first subparagraph of Article 2(1), on his death or resignation, or by decision to deprive him of his office as provided by the first and second paragraphs of Article 6 of the Statute.

The duties of a temporary Judge shall end when the Judge whom he has replaced is no longer prevented from acting. However, the Civil Service Tribunal may decide that a temporary Judge should continue to perform his duties until the cases in which he has been sitting are completed.

Any temporary Judge whose name is removed from the list provided for by Article 2(1) shall be replaced, in accordance with the procedure under that provision, for the remainder of the period of validity of the list.

Article 6

This Regulation shall enter into force on the first day of the month following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ..., on ...

*For the European Parliament
President*

*For the Council
President*