Introduction: The Dos and Don'ts of Judicial reform in the European Union

THE NEW EU JUDICIARY

Marie-Pierre Granger and Emmanuel Guinchard (editors)

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'[T]he emerging picture is thus not one of a judicial pyramid with stable foundations, but rather one of a tall skyscraper with a somewhat shaky basis, regularly threatened to tip over'.[1]

This reflection on the Court of Justice of the European Union (CJEU)[2] was articulated by Michal Bobek, before he joined the Luxembourg-based court. Since, the institution has undergone various reforms and a significant institutional reorganization, notably the doubling of the number of judges of the General Court (GC) from 28 to 56 judges and the termination of the young and performant Civil Service Tribunal (CST). The picture that emerges is that of a tired building, which may look safer because it has lost one floor and has broader base, but is still very top heavy and may thus well collapse for that reason.

Only time will tell whether the latest reforms will really improve the EU courts' effectiveness and enable them to reduce their backlog and deliver fast and quality decisions. In time, we will also know whether the recent changes will have any broader transformative effect - although perhaps not all positive – on the EU courts' decision-making practices, roles and identities, and more broadly, on the legitimacy of the EU

[1] Michal Bobek, 'The European Court of Justice', in Anthony Arnull and Damian Chalmers (eds) *The Oxford Handbook of European Union Law* (Oxford, Oxford University Press, 2005) 153-177: 155

[2] The 2009 Lisbon Treaty, which came into force on 1 December 2011, re-labeled the EU courts. The whole institution is now called the 'Court of Justice of the European Union' (CJEU), which includes, as the top-tier, the 'Court of Justice' (CJ), formally known as the 'European Court of Justice' (ECJ) or simply 'the Court', and still often referred to in those terms in academic and practitioners' circles, the middle-tier the 'General Court' (GC), formally the 'Court of First Instance' (CFI), and the lower tier 'specialized courts', previously named 'specialized panels'. Following the abolition of the Civil Service Tribunal (CST), with the latest reform, the system currently comprises only two-tier. This book adopts the official post-Lisbon terminology but also uses common informal labels or acronyms to refer to the EU judicial institutions and bodies (eg ECJ or the Court may be used to refer to what is formally the CJ). Old terminology will only be used when necessary to the analysis.

and its institutions as a whole, as European integration faces unpredecented challenges. As for the members and personnel of the CJEU hemselves, after half a decade of controversial institutional reorganization, they now seem eager to get back to their core (and increasingly delicate) business, and leave behind what has been a very divisive reform process.

Indeed, this latest round of EU judicial reforms, initiated in 2011 by Judge Skouris, President of the Court of Justice (CJ) with little preparation, consultation and reflection, triggered unprecedented anger, frustration, and anxiety, not only amongst observers and users of the EU judiciary, but also within the CJEU's own ranks. Amongst other problems, the reform led to an acrid confrontation between the two main EU courts, the CJ and the GC. Whilst these two have not always seen eye-to-eye in the past, about judicial reforms or case law development, they generally sought a conciliatory tone. The disagreement around the 'Skouris reforms', however, broke out in the open, pulling the EU political institutions into the storm.

Many observers - academics[3] or journalists-[4] have been very critical of the substantive outcomes of the reform. Moreover, even those who take a more positive stance on the achivements, admit that the manner in which the reform was handled irremediably tarnished the reputation and legitimacy of the Court.[5]

This edited volume, which brings together seasoned academics and 'practitioners of the Court', as well as more junior legal scholars, coming from different legal traditions, takes stock of the various aspects of the reforms engaged by the EU judiciary since the coming into force of the Lisbon treaty, looking at it from diverse perspectives

[3] Steve Peers, 'Building the EU judicial system: Politicians 1, (Judicial) Architects 0', *EU Law Analysis Blog*, 23 November 2014, <http://eulawanalysis.blogspot.hu/2014/11/building-eu-judicial-system-politicians.html> (accessed on 10 February 2017) and '"Don't mention the extra judges!" When CJEU reform turns into farce', *EU Law Analysis Blog* , 3 July 2015, <http://eulawanalysis.blogspot.hu/2015/07/dont-mention-extra-judges-when-cjeu.html> (accessed on 10 February 2017); Alberto Alemanno and Laurent Pech, 'Reform of the EU's Court System: Why a more accountable – not a larger – Court is the way forward', *EU Law Analysis Blog*, 16 June 2015, <http://eulawanalysis.blogspot.hu/2015/06/reform-of-eus-court-system-why-more.html> (accessed on 10 February 2017); Alberto Alemanno, 'Where do we stand on the reform of the EU's Court System?', <http://albertoalemanno.eu/articles/where-do-we-stand-on-the-reform-of-the-eu/≥ (accessed on 10 February 2017); M. Abenhaïm, 'Note on a missed opportunity for the administration of justice across Europe', *Kluwer Competition Law Blog*, 24 March 2014, http://kluwercompetitionlawblog.com/2014/03/24/note-on-a-missed-opportunity-for-the-administration-of-justice-across-europe/ (accessed on 10 February 2017); and M. Abenhaïm, 'Follow-Up Note on Another Missed Opportunity for the Administration of Justice Across Europe' , *Kluwer Competition Law Blog*, 16 December 2014, <http://kluwercompetitionlawblog.com/2014/12/16/follow-up-note-on-another-missed-opportunity-for-the-administration-of-justice-across-europe/> (accessed on 10 February 2017).

[4] Jean Quatremer, 'La justice européenne au bord de la crise de nerf, Blog Liberation – Les Coulisses de Bruxelles', 26 April 2015<, http://bruxelles.blogs.liberation.fr/2015/04/26/la-justice-europeenne-au-bord-de-la-crise-de-nerfs/> (accessed on 10 February 2017); Duncan Robinson, 'The First Rule of the ECJ fight club…is about to be broken', *FT Brussels Blog*, 27 April 2015, <http://blogs.ft.com/brusselsblog/2015/04/27/the-1st-rule-of-ecj-flight-club-is-about-to-be-broken/> (accessed on 10 February 2017), cited in Franklin Dehousse, *The Reform of the EU Courts (II). Abandoning the Management Approach by Doubling the General Court, Egmont Paper 83*, 21 March 2016 (hereinafter 'Dehousse report II'), p. 34, <http://www.egmontinstitute.be/publication_article/reform-of-eu-courts-2/> (accessed on 10 February 2017).

[5] See chapter by L. Coutron in this book.

(comparative, insider, and outsider). It also provides a timely occasion to reflect on the changing role of the EU courts, in a European Union which faces numerous crises (financial and economic crises, refugee crisis, Brexit, anti-EU populism, etc.), and in times in which courts, even those 'tucked away in the fairy-tale Duchy of Luxembourg',[6] cannot escape public and media scrutiny, and have to deal with renewed attacks on their legitimacy, as they come to decide on politically and socially charged issue (eg immigration, religion).[7] Such a reflection begs the question of whether the EU courts are currently 'fit for purpose' or whether they need further adjustments to address their new tasks and functions more effectively and legitimately.

In this introduction, after having briefly presented the different contributions to the volume, we identify the main challenges faced by the EU judiciary after the coming into force of the Lisbon Treaty. We then embark on the sinuous and delicate journey taken by the last round of reforms of the EU courts, before passing the floor to our expert contributors for more focused analysis.

Insiders and outsiders take a look at the 'new' EU judiciary

The first contributions to this volume, gathered in Part One, entitled 'The Comparative Context', bring in necessary comparative perspectives. They examine how European courts have reformed themselves, or been reformed, over the last decade, as they tried to cope with new challenges. These are, at least for some of them, similar to those facing the CJEU. Part One thus logically starts with a chapter on 'the other European Court', the European Court of Human Rights (ECtHR), an institution which, even more so than the CJEU, is confronted with a significant workload problem, as well as regular attacks on its legitimacy. Authored by Jean-Paul Jacqué, and informed by a wealth of experience and insight, it enlightens us on the overall successful experimental and incremental approach to judicial reform taken by the Strasbourg court. In Chapter Two, Marie-Luce Paris introduces us to the changes affecting the French *Conseil Constitutionnel*, which shares a few similarities with the CJEU, including its age, a history of self-empowerment and a political (although not necessarily politicized) system of judicial appointments. Over the last few years, it also had to adjust to a dramatic increase in the number of cases, resulting from a recent constitutional reform which introduced a new mechanism for a posteriori concrete constitutional review (*Question Prioritaire de Constitutionalité).* Chapter Three, by James Lee, takes us across the Channel to the newly established Supreme Court of the United-Kingdom. It informs us on its modes of operation and the challenges this transformation of the British judiciary entails, which could encourage us to consider perhaps more radical reforms at EU level. This European *tour d'horizon* offers interesting food for thought on how to (not) do judicial reform, and how courts can address contemporary challenges (e.g. judicialization of both public affairs and private life, rights litigation, technological developments, increased media and popular attention, rejection of experts and elites, populist trends, etc.),which affect the role and authority of judges across Europe .

[6] Federico Mancini, 'The Making of a Constitutional for Europe', 32 *Common Market Law Review* (1989) 539, 595.

[7] The Court's rulings on whether a prohibition of the Muslim veil by private employers constitutes prohibited discrimination are eagerly expected (cases C-188/15, *Bougnaoui*, O.J. 2015 C 221/2 and C-157/15*Achbita* O.J. 2015 C 205/17).

In Part Two, labelled 'The Courts', we turn our attention to the courts which are (or have been) part the EU judiciary. We start at the apex of the system, with the Court of Justice. Chapter Four, by Kontanze von Papp, offers a critical assessment of the evolving role, powers and competences of the Court, including instances of self-empowerment and the part it took in furthering integration in Europe. It explores in some depth the relationship between the Court and domestic courts, and reflects on its review of member states' measures, its attitude towards national reluctance to refer cases for preliminary ruling, and its commitment to the principles of supremacy and mutual trust, and the consequential impact on human rights protection. It is followed by Chapter Five, by Albertina Albors-Llorens, which offers a sharp analysis of the Court's recent reforms, informed by the intensive discussions which preceded the adoption of the Nice Treaty, and reflects on the future of the Court, including relevant suggestions for further reform. Laurent Coutron, in Chapter Six, takes us to the crux of the matter, the body that underwent the most radical change with the latest EU judicial reform, the General Court. The GC saw a doubling of its judges, a solution supposed to improve the efficiency of the body, but apparently more driven by consideration of political expediency. The author introduces us to the difficulties which the GC faced prior to the reform, before skillfully taking us through the meanders on the convoluted and controversial reform process, and reflecting critically the method and outcome. We then turn our attention to the young, yet now dismantled Civil Service Tribunal, with an 'insider' analysis, by Waltraud Hakenberg, former registrar of that court, in Chapter Seven. She reflects on this first and apparently successful experiment of the EU with specialized courts, and invites us to draw lessons from the operation of the CST for future judicial reform at EU level. Part Two concludes with a European judicial body, which although not formally part of the EU judiciary, constitutes another interesting EU-related judicial experiment: the Unified Patent Court (UPC). In Chapter Eight, Ingve Björn Stjerna, an intellectual property specialist, analyses the difficult gestation the future UPC, including its problematic future relationship with the CJ, before critically analyzing the structure, composition, competences, functions and modes of operation of this new judicial body. Although the idea of specialized court no longer seems to be 'in favor' following the termination of the CST, this experiment on the margin of the EU judicial system, which has already been subject to sustained scrutiny and criticism from the profession, is worth paying attention to, and could inform future judicial developments in the EU.

In Part Three, we move beyond the institutional framework and culture, to meet the humans that populate and activate the EU courts. We start with checking out the members of the Court themselves. Henri de Waele, in Chapter Nice, explains how they are selected and appointed, and assess the impact of the new panel scrutiny procedure. He addresses critically some of the problematic aspects of the EU process of judicial appointment, notably its perceived political and secretive nature, and suggests alternative solutions. In Chapter Ten, Imola Streho, a former *référendaire* and a legal scholar, throw light on the invisible, yet very influential, legal clerks who assist the members of the Court in their work, known as *référendaires.* In the following contributions, we move to Brussels, and examine the way EU institutions engage with the Court and judicial reform at EU level. We begin with the EU 'repeat-player' before the Court, the Commission, whose lawyers are regular visitors of the Court's premises in Luxembourg. In Chapter Eleven, Felix Ronkes-Agerbeek gives us an insider's view of the way the Commission handles litigation before the Court, and analyses the role and activities of the influential Legal Service of the Commission. In Chapter Twelve,

Kieran Bradley, former judge at the CST and previously a member of the Legal Service of the European Parliament (EP), looks back at his former home, and gives us an insight into the manner in which the EP contributes to the making of EU case law by selectively triggering and participating in litigation before the CJEU and exposes its approach to judicial reform in the EU. Finally, in Chapter Twelve, Bertrand Wagenbauer brings his extensive EU litigation experience to the fore, and tells what it is like to be a lawyer before the Luxembourg Court, and how it evolved over time. His contribution, peppered with revealing anecdotes, concludes this more 'sociological' section exposing the people that contribute to the EU courts' permanent transformation.

In Part Four, called 'Procedures, Practices and Cultures', the authors investigate the technical and more informal elements which frame the way the EU courts decide in individual cases and develop EU law, and assess recent changes. It starts with Chapter Thirteen, written by Georgia Koutsoukou, who introduces us to the new Rules of Procedure of the Court of Justice, and continues with a Chapter Fourteen, by Paulo Biavati, a renowned civil procedure specialist, who critically analyses the recent changes to the Rules of Procedure of the General Court, as these appear to have contributed a great deal to the GC's increased efficiency over the last few years. Then comes Chapter Fifteen, by Laure Clement-Wiltz, who reflects on the experience of the main special procedure before the CJEU, the urgent preliminary procedure (known as PPU), which is available since 2008 to deal in due time with urgent and sensitive cases pertaining to the Area of Freedom, Security and Justice (eg asylum, immigration, civil and criminal cooperation, etc). From procedures we moved to practices, with a more technically-oriented Chapter Sixteen, by Francesco Contini, who initiates us to the world of e-justice, and explores with us the way the EU courts are handling the digital revolution. We then move to one of the most delicate aspects of the works of the Court: languages. In Chapter Seventeen, Mathias Derlen offers an insightful analysis of the EU Courts' language regimes, and the challenges which linguistic diversity in the EU poses to the work of its courts, and envisages possible solutions. Finally, in the last chapter, we turn towards more cultural considerations, as Gerard Conway, in Chapter Eighteen, reveals that the Court has its own meta-teleological approach to interpretation. Having identified the main traits of the Court of Justice's way of working with the law, he reflects critically on its influence on the evolution of EU law, and European integration. These 'informal' aspects, whilst perhaps less spectacular and noticeable than formal reforms processes, nonetheless shape what comes out of Luxembourg and cannot be omitted from a reflection on the transformation of the EU judiciary. After this overview of the various contributions to the volume, we now introduce the reader to the process of judicial reform in the EU, the story of the last round of reforms, and their rather 'unintended' results. Indeed, an historical overview of judicial reform in the CJEU reveals the 'peculiar' character of the latest reform.

The formal framework of the EU judiciary: the three layers approach

The formal legal framework which defines the EU judicial system is laid down in three sets of instruments, namely the Treaties,[8] the Protocol (annexed to the Treaty) on the

[8] Article 19 TEU, Articles 251 to 281 TFEU, Article 136 Euratom.

Statute of the Court of Justice,[9] and the Rules of Procedure of each of the EU courts (CJ and GC).[10] The EU Courts also release guidelines, addressed for example to lawyers appearing before them or national courts sending requests for preliminary rulings,[11] which further explain the way various actors should engage with the EU judiciary. Moreover, part of the daily operation and functioning of the CJEU are based on conventions and informal practices. However, amendments to these formal document reveal only part of the story of judicial reform over the life of the EU, as most of substantial institutional change the CJ underwent was a result of its own interpretative case law.

Informal judicial reform through creative interpretation: a thing of the past?

It is common knowledge, at least amongst those who study European integration, that the role and powers of the CJ itself were most radically altered, not as a result of amendments to the Treaties, but through creative interpretation by the Court itself of these Treaties.[12] To cut it short, the CJ, by asserting that Community (now Union) law prevailed over conflicting national laws (supremacy)[13] and could be invoked by private parties before national court against them (direct effect),[14] turned the interpretative preliminary reference procedure (now Article 267 TFEU) into a mechanism for the judicial review of national laws. In doing so, it recruited individual litigants and national courts for the daily enforcement of EU law and positioned itself as the main engine of (legal) integration in Europe.[15] The activism of resourceful litigants and the cooperative attitude of (lower) courts, which referred potentially transformative questions to the CJ, and generally followed its decisions, alongside challenges stemming from national (constitutional) courts, in particular the German and Italian ones, contesting the unconditional authority of EU law and the CJ over cherished principles of their constitutions, including fundamental rights, undeniably contributed to reshape the contours of the EU legal order[16] and participated in the gradual mutation of the CJ into a constitutional court for the EU.[17]

9 For the latest version, see Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, O.J. 2015 L 341/14.

10 Rules of Procedure of the Court of Justice, O.J. 2012 L 265/1, Amendment to the Rules of Procedure of the Court of Justice, OJ 2013 L 173/65.

11 e.g. CJEU, Practice Directions to Parties concerning cases brought before the Court, O.J. 2014 L 31/1, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2014:031:TOC (accessed on 10 February 2017) ; Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, O.J. 2016 C 439/1 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:439:FULL> (accessed on 10 February 2017).

12 For a seminal contribution on the topic, see Joseph H. Weiler, 'The transformation of Europe', 100 *Yale Law Journal* (1991) 2403-2483

13 Case C-6/64 *Costa v ENEL*, EU:C:1964:66; Case 11/70 *Internationale Handelsgesellschaft* mbH v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, EU:C:1970:114.

14 Case 26/62 *NV Algemene Transport- en Expeditie Onderneming van Gend en Loos* v *Nederlandse administratie der belastingen* ECLI:EU:C:1963:1

15 See chapter by K. von Papp in this book.

16 Case C-6/90 *Francovich* and Bonifaci v Italy ECLI:*EU*:*C*:1991:428, C-46/93 and 48/93 *Brasserie du Pêcheur SA v Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others* ECLI:EU:C:1996:79.

17 See Anne-Marie Slaughter, Alec Stone Sweet, and Joseph Weiler (eds) *The European Court and National Courts: Doctrine & Jurisprudence: Legal Change in its Social Context* (Oxford, Hart Publishing, 1998); Karen J Alter, *Establishing the supremacy of European law: The making of an*

Pure product of the CJ and the community of lawyers surrounding it,[18] these institutional transformations were neither codified, nor rectified, by later Treaty amendments (save for the protection of fundamental rights, which is now enshrined in Article 6 TEU, and detailed in the EU Charter of Fundamental Rights). One can therefore safely claim that the most significant institutional change which the CJEU ever underwent occurred without the need for any formal reform through Treaty amendments or legislative action.[19]

The CJEU history is peppered with other instances of such informal judicial reform through interpretation. Another important, and well known, example is the extension of the scope of application of the action for annulment (now Article 263 TFEU) to acts adopted by the European Parliament, when the Treaty made no mention of it, and the possibility for that same institution to bring judicial review actions against other EU institutions to preserve its own prerogatives, when the Treaty did not include it amongst the so-called 'privileged' applicants.[20] These interpretative 'innovations' were, for their part, codified in later Treaty revisions.[21] Furthermore, by adopting a particularly restrictive interpretation of the conditions of individual and direct concern which determine private parties' standing to challenge EU regulatory measures (the [in]famous *Plaumann* doctrine),[22] and limiting the circumstances in which national courts should refer preliminary questions contesting the validity of EU acts,[23] the Court of Justice significantly restricted the range of actors which would contest EU legislative and regulatory acts to member states and EU institutions, and this way effectively shielding EU acts from closer judicial scrutiny. The CJ, despite strong academic criticism[24] and pressure from the GC[25] and its own Advocate General,[26] remained

international rule of law in Europe, (Oxford University Press, 2001); Karen J. Alter, 'Who are the 'masters of the treaty'?: European governments and the European Court of Justic'e 52:1 *International Organization* (1998) 121-147; Walter Mattli and Anne-Marie Slaughter, 'Revisiting the European Court of Justice' 52:1 *International Organization* (19998) 177-209; Rachel Cichowski, *The European court, civil society and European integration*, (Cambridge University Press, 2006); R. Daniel Kelemen, *Eurolegalism: The transformation of law and regulation in the European Union* (Cambridge, Harvard University Press, 2011).

18 Antoine Vauchez, 'The transnational politics of judicialization: Van Gend en Loos and the making of EU polity' 16:1 *European Law Journal* (2010) 1-28; Antonin Cohen, 'Constitutionalism Without Constitution: Transnational Elites Between Political Mobilization and Legal Expertise in the Making of a Constitution for Europe (1940s− 1960s)' 32:1 *Law & Social Inquiry* (2007) 109-135.

19 On informal Treaty reform, see Thomas Christiansen, and Knud Erik Jorgensen. 'The Amsterdam process: a structurationist perspective on EU treaty reform', 3:1 *European Integration online Paper* (1999), at <http://eiop.or.at/eiop/texte/1999-001a.htm> (accessed on 10 February 2016).

20 Case 294/83 *Parti écologiste "Les Verts" v European Parliament* EU:C:1986:166 ; C-70/88 *European Parliament v Council of the* European *Communities* EU:C:1990:217

21 Article 263(1) TFEU.

22 Case 25/62 *Plaumann v Commission* EU:C:1963:17.

23 Case C-314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* EU:C:1987:452.

24 e.g Anthony, Arnull, 'Private Applicants and the Action for Annulment under Article 173 of the EC Treaty', 32 *Common Market Law Review* (1995) *7* and 'Private applicants and the action for annulment since *Codorniu*' 38 *Common Market Law Review* (2001) 7; Nanette Neuwahl, 'Article 173 paragraph 4 EC: Past, Present and Possible Future' 21 *European Law Review* (1996) 17; Albertina Albors-Llorens, 'The Standing of Private Parties to Challenge Community Measures: Has the European Court Missed the Boat?' 62:1 *The Cambridge Law Journal* (2003) 72-92.

25 Case C-263/02 P *Jégo-Quéré v Commission* EU:C:2004:210.

26 Advocate General Jacobs in case *Unión de Pequeños Agricultores v Council of the European Union* C-50/00 Jacobs [2003] EU:C:2002:197.

unwilling to take the initiative to relax the *Plaumann* criteria and broaden standing.[27] As exposed later, it required the intervention of the Treaty-makers and the Lisbon Treaty to loosen the admissibility criteria for challenging to EU regulatory measures.

As these few important examples expose, judicial reform does not always come in the form of formal amendment of the Treaties, Statute or Rules of Procedures.[28] This is not to say that formal judicial reform is redundant, or that established judicial interpretations, conventions and practice should never be 'revised'. Since the mid-1980s, repeatedly confronted with quantitative challenges, which resulted in significant and problematic delays in the delivery of justice, the Court has had to call upon the Treaty-makers and EU legislator for help.

The Single European Act and the creation of the Court of First Instance

Prior to the Intergovernmental Conference which led to the adoption of the Single European Act (1986), already overburdened and anticipating a further increase in supranational litigation which would ineluctably result from the adoption of a large package of legislative measures aimed at the realization of the internal market, the Court asked the member states to amend the Treaty to include a legal basis for the creation of a new judicial body, attached to the Court, which could assist with some of the time-consuming but 'less important' cases. This led to the setting up, by a 1988 Council Decision, of the Court of First Instance (CFI).[29] The jurisdiction of the CFI was gradually extended, through successive amendments of the CJ Statute, to most direct actions concerning the validity of EU acts.[30] At some point however, the CFI itself started to struggle with its own case load, which increased following successive EU enlargements and the expansion of the scope of Union's competences and its legislative and regulatory activities. The Court's call for Treaty amendment found little echo at first.

Unsuccessful calls for judicial reform

Despite the important institutional amendments they brought about, neither the Maastricht Treaty (1992) nor the Amsterdam Treaty (1996) touched on the EU courts. This was so, despite numerous calls to reform the EU judiciary. These emanated not only from prominent academic commentators, [31] but also from the EU courts

[27] See Marie-Pierre F. Granger, 'Towards a liberalisation of standing conditions for individuals seeking judicial review of Community acts'*: Jégo-Quéré et Cie SA v Commission* and *Unión de Pequeños Agricultores v Council*, 66:1 *The Modern Law Review* (2003) 124-138.

[28] One possible explanation of why much judicial reform occurred informally in the past may well have to do with the rare occurrence of Treaty amendments (at least until the 1990s), and the difficulty of agreeing to changes in the formal framework under the then applicable unanimity rule amongst member states, or within the Council.

[29] Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities O.J. 1988, L319/1.

[30] Council Decision 93/350/ECSC, EEC, Euratom of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities O.J. 1993 L144/21; Council Decision 94/149/ECSC, EC of 7 March 1994 amending Decision 93/350/Euratom, ECSC, EEC amending Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities O.J. 1994 L66/29.

[31] E.g. Jean-Paul Jacqué and Joseph H. Weiler, 'On Road to European Union- A New judicial Architecture- An Agenda for the Intergovernmental Conference', 27 *Common Market Law Review* (1990) 185; Thijmen Koopmans, 'The Future of the Court of Justice of the European Communities' 11

themselves,[32] as well from some Member States' governments, as some were quite eager to curtail the Court's law-making powers.[33] The fear of opening the Pandora's box and risking a clamp down on its jurisdiction may have invited the EU judiciary to refrain from pushing too hard for a reform at the time. When a few years later it was decided that a new IGC would be convened to handle the Amsterdam 'left-overs' and further prepare for the 'Big-Bang Enlargement', the relationship between national governments and the Court had pacified, an evolution which must have encouraged to EU Courts to renew their call for judicial reform.

The 'substantial' Nice reform

Whilst there was overall disappointment with the scope of the Nice Treaty reform,[34] as far as judicial matters were concerned, the assessment both in terms of process and substance, has been more positive.[35] Many participants took part in the pre-Nice 'conversation' on the reform of the EU judiciary. The debates were initiated by the EU courts themselves, which, acting at (almost) unison, put back on the table some of their earlier proposals, together with new ones.[36] EU institutions (the European Parliament and the Commission),[37] member states governments,[38] representatives of the law

Yearbook of European Law (1991) 15; David Scorey, 'A new Model for the Communities' Judicial Architecture in the European Union' 21 *European Law Review* (1996)224; Anthony Arnull, 'The Community Judicature and the 1996 IGC' 20 *European Law Review* (1995) 599.

[32] European Court of Justice, *Report of the Court of Justice on certain aspects of the application of the Treaty on the European Union*, Luxembourg, May 1995 (hereinafter 'Court of Justice Report (1995)) ; *Contribution of the Court of First Instance for the Purpose of the 1996 Intergovernmental Conference*, Luxembourg, 17 May 1995 (hereinafter 'CFI 1996 IGC Contribution (1995)').

[33] In 1992, the German government had proposed to remove from lower courts the power to make preliminary references (Europe No. 5835, 14 October 1992). The Spanish government sought an amendment of the preliminary reference procedure to limit the court's lawmaking powers (*1996 Intergovernmental Conference: starting points for discussion*, 2 March 1995 and the *1996 Intergovernmental Conference: Basis for discussion* of 6 March 1995). As for the United Kingdom, it called for a more political mechanism to overrule the Court's decisions on preliminary rulings (*Memorandum by the United Kingdom on the European Court of Justice*, CONF/3883/96, London, 1996). It appeared to be supported by the German and French governments ('Britain leads move to curb Eurocourt', *The Times*, 23 October 1995).

[34] See for example Andrew Duff, 'The Treaty of Nice: From left-overs to hang-overs, Briefing on the outcome of the IGC and the European Council in Nice', 7-11 December 2000.

[35] M.-P. Granger, 'The Community Judiciary at the Dawn of the Third Millenium: A Revolution or a Simple Face-Lift?'34 *Bracton Law Review* (2002) 7-33, Angus Johnston, 'Judicial review and the Treaty of Nice'38 *Common Market Law Review* (2001) 499-523.

[36] The Court of Justice and the Court of First Instance, *The Future of the Judicial System of the European Union (Proposals and Reflections)* (Luxembourg, 10 May 1999); the Court of Justice and the Court of First Instance, *Contribution of the Court and the CFI to the Intergovernmental Conference* (Luxembourg, March 2000); the Court of Justice, *The EC Court of Justice and the Institutional Reform of the European Union* (Luxembourg, April 2000).

[37] European Commission, *Additional Commission Contribution to the Intergovernmental Conference on Institutional Reform: Reform of the Community Courts*, 1 March 2000, COM (2000) 109 final; European Parliament, *Report on the European Parliament proposals for the IGC*, 27 March 2000, FINAL A-50086/2000, PE 232.748/fin./Part 1.

[38] National governments contributions are available in the 2000 IGC archives <http://ec.europa.eu/archives/igc2000/offdoc/memberstates/index_en.htm≥ (accessed on 10 February 2017). For overviews of the various positions, see Presidency Notes entitled *Interim Report on Amendments to be made to the Treaties regarding the Court of Justice and the Court of First Instance* (31 March 2000, CONF 4729/00), *IGC 2000: Other amendments to be made to the Treaty with regard to the institutions* (19 May 2000, CONF 4743/00) and the *Progress report on the Intergovernmental Conference on institutional reform* (3 November 2000, CONF 4790/00).

professions[39] and academics[40] all actively contributed. They aired various proposals and recommendations for reform, ranging from technical to radical ones. One of the most important contributions to the debate on judicial reform was the 'Due Report', a document prepared by a group of experts convened by the Commission and composed mainly of former members of the Court, under the leadership of retired judge Ole Due.[41] They reviewed the functioning of the EU judicial system and came up with numerous proposals, including some far-reaching ones.

This intensive consultative and discursive exercise fed into amendments to the Treaties, a new single Statute and Recast Rules of Procedure of both the ECJ and CFI, which all sought to improve the CJEU's ability to handle its increasing and ever more diversified caseload in more satisfactory ways. The reform was, after all, relatively modest, and not as radical as many had hoped for. Still, it allowed for some experimentation and, responding to the Courts' request, injected more flexibility in, and granted more autonomy, to the EU judicial system.

To start with, the Nice Treaty codified the convention according to which there should be one judge from each member state in the ECJ; it furthermore added that there should be at least one judge per member state in the CFI, thus paving the way to adding judges to the CFI to increase its capacity where needed. It also opened the possibility to transfer jurisdiction over preliminary reference to the CFI, in specific and defined fields.

Probably one of the most remarkable change was the introduction into the Treaty of a legal basis for the creation of 'specialized courts' (called at the time 'specialized panels'). Their decisions would be subject to appeal to the CFI and to review, in exceptional circumstances, to the CJ, thereby creating a three-tier judicial architecture, familiar to many domestic settings. Based on this, the Civil Service Tribunal was set up at the end of 2004 to handle disputes between EU institutions and their staff.[42]

Moreover, the Nice reform injected greater organizational and procedural flexibility into the EU judicial system. It reallocated the provisions regulating the EU judiciary between the Treaties, the Statute and the Rules of Procedure. Interestingly, provisions related to linguistic matters, which used to be regulated in the Rules of Procedure, were shifted to the Statute, exposing the perceived importance of those aspects.[43] The reform provided for amendment of most parts of the Statute (except Part 1 on Judges and Advocate General) by the Council acting at unanimity, with no longer the need for a

[39] See *Contribution from the Council of the Bars and Law Societies of Europe (CCBE) for the Intergovernmental Conference*, 18 May 2000, CONFER/VAR 3966/00.

[40] See inter alia Anthony Arnull, 'Judicial Architecture or Judicial Folly? The challenges facing the European Union' 24 *European Law Review* (1999) 516; Anthony Arnull, *The European Union and its Court of Justice* (Oxford University Press, 1999); Hjalte Rasmussen, 'Remedying the crumbling EC Judicial System' 37 *Common Market Law Review* (2000) 1071; Arjen W.H. Meij 'Guest Editorial: Architects or Judges? Some comments in relation to the current debate? 37 *Common Market Law Review* (2000) 1089; Jean-Paul Jacqué, 'L'avenir de l'architecture juridictionnelle de l'Union' 35 *Revue Trimestrielle de Droit Européen* (1999) 443.

[41] *The Report by the Working Party on the Future of the European Communities' Court System*, January 2000, (hereinafter 'The Due Report') available at <http://ec.europa.eu/dgs/legal_service/pdf/due_en.pdf> (accessed on 10 February 2017).

[42] Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing a European Union Civil Service Tribunal O.J. 2004, L333/7.

[43] See contribution by M. Derlen in this volume.

Treaty amendment, as was previously the case for most parts of that instrument. Moreover, the Rules of Procedure, proposed by the EU Courts, could now be adopted by qualified majority voting in the Council, and no longer unanimity, which would make it easier for EU Courts to secure acceptance of their proposal for revision.

To increase procedural flexibility, the Nice reform introduced a new formation of judgment, the Grand Chamber, which would hear the most important cases, without the need to convene the plenary for this, as was previously the case. Furthermore, it allowed for the possibility to proceed without an Opinion by the Advocate General. The new Statute, moreover, introduced accelerated and simplified procedures, and provided for the suppression of unnecessary oral hearing or second pleadings, to speed up judicial decision-making and facilitate caseload management. Successive amendments to the Court's Rules of Procedures provided for further devices to lighten and accelerate proceedings.

These 'turn-of-the-century' reforms, in no way structural or radical, gave some temporary relief to the EU judiciary and generated an increase in 'productivity' of the two courts.[44] Still, with the combined effect of the latest rounds of enlargement and new areas of jurisdiction, the EU judiciary soon found itself again at breaking point (or so it seemed when the latest round of reform was launched).

The Lisbon reform

Judicial reform did not feature on the early agenda of the Convention on the Future of Europe, entrusted with the drafting of what became the failed 'Constitution for Europe'. In December 2003, some of the Convention members, beware of the possible implications of some of the proposals on the workings of the Court, called for a separate reflection on judicial reform (CONV 547/03). The 'Circle of Discussion on the Court of Justice', composed of 19 members (MEPs, national supreme courts judges, academics, etc.) was set up to discuss EU judicial reform, calling on experts' opinions and asking the EU Courts for their views. Each of them obliged: after internal discussions, their respective presidents presented each EU courts' positions to the Circle.[45] Moreover, many of the Courts' members had the opportunity to present their individual views on the future of Europe or certain aspects of judicial reform (such as standing in annulment actions) directly to the Convention members, as they were invited by the Convention's working groups.[46] At the end of the process, the Convention suggested a number of relatively modest proposals.[47] As is well-known,

[44] As reflected in the annual reports, available at <http://curia.europa.eu/jcms/jcms/Jo2_11035/rapports-annuels>.

[45] *Oral presentation by M. Gil Carlos Rodríguez Iglesias, President of the Court of Justice of the European Communities, to the "discussion circle" on the Court of Justice on 17 February 2003*, 10 March 2003, CONV 572/03; *Oral presentation by M. Bo Vesterdorf, President of the Court of First Instance of the European Communities, to the "discussion circle" on the Court of Justice*, 10 March 2003, CONV 575/03.

[46] For an analysis of judicial positions in the Convention on the Future of Europe, see Marie-Pierre F. Granger 'The Future of Europe: Judicial Interference and Preferences' 3 *Comparative European Politics* (2005) 164.

[47] For a review, see Granger (2005) supra n 46; René Barents, 'The Court of Justice after the Treaty of Lisbon' (2010) 47:3 *Common Market Law Review* (2010) 709-728, D. Ruiz-Jarabo Colomer, 'La cour de Justice après le Traité de Lisbonne', 23 *La Gazette du Palais*, 19 June 2008, 171; Anthony Arnull,

the so-called 'Constitution for Europe' (formally the Draft Treaty establishing a Constitution for Europe), rejected in national referenda in France and the Netherlands, never became positive law. Most of its provisions, including those concerning the EU courts, were nonetheless retained in the Lisbon Treaty, which came into force on 1 December 2009. [48]

As explained earlier, the Lisbon treaty started with rebranding the whole EU judicial institution and its components. It also infused further flexibility in the judicial system. Amendments to the Court's Statute, as well as the creation (and, as the case may be, the abolition) of new specialised courts, can now be done through the ordinary legislative procedure, without the need for a unanimity decision by the Council. Moreover, whilst previously member states could suggest amendments to proposals for reform of the Statute submitted by either the Court or the Commission, following Lisbon, they no longer can, which de facto gives a monopoly of initiative to the Commission and the Court.[49]

Significantly, the Lisbon Treaty modified the procedure for appointing judges at the CJ and GC. The Court's members are still formally nominated by each government and appointed by common accord of the member states (Article 253 TFEU), but each nomination is now reviewed by an advisory committee (known as 'Article 255 panel'), made up of former members of the Court, members of national supreme courts, and lawyers of recognized competence. These verify that the nominees fulfill the conditions required by their future functions.[50]

With the Lisbon's abolition of the pillar structure, the CJEU acquire extensive jurisdiction over acts adopted in the Area of Freedom, Security and Justice.[51] It is still excluded from the Common Foreign and Security Policy (CFSP), but can nonetheless review Union's restrictive measures taken against natural or legal persons under this policy.[52] It can, furthermore, review acts of the European Council, now recognized as a formal EU institution. It is, moreover, entrusted with ensuring that the EU Charter of Fundamental Rights, now legally binding, is respected by the EU institutions and member states when they implement EU law.[53]

The Lisbon Treaty also seeks to improve the 'bite' of the EU infringement procedure against member state which do not live up to their EU commitments.[54] Where a member state fails to comply with a prior ruling finding a violation, the Commission can refer the matter to the CJEU for it to impose financial sanctions, after having given formal

'The European Court of Justice after Lisbon' in Martin Trybus and Luca Rubini (Eds) *The Treaty of Lisbon and the future of European law and policy* (Cheltenham, Edward Elgar, 2012) 34-54.

48 See consolidated version of the Treaty on the European Union (TEU) O.J. 2012 C326/13, and of the Treaty on the Functioning of the EU institutions (TFEU), O.J. 2012 C326/57.

49 Dehousse Report II, supra n 4, p. 11.

50 They must be persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence (Article 153 TFEU).

51 Except for police operations carried out by a Member State, or the responsibilities of Member States concerning the maintenance of law and order and the safeguarding of internal security (Article 276 TFEU).

52 Article 275 TFEU.

53 Article 6 TEU and Article 51 of the EU Charter of Fundamental Rights.

54 Article 258-260 TFEU.

notice to the state at fault, and without the need for a further reasoned opinion. Moreover, where a member state did not communicate transposition measures, the Commission can at once refer the matter to the Court for both a finding of violation and the imposition of financial sanctions, thus removing the need for two separate and successive actions.[55]

Finally, addressing the concerns over the overly restrictive nature of standing requirement to challenge EU general acts, the Lisbon Treaty relaxed the conditions under which private parties could contest the validity of EU regulatory acts, whilst preserving the legislators' quasi-immunity against direct challenge by natural and legal persons.[56]

The coming into force of the Lisbon Treaty, as expected, led to a significantly increase in the EU Courts' caseload, in particular that of the GC.[57] These considerations brought judicial reform back on the political agenda of the EU.

The controversial Skouris reforms – or 'how not to do judicial reform'? [58]

As further Treaty reform was not on the agenda, on 28 March 2011, President Skouris, apparently without much consultation within or outside of the Court, made proposals to amend the Statute. Some of these, of a more managerial nature, went through without much turmoil;[59] they will be presented in more detail in some of the contributions of this book.[60] However, one of the proposal, the increase of the number of GC judges by 12, proved problematic, and marked the beginning of five years of difficult negotiations.[61]

Two options had been apparently considered to address the CJ backlog problem: the creation of a new specialized court, to cover intellectual property cases, or an increase in the number of GC judges. The CJ President opted for the second, on grounds of effectiveness, urgency, flexibility and consistency. The financial costs of the addition of 12 judges was assessed at around 13.5 million EUR.[62] These reforms, which were presented in an explanatory note,[63] were initiated in a context in which companies had

55 Article 260 TFEU.
56 Article 263 (4) TFEU.
57 For relevant statistical data, see the 2011 Annual Report, http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-06/ra2011_statistiques_tribunal_en.pdf, p. 193.
58 Frankin Dehousse, 'The reform of the EU Courts (III) : The brilliant alternative approach of the European Court of Human Rights', *Egmont Papers*, 5 September 2016 (hereinafter 'Dehousse report III') <http://curia.europa.eu/jcms/upload/docs/application/pdf/2012-06/ra2011_statistiques_tribunal_en.pdf> (accessed on 10 February 2016).
59 Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto**,** OJ 2012 L 228/1.
60 See chapters in this book by A.Albors-Llorens and L.Coutron.
61 *Report on the on the draft regulation of the European Parliament and of the Council amending the Protocol on the Statute of the Court of Justice of the European Union by increasing the number of Judges at the General Court*, 10 July 2013, 2011/0901B (COD).
62 Cover note from President V. Skouris, *Draft amendment to the Statute of the Court of Justice of the European Union, Brussels*, 7 April 2011, 2011/0901 (COD), and *Addendum* of 2 May 2011, Council Document No 8787/11 ADD, 2011/09111 (COD), cited in Dehousse Report II supra n 4 p. 13.
63 Dehousse Report II supra n 462, p. 15.

launched actions in damages before the GC, claiming over 20 millions Euros in compensation for excessive delays in proceedings before that same court for harmful breach of Article 47 CFR and Article 6 ECHR.[64]

The Commission welcomed the Court's proposal, but suggested that further reform would be necessary to create specialized chambers within the GC, and aired various models for appointing the new GC judges.[65] The EP began examining the proposal in May 2012. The EP plenary adopted the proposal but introduced amendments to the effect that the additional judges be chosen without regard to their nationality, and only by reference to their professional and personal qualities and that there should be no more than two judges per member states.[66] The Council members apparently disagreed about the potential impact of the different size increase on the effectiveness of the CJ.[67] Moreover, they also did not accord on the method for appointment.[68] In 2013, the CJ discussed a new proposal before the EP Legal Affairs committee, consisting in an increase of nine judges and advancing three criteria for appointing the additional judges (namely competence, stability and geographical balance). The proposal for a nine judges' increase was apparently supported by all three political institutions; however, as the member states could not agree on the appointment and rotation systems, it fell through.[69]

On 13 October 2014, by a letter to the Council,[70] the CJ came back to the charge and submitted an 'improved proposal' towards 'structural and sustainable solutions': the doubling of the number of judges and the abolition of the CST, and transfer of its judges and jurisdiction to the GC. The plan was to increase the number of GC judges by 28, by adding 12 judges in 2015, transferring the seven judges from the CST to the GG in 2016, and adding a further nine judges in 2019. The Court argue that this solution offered the multiple advantages of not only solving the GC backlog problem but also simplifying the EU judicial structure, improving consistency (as the CJ would now hear all appeals), and injecting greater flexibility in case management in the GC. The GC, opposed to the proposal, decided to step in the political arena. In December 2014, its

64 CJEU, Press release No 44/15, 28 April 2015, *Reform of the EU court system, at European Council, Press release*; European Council, *European Court of Justice: Council backs reform of General Court*, 23 June 2015 at <http://www.consilium.europa.eu/en/press/press-releases/2015/06/23-gac-court-justice-reform/> . One of these cases (T-577/14 *Gascogne Sack Deutschland GmbH and Gascogne* v *Court of Justice of the European Union*, :EU:T:2017:1) has been recently decided. The GC granted 50000 EUR for damages caused by excessive delays in proceedings before the GC.

65 European Commission, *Opinion on the requests for the amendment of the Statute of the Court of Justice of the European Union*, presented by the Court COM (2011) 596 final

66 *Amendments adopted by the European Parliament on 12 December 2013 on the draft regulation of the European Parliament and of the Council amending the Protocol on the Statute of the Court of Justice of the European Union by increasing the number of Judges at the General Court*, P7_TA-PROV(2013)0581.

67 Cypriot presidency, document No 14916/12, <http://statewatch.org/news/2012/oct/eu-council-reform-ecj-14916-12.pdf> (accessed on 10 February 2016)> , cited in Dehousse report II supra n 4 p. 19.

68 CJEU, Press release No 44/15 supra n 64.

69 Dehousse Report II supra n 4, p. 21.

70 Response to the invitation from the Italian Presidency of the Council to present new proposals in order to facilitate the task of securing agreement within the Council on the procedures for increasing the number of Judges at the General Court, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-05/8-en-reponse-274.pdf> (accessed on 10 February 2016). It was not clear whether this was a formal proposal, a revised or new one, and which procedural steps should follow. See Dehousse Report II supra n 4 p. 24.

President, Judge Jaeger, wrote to the Council exposing the GC's opposition and its reasons, and proposed alternative, and more effective, solutions.[71] The EU trade unions also mobilized against the reform, although to no effect.[72] The discussions in the EP of the 2014 proposal did not go smoothly. The rapporteur Mr Marinho e Pinto and MEPs asked questions to the Council and Commission concerning the quality of the preparation and planning of the reform, the level of support for the reform within the CJEU, and the GC in particular, or the costs of alternative solutions, such as an increase in cabinets' size. They also invited the president and four members of the GC to expose their position.[73] On 17 June 2015, the Council adopted its final position; on the same day the EP rapporteur circulated two documents, with conflicting assessments of the GC backlog, one apparently emanating from the Court, the other prepared by a GC judge. He also issued a critical press release which expressed strong doubts about the need for additional judges to improve the GC productivity, criticized the waste of tax-payers money in times of austerity and the absence of impact assessment, and challenged the accuracy of the backlog numbers.[74] He suggested instead to increase the number of *référendaires* and other management measures. [75] The reform was nonetheless approved by the Council on 23 June 2015, by a qualified majority (with only the United Kingdom opposing it), on the condition that there should be no staff increase. The EP also eventually backed the reform on 28 October 2015, after President Skouris apparently directly approached the President of the European Parliament, Martin Schultz, so that the largest political groups would support the reform.[76] The Regulation amending the Statute, adopted on 16 December 2015, is now being implemented.[77]

The authoritarian style of the reform and concerns regarding the proposed solutions led some of the GC judges to go out of their ordinary reserve and publicly 'campaign' against the Skouris reforms. Judge Franklin Dehousse wrote three substantial, and

[71] Duncan Robinson, 'European Court doubles numbers of judges', Financial times, Brussels blog, 12 April 2015, <https://www.ft.com/content/562d0236-df97-11e4-a6c4-00144feab7de> (accessed on 10 February 2017), cited in Dehousse report II p. 34.

[72] Dehousse Report II, supra n 4, p. 31-33.

[73] Their views are laid out in a document entitled 'Doubling The General Court's Judges: Why Progressive, Reversible And More Economical Solutions Are Far Better' <http://g8fip1kplyr33r3krz5b97d1.wpengine.netdna-cdn.com/wp-content/uploads/2015/04/EP-Strasbourg-Summary-and-costs.pdf> (accessed on 10 February 2017) . On the hearing, see E. Maurice, 'MEPs to grill EU judges on court reform', *EUobserver*, 28 April 2015 <https://euobserver.com/justice/128491> (accessed on 10 February 2017).

[74] Doubts about the accuracy of the figures were also raised by A.Alemanno, 'Reform at the Court of Justice: What caseload backlog?', The Good Lobby, <http://www.thegoodlobby.eu/reform-at-the-cjeu/> (accessed on 10 Febraury 2017). In fact, even the Court seemed to admit to it in press release in 2016, when it identified a raise in productivity of 90%, which took place before any additional appointment occurred (CJEU, Press release No 34/16, of 18 March 2016).

[75] EP Committee on Legal Affairs, António Marinho e Pinto (*Rapporteur): Draft recommendation for second reading on the Council position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union* (09375/1/2015 – C8-0166/2015 – 2011/0901B(COD)).

[76] D. Seytre, 'La Cour et les socialistes', *Le Jeudi*, 15 October 2015.

[77] Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, OJ 2015 L 341/14.

critical, reports over the course of the reform process. In the first paper,[78] he proposed a management approach to EU judicial reform; in a second paper, whilst some of these management reforms were underway in the CJ and GC and were apparently starting to show results, he publicly and virulently aired his opposition to the CJ President's proposal to increase the number of judges in the GC, which he denounced as a scandalous waste of money at times when national judicial systems have to adjust to sometimes drastic austerity measures. He criticized not only the content of the reform, as ill-suited to address the Court's 'real' problems, but also the manner in which the reform was conducted, without proper research, advice and consultation, in a secretive way, and against the wishes of the GC itself, whose operations would be most affected by the proposals. He also accused President Skouris of lying about the actual extend of the GC backlog.[79] Finally, in a last paper, released after the reform was approved, he contrasted the sensible 'managerial' approach followed by the other European court, the European Court on Human Rights, with the hazardous and expensive CJEU reform.[80] Another of the GC judges, Judge Collins, had already outlined the positive impact of a number of management and organizational reform already undertaken in the GC, and warned against 'embarking in a nebulous and counterproductive reform.'[81]

The reform of the Statute has not been the only change which affected the operation of the EU Courts over the recent years. The EU courts also obtained amendments to their Rules of Procedure, which assisted in improving the efficiency of the EU judiciary.[82] They adopted technical innovations, such as e-Curia,[83] and try to work out a language regime which ensure effective decision-making whilst preserving diversity.[84] More subtle transformations (for example, changes in judicial reasoning, methods of interpretation or judicial philosophies) may also be happening as we write.

Further changes will nonetheless be required in the future to address case law developments, which we will further explore in the conclusion of this volume, after having learned from the best practice and other trials and experiments revealed by the experts who contributed to this volume.

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78 Franklin Dehousse, 'The Reform of EU Courts: The Need of a Management Approach', Egmont Paper 53, 20 December 2011, <http://www.egmontinstitute.be/wp-content/uploads/2013/09/ep53.pdf> (accessed on 10 February 2017)

79 Dehousse report II supra n 4.

80 Dehousse report III supra n 58.

81 Judge Collins, 'The General Court: enlargement or reform? Paper presented at the Annual Conference on European Law', Kings College London, 11 March 2016, <https://www.kcl.ac.uk/law/research/centres/european/Judge-Collins-lecture.pdf>, (accessed on 10 February 2017).

82 See Chapters by G. Koutsoukou, and Biaviatti.

83 See Chapter by F. Contini in this book.

84 See Chapter by M. Derlen.