HOUSE OF LORDS

European Union Committee

14th Report of Session 2010–11

The Workload of the Court of Justice of the European Union

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SUMMARY

One of the central responsibilities of the Court of Justice of the European Union (CJEU) is to uphold the EU's founding principles including respect for the rule of law. Concerned by both the latest workload statistics in the Court's own 2009 Annual Report and the impact that the Treaty of Lisbon will have on the CJEU's ability to fulfil its central and crucial role, the Committee published a call for evidence in July last year. Our concerns were not misplaced.

In the case of the Court of Justice (CJ) we predict another crisis of workload soon, in part driven by the rise in the EU's membership to 27 States, and also caused by the expansion of the Court's jurisdiction into the Area of Freedom, Security and Justice introduced by the Lisbon Treaty. As for the General Court (GC) the prognosis is even bleaker; we found an institution struggling to manage its existing and ever increasing workload, and twice criticised by the Court of Justice for taking too long to deliver justice, most recently in 2009. As an example of the delays in the GC, the Confederation of British Industry highlighted an average time of 33.1 months for competition cases.

Whilst we recognise the Government's argument regarding the current economic climate, this Report argues that there is a cost for litigants and individuals in allowing the EU's judicial institution to suffer sclerosis in the delivery of justice. This cost will be felt not just financially but in bringing both the CJEU and the wider EU into disrepute whilst at the same time undermining their legitimacy.

We make a number of recommendations designed to alleviate these problems. For the CJ we suggest that an increase in the number of Advocates General should be made as soon as possible. For the General Court where the need is most pressing, we reject the creation of more specialised tribunals provided that their problems are dealt with by other means. The main solution that we suggest is an increase in the number of judges serving the GC. Although this will of course cost money we believe it could be accommodated by adjusting priorities in the existing budget and, given the central role fulfilled by the Court, we believe the benefits will outweigh the costs.

CHAPTER 8: SUMMARY OF CONCLUSIONS

The Court of Justice's workload

137. We believe that the window of opportunity has closed within which the CJ was able to avoid longer delays because the increase in its membership preceded an expected increase in its workload (see paragraph 41).

The impact of the Treaty of Lisbon on the CJ's workload

138. We believe that the expansion of the CJ's jurisdiction into the Area of Freedom, Security and Justice introduced by the Lisbon Treaty, coupled with the increase of EU membership to 27 States, will have an impact on the CJ's ability to manage its workload. We predict another crisis of workload soon (see paragraph 44).

The General Court's workload

139. We conclude that the most immediate problem lies in the GC. The GC's own statistical information, and the evidence we received, point to significant problems with its existing workload and its ability to manage its future workload. We agree with the representatives of the CCBE that it is within the GC that "structural solutions need to be found"[197] and urgently (see paragraph 53).

The Civil Service Tribunal's workload

140. The CST is a success story and the Committee has no concerns regarding its ability to manage its case-load (see paragraph 56).

Translation into the CJEU's working language

141. It is our view that the popular opinion that delay is caused by translating documents into the CJEU's working language is misplaced. The CJEU has to have a working language and for historical reasons that language is French. Any increase in the number of working languages will, in the Committee's view, merely add another level of translation to the process, thus exacerbating any existing delays caused by translation (see paragraph 62).

Translating the Court's judgments into the EU's 23 official languages

142. Access to the CJ's case law, either by Member States' authorities or their citizens, must remain the key. The law as decided by the CJ applies equally throughout the Member States, and it has to be available in a language that all the citizens of the Member States can understand. This is important for the Court's legitimacy (see paragraph 68).

143. Translation remains an expensive but necessary service for an institution operating in a multilingual and transnational environment (see paragraph 70).

The wider political and economic context

144. The Committeë is sensitive to the lack of appetite amongst the Member States for Treaty change and to the current economic constraints. It is our

197 Q 61.

view, however, that the time to "leave the Court to work as it is" has passed and that solutions which may involve additional expenditure on the Courts (not involving an addition to the budget) need to be addressed urgently. We do not make any suggestion likely to involve Treaty change because in the short term other solutions are available. But the Member States should not be put off from undertaking necessary reform involving Treaty change when the opportunity arises in the longer term (see paragraph 76).

Legislative impact assessments

145. We believe that legislation, in particular legislation liable to have a significant impact on the CJEU's workload, should include within its impact assessment a section considering its likely impact on the CJEU, a cogent recent example being the introduction of the REACH Regulation. Where the EU creates executive agencies designed to police the application of Community law, it is a legal requirement that their decisions be open to challenge. The EU institutions should not ignore the fact that the act of creating a regulatory agency whose decisions are subject to an appeal to the GC brings with it an impact on the GC which, as currently constituted, will struggle to carry the additional burden. Whilst we recognise the limitations of impact assessments highlighted by both the Commission and the Government, it must be the case that at least when creating an executive agency the Member States should consider its judicial impact (see paragraph 80).

The rotation of judges

146. The Committee recommends that the Member States heed AG Sharpston's request and state their intentions regarding the appointment of judges in good time. We suggest that the Court stipulates what constitutes a reasonable period of time (see paragraph 84).

Procedural changes

147. Whilst the Committee received some suggestions for procedural reform, the weight of the evidence suggests that delays due to the CJ's procedures have been reduced to, or close to, the minimum. We look forward to the further conclusions of the Court's Rules of Procedure Committee (see paragraph 88).

Give the CJ procedural autonomy?

148. We recommend that the Government and the Council give constructive consideration to any reform proposals from the Court (see paragraph 91).

Reform the oral hearing?

149. In allowing the Court to decide whether an oral hearing is necessary in each individual case, whilst at the same time providing an opportunity for legal representatives to apply for an oral hearing, we consider that the Court's current rules of procedure strike the right balance (see paragraph 96).

Sharing jurisdiction for preliminary rulings between the CJ and the GC

150. Given the wider constitutional significance of preliminary rulings, and given that the GC is overburdened, we believe that this jurisdiction should remain exclusively with the CJ (see paragraph 105).

Filtering references

151. It is important that any filtering reform should not disrupt the delicate relationship between the national courts and the CJ, in particular when there is no evidence to support any argument that this reform would address the central goal of reducing the CJ's workload (see paragraph 108).

The green light system

152. We agree that encouraging national courts to include a provisional answer in their request for a preliminary ruling is a sensible policy. We reject the idea of making the practice compulsory but we see merit in the Court taking further steps to encourage national courts making reference requests to adopt this policy (see paragraph 111).

Should the CJ judge with the nationality of the Member State court making the request be routinely included in the CJ chamber deciding the case?

153. We are not persuaded that it is necessary to introduce into the preliminary reference system a requirement for the CJ judge with the nationality of the Member State court making the request to be routinely included in the CJ chamber deciding the case. Moreover we believe that the resultant restriction on the pool of judges available to sit in any given preliminary reference request would exacerbate the workload problems the CJ is currently facing. We do, however, consider it important to retain the stage of the procedure where all judges consider preliminary reference requests (see paragraph 115).

Increase the number of Advocates General?

154. It is the Committee's view that an increase in the number of AGs should be made as soon as possible. This comparatively straightforward reform will assist the Court in increasing the speed with which cases can be dealt, while improving the quality of decision-making. There is provision in the Treaty for an increase in the number of AGs serving the CJ and we recommend that the CJ submit a request for an increase to the Council (see paragraph 117).

Specialist chambers

155. The Committee can see the case for the use of specialist Chambers within the Court, in particular when a new stream of cases flows into the Court. Given the evidence discussed earlier in relation to the REACH Regulation and the impact this area of law may have on the GC's workload, the Committee suggests that, if the GC has not already done so, it should consider the use of specialist chambers (see paragraph 121).

Better case management

156. Although we recognise that addressing the GC's case management record is not going to solve the GC's wider workload problems, we recommend that the Court should consider taking a more robust approach. It ought to be possible to publish clear public timetables charting a case's progress. We suggest that money is made available to create, or add to the Court's website, a facility for achieving this (see paragraph 124).

Overall conclusions on structural reform of the GC

157. Regarding specialist tribunals, we see the CST as a special case since its work is essentially related to the internal affairs of the EU and its decisions have no

impact on the law of the individual Member States. A proliferation of specialist tribunals separate from the GC would not be desirable. They would cost more than the CST, in particular given the greater translation costs because their decisions will be of relevance to all Member States. In addition, their judges will be of the particular discipline and thus be of no use to the GC in coping with its general workload. We do not recommend this course, provided that the problems facing the GC are alleviated by other means (see paragraph 135).

158. We recommend an increase in the GC's judiciary. Whilst we recognise the cost implications, if the Member States are serious about addressing the GC's workload problems this reform represents the best and most flexible long-term solution. It must surely be possible for the Council to agree to appoint the necessary number, less than 27, which the Court should recommend at this stage. We suggest one third might be a reasonable number on a rotating basis. This reform will of course cost money but, given the central role fulfilled by the Court in the effective operation of the Union, we believe that the benefits would clearly outweigh the costs (see paragraph 136).