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Epilogue, at last, on the reform of the General Court

Marc Abenhaïm (Sidley Austin LLP) · Tuesday, January 26th, 2016

On 3 December 2015, the Council of the European Union and the European Parliament (EP) approved a long-awaited regulation reforming the General Court of the European Union.[1] The Council's approval marked the end of four years of inter-institutional debate and paved the way for publication of the Regulation in the EU's Official Journal on 24 December 2015. The reforms will lead to profound changes in the composition of the General Court, including, most notably, a doubling in the number of judges.

More than four years of debate. Reforms to the General Court had been requested as early as 2011 in order to help tackle the mounting backlog of ever more complex cases. And the excessive duration of judicial proceedings had already given rise to damages claims against the European Union.

The President of the Court of Justice initially proposed to increase by 12 the total number of judges at the General Court, a figure which he later changed to nine, in response to cost concerns. When Member States could not agree that there be a departure from the pre-existing equality in numbers of judges from each Member State,[2] the President of the Court of Justice simply adapted the proposal to provide for a doubling – to 56 – of the number of judges.[3]

On 23 June 2015, realizing the urgency of the situation, and perhaps more conscious of the delays at the General Court, the Council unreservedly accepted the revised proposal and sent it to the EP.

But the proposal to double the number of judges met with fierce opposition from some MEPs, including the *Rapporteur* on the dossier, Antonio Marinho e Pinto.[4] Among other aspects, Marinho e Pinto criticized a '*deep contempt for European taxpayers' money*',[5] arguing that the proposed reforms amounted to an unnecessary increase in spending, '*at a time when the EU is imposing severe austerity measures to balance Member States' budgets*'.[6] There was also trenchant criticism of the lack of a proper impact assessment and questioning of the figures provided by the Court of Justice on the number of outstanding cases pending before the General Court and their average duration.

Marinho e Pinto suggested an alternative reform package, providing for the appointment of a maximum of 12 additional judges, on condition that '*the Court of Justice furnishes detailed evidence showing it to be objectively necessary in the light of the trend in the caseload for the*

General Court in 2015'.[7] The alternative package focused on the appointment of more staff, more legal secretaries (*référendaires*) and various measures to improve the overall efficiency of the General Court.

Ultimately, however, despite Marinho e Pinto's opposition, the proposal to double the number of judges was supported by a coalition of the two biggest parliamentary groups and was passed by the EP on 28 October 2015, and by the Council on 3 December 2015.

The reforms – essential aspects. The reforms consist in expanding the number of judges at the General Court in three successive phases**.** The first phase was due to take effect immediately upon entry into force of the Regulation (the day after its publication) and consisted in adding 12 additional judges, each with their corresponding staff (two legal secretaries and three *référendaires*)**.** The second phase of the reform, due to take effect in September 2016, will consist in the absorption by the General Court of the Civil Service Tribunal, its seven judges, their staff and the corresponding case load**.** The third and final phase, which is expected to take effect in September 2019, will see the appointment of the nine remaining additional judges**.** The EP and the Council also provided for: (i) a political statement requiring Member States to take the greatest possible account of gender equality when proposing their candidates; and (ii) a clause in the legislation itself requiring the Court of Justice to report, by 2021, on the functioning of the General Court and, where appropriate, to make proposals for reforms to its statute.

Challenges ahead. The reforms raise a number of implementation challenges, both for Member States and for the General Court itself.

First, the timing was always unrealistically tight**.** Within a little over three weeks of the Council finally approving the Regulation, each of the Czech Republic, Sweden, Spain, Hungary, Poland, Cyprus, Lithuania, Greece, Latvia, Luxembourg, Slovakia and Malta were to have nominated their additional judges, had them duly grilled by the Article 255 committee, and then approved in Council**.** That was never going to happen**.** The nomination process itself can take some time: Member States select their candidates, according to their own national procedures, before proposing them to the Council**.** Some Member States have no particular selection procedures, but others require an open competition, the results of which may give rise to litigation, etc. The organization of the Article 255 committee hearings, too, can take quite some time.

The reforms have also been organized in such a way as to coincide with a partial renewal of the General Court, meaning that some Member States will have to nominate candidates for not one, but two posts. Nominating two judges might not be a problem for larger Member States, or Member States that have long been part of the EU, but, as Judge Forwood recently observed: it might be '*hard {…} for many {others} to find appropriately qualified people who are willing to do the job*'.[8]

Finally, getting 28 additional judges up to speed on the workings of the Court, its case law and current case load, will not be easy and may entail delays of its own. These difficulties will be compounded by problems around the absorption of the Civil Service Tribunal: the transitional measures, the necessary (re)allocation of staff cases, and the fact that all General Court judges will now have to get up to speed on this rather *sui generis* type of case will undoubtedly impact the smooth functioning of the Court in the coming months and years.

It may therefore take several months, or even years, for the reforms to begin to have any positive

impact on parties' experiences in proceedings before the General Court.

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References[+]

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