

Speakers' contributions



Litigating European Union Law



419DT13 Trier, 9-10 October 2019



This seminar series has received financial support from the European Union's Justice Programme (2014-2020). For further information please consult:

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“Court of Justice of the EU Composition, organisation and competences”

ERA – 09.10.2019
Trier

Milan KRISTOF
référéndaire

Cabinet of Advocate-General Tanchev
Court of Justice of the EU



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Part I. Court of Justice

CJEU - Introduction

- **Est.:** 1952
- **Mission:** ensure that "the law is observed" "in the interpretation and application" of the Treaties
- CJEU:
 - reviews the legality of the acts of EU institutions
 - ensures that the Member States comply with obligations under the Treaties
 - interprets EU law at the request of the national courts and tribunals

Court of Justice - Introduction

- In cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law
- Seat: Luxembourg
- CJEU consists of **2 courts:**
 - Court of Justice
 - General Court
- Civil Service Tribunal, established in 2004, ceased to operate on 1 September 2016 after its jurisdiction was transferred to the General Court in the context of the reform of EU's judicial structure (more on that later)

Court of Justice - Introduction

- As each Member State has its own language and specific legal system, CJEU is a multilingual institution
- Its language arrangements have no equivalent in any other court in the world, since each of EU's 24 official languages can be the language of a case
- It is required to observe the principle of multilingualism in full, because:
 - need to communicate with the parties in the language of the proceedings
 - to ensure that its case-law is disseminated throughout the Member States

Court of Justice - Introduction

- 1 December 2009: **Lisbon Treaty**
- Community competences => Union (EU legal personality)
- From its establishment: some 28 000 judgments both (*all three) courts combined

Court of Justice - Composition

- Members of the Court are...
 - **28 Judges**: CJ has 1 Judge per Member State - all the national legal systems are represented (this is different for the General Court)
 - **11 Advocates General**
- They are appointed by common accord of the governments of the MSs after consultation of a panel responsible for giving an opinion on prospective candidates' suitability to perform the duties concerned (255 Committee) (Lisbon)

Court of Justice - Composition

- **Term** of 6 years, renewable (different for AGs)
 - Individuals whose independence is beyond doubt and who possess the qualifications required for appointment, in their respective countries, to the highest judicial offices, or who are of recognised competence
- Judges of the Court elect from amongst themselves a President and a V-P for a renewable term of 3 years
- President directs the work of the Court and presides at hearings and deliberations of the full Court or the Grand Chamber

Court of Justice - Composition

- Vice-President assists the President in the exercise of his duties and takes his place when necessary
- **Advocates General** assist the Court. They are responsible for presenting, with complete impartiality and independence, an 'Opinion' in the cases assigned to them
- Permanent AGs: FR, DE, IT, PL, ES and EN
- Registrar is the institution's secretary general and manages its departments

Court of Justice - Composition

- CJ may sit as a full court, in a Grand Chamber (15) or in Chambers of 5 (5 Ch. in total) or 3 judges (5)
- **Full court:**
 - In the particular cases prescribed by the Statute of the Court (including proceedings to dismiss the European Ombudsman or a Member of the Commission who has failed to fulfil his or her obligations) and where the Court considers that a case is of exceptional importance
- **Grand Chamber:** when a Member State or an institution which is a party to the proceedings so requests, and in particularly complex or important cases

Court of Justice - Composition

- CJ must always consist of an uneven number of Judges (now 28 Judges?)
- Presidents of the Chambers of 5 Judges are elected for 3 years, and those of the Chambers of 3 Judges for 1 year
- Current President: Koen Lenaerts (BE)
- Vice-President: Rosario Silva de Lapuerta (ES)
- 1st Advocate General: Maciej Szpunar (PL)

Court of Justice - Composition

- Working language = FR (but AGs may 'in principle' draft in their own language)
- Deliberations are secret

Part II. General Court

General Court - Composition

- Started on 25 September 1989 (30 years now)
- Is made up of **2 judges** from each Member State (more on the reform later)
- Appointment and 255 Committee...
- Term of office is 6 years, renewable
- Judges appoint their President and V-P (for 3 years) from amongst themselves (Registrar for 6 years)
- No permanent AGs, but may exceptionally be carried out by a judge

General Court - Composition

- Current President: Marc van der Woude (NL)
- Vice-President: Savvas Pappasavvas (CY)

General Court - Composition

- Cases are heard by Chambers of 3 or 5 Judges or, in some cases, as a single Judge
- GC may also sit as a Grand Chamber (15 Judges) when this is justified by the legal complexity or importance of the case
- Presidents of Chambers of 5 elected for 3 years
- GC has its own Registry, but uses the administrative and linguistic services of the institution for its other requirements

Part III. Reform of the General Court

General Court - Reform

- On 16.12. 2015, the EU legislature adopted a regulation reforming the judicial structure of the CJEU
- **Purpose** : to respond to the immediate needs of the GC - which had 28 judges in 2015 - and to enhance, on a lasting basis, the efficiency of the European judicial system as a whole

General Court - Reform

- **3 stages:**
 - Initial increase of **12** judges at GC achieved in part in **April 2016**
 - In **September 2016** (at the next partial renewal of the membership of the GC), the number of judges was increased by **7** when the Civil Service Tribunal was incorporated within the GC (CJEU now composed of only 2 courts)
 - In the **autumn of 2019** (the following renewal of the membership of the GC), the number of judges was increased by **7**, bringing the total number of judges to 54 (full composition would be 56 when the GC would have 2 judges per Member State)

General Court - Reform

- 54 and not 56: 1 judge from Slovakia still needs to be appointed and the UK decided not to appoint a 2nd judge
- By virtue of the number of judges being doubled in a 3-stage process extending until 2019, GC is now in a position to cope with the increase in litigation and to fulfil its task in the interests of EU litigants
- ... while meeting the **objectives** of quality, efficiency and rapidity of justice
- The reform was accompanied by the drafting of **new Rules of Procedure** of the GC (entered into force on 1.7. 2015, last amended in 2018) which strengthen its capacity to deal with cases within a reasonable period and in compliance with the requirements of a fair hearing

General Court - Reform / New structure

- From September 2016: **9 chambers** of 5 judges
- ... each Chamber being able to sit in **2 formations** of 3 Judges presided over by the President of the Chamber of 5 Judges
- Being sufficiently streamlined, it will preserve the coherence of the system through the retention of the **3-Judge** formation as the ordinary formation of the Court
- Will facilitate the **referral** of cases to 5-Judge formations
- Will facilitate the **replacement** from within the same Chamber of any Judge who is prevented from acting
- Will give the Presidents of Chambers an enhanced role in respect of the coordination and **consistency** of the case-law

General Court - Reform

- Finally, GC dealt with all civil service cases transferred from the Civil Service Tribunal to the GC as it found them on 1 September 2016
- ... they are subject to a right of appeal to CJ

Part IV. A few words on the role of the CJEU within the EU judicial system

CJEU's role...

- Sufficient legal remedies/procedures exist before Union courts and the national courts to enforce EU law rights and to ensure judicial review of Union acts
- There exist **direct and indirect paths** by which to enforce rights based on EU law and to review the legality of Union acts
- **National courts** are 'normal' or 'ordinary' Union courts

CJEU's role...

- 'While it is true that the Court has no jurisdiction to rule on direct actions between individuals in the field of patents, since that jurisdiction is held by the courts of the Member States, nonetheless the Member States cannot confer the jurisdiction to resolve such disputes on a court created by an international agreement which would deprive **those courts of their task, as 'ordinary' courts within the European Union legal order, to implement European Union law** and, thereby, of the power provided for in Article 267 TFEU, or, as the case may be, the obligation, to refer questions for a preliminary ruling in the field concerned' (Opinion of CJ 1/09 'Unified Patent Litigation System', para 80)

CJEU's role...

- By contrast, the organic **Union courts at EU level** (CJ and GC) are bound by the principle of conferral whereby they exercise only the jurisdiction conferred upon them under the Treaties
- Union courts do not have inherent jurisdiction just because matters of EU law are involved in a given case
- Everything falling outside of what the Treaties confer upon the Union courts (CJEU) falls within the residual competences of the **national courts**:
 - Cases between natural and legal persons
 - Cases between natural and legal persons and national authorities
- Private party may bring a case before CJEU only against a Union defendant (institution, office etc.)
- Hence the importance of the preliminary ruling procedure

CJEU's role...

- As Lenaerts et al. (EU Procedural Law) aptly put it, Union law acts as a:
- 1) **sword** for safeguarding the rights deriving from the law and hence this implicates certain types of actions and procedures which ensure that the Member States comply with their obligations under the Treaties
- 2) **shield**: Union judicature secures the enforcement of written and unwritten superior rules of Union law and affords protection against any act or failure to act of institutions and other bodies of the Union in breach of those rules

Thank you for your attention.

The judicial system of the European Union

Proceedings before the Court of Justice of the European Union

ERA - 9 October 2019

Katarína Andová



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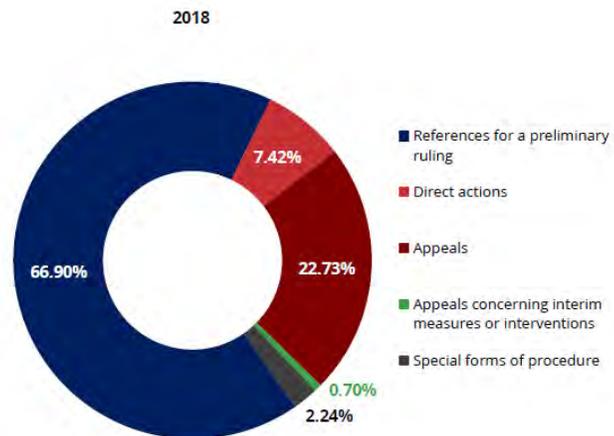
On the agenda

- Introduction to proceedings before the Court of Justice of the European Union
- Language difficulties in written and oral submissions
- Procedural issues in recent case law

Introduction to proceedings before the Court of Justice of the European Union

General remarks

New cases: Court of Justice

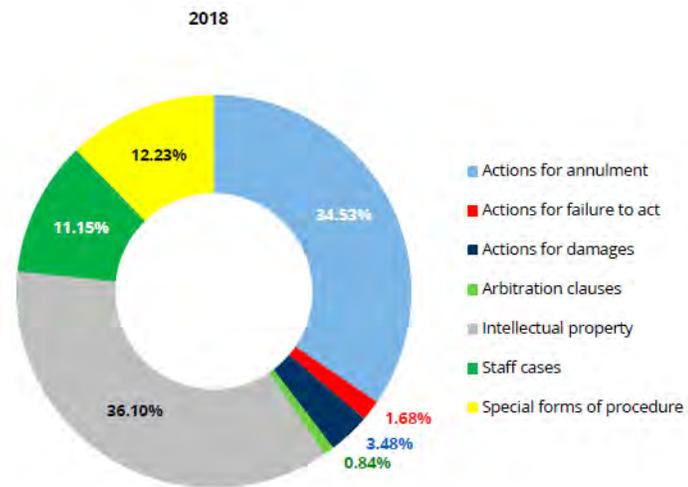


	2014	2015	2016	2017	2018
References for a preliminary ruling	428	436	470	533	568
Direct actions	74	48	35	46	63
Appeals	111	206	168	141	193
Appeals concerning interim measures or interventions		9	7	6	6
Requests for an opinion	1	3		1	
Special forms of procedure ¹	8	11	12	12	19
Total	622	713	692	739	849
Applications for interim measures	3	2	3	3	6

Source: Annual report 2018. Judicial activity

General remarks

New cases: General Court



	2014	2015	2016	2017	2018
Actions for annulment	423	332	297	371	288
Actions for failure to act	12	5	7	8	14
Actions for damages	39	30	19	23	29
Arbitration clauses	14	15	10	21	7
Intellectual property	295	302	336	298	301
Staff cases			163	86	93
Appeals	36	36	39		
Special forms of procedure	93	111	103	110	102
Total	912	831	974	917	834

Source: Annual report 2018. Judicial activity

Proceedings before the Court of Justice and the General Court

Applicable rules

Treaty on the
Functioning of
the European
Union
(Art. 251 – 281)

Statute of the
Court of Justice
of the European
Union

Proceedings before the Court of Justice

Applicable rules

Rules of Procedure of the Court of Justice (RP CJ)

Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

Practice directions to parties concerning cases brought before the Court

Specific decisions (Judicial functions of the Vice-President, Security rules, e-Curia)

Other useful information (Anonymity, Advice to counsel appearing before the Court)

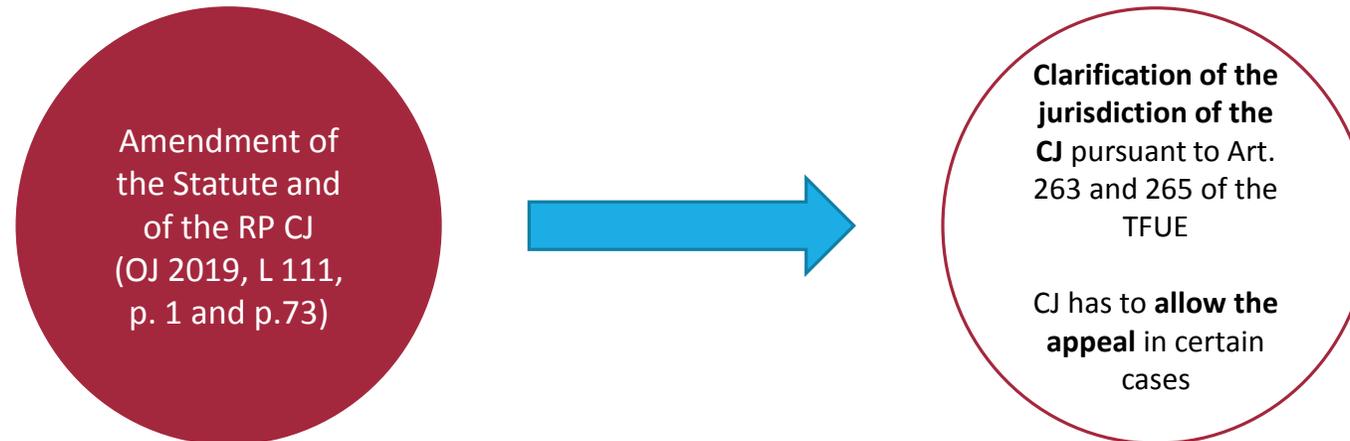
- **Rules reviewed in 2012**

- **Structure:**

- Introductory provisions
- Organisation of the Court (Title I)
- **Common procedural provisions** (Title II)
- **References for a preliminary ruling** (Title III)
- **Direct actions** (Title IV)
- **Appeals against decisions of the GC** (Title V)
- Review of decisions of the General Court (Title VI)
- Opinions (Title VII)
- Particular forms of procedure (Title VIII)
- Final provisions

Proceedings before the Court of Justice

Recent changes



Proceedings before the General Court

Applicable rules

Rules of Procedure of the General Court (RP GC)

Practice rules for the implementation of the Rules of Procedure

Specific decisions (Criteria for the assignment of cases to Chambers, Security rules, e-Curia)

Other useful information (Anonymity, Aides-mémoire “Application” and “Hearing of oral argument”, Legal aid form)

- **Rules reviewed in 2015**

- **Structure:**

- Introductory provisions
- Organisation of the General Court (Title I)
- Languages (Title II)
- **Direct actions** (Title III)
- **Proceedings relating to intellectual property rights** (Title IV)
- Appeals against decisions of the CST (Title V)
- Procedures after a case is referred back to the General Court (Title VI)
- Final provisions

Proceedings before the General Court

Recast of the RP GC in 2015

Consistency of procedural rules

Adaptation of procedural rules

Measures to improve efficiency

Innovation

Simplification and clarification

Proceedings before the General Court

Recent changes

New rules for
civil service
cases

- OJ 2016, L 217,
p. 73
- since 1 September
2016

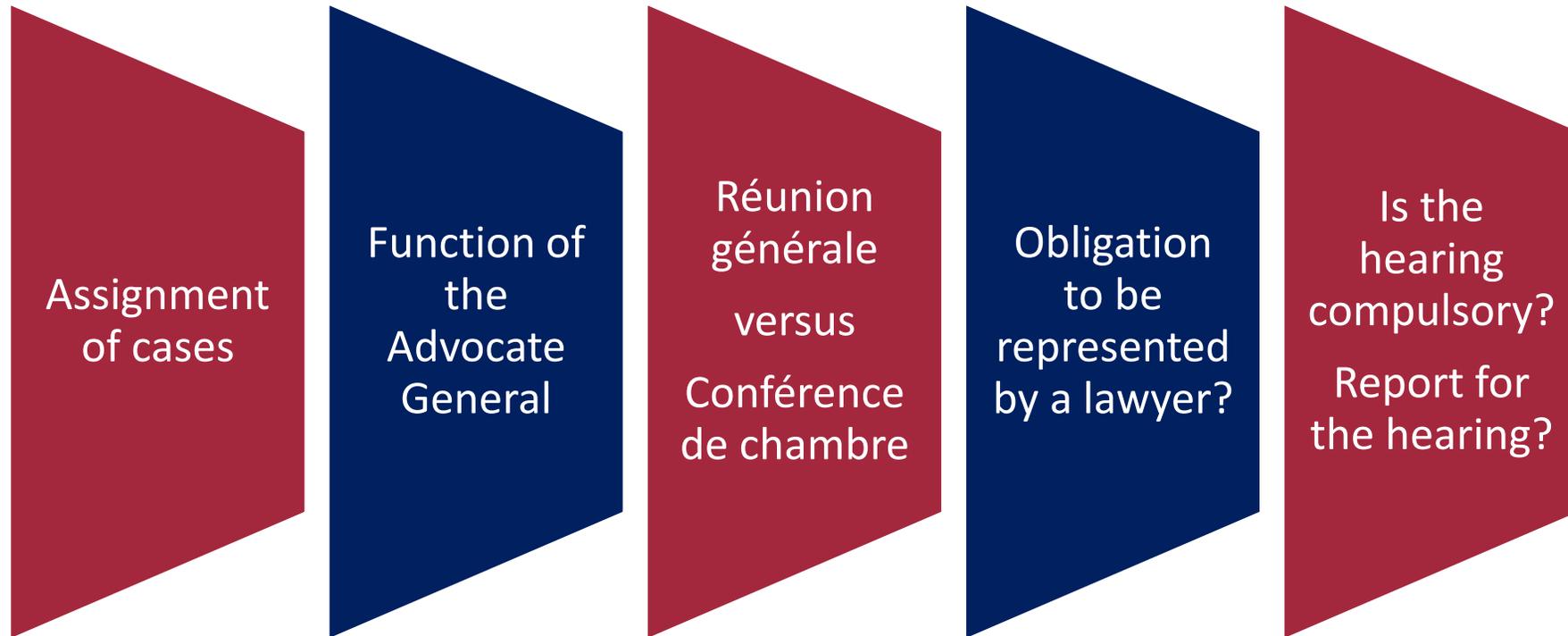
New rules on
lodging and
service

- OJ 2018, L 240,
p. 68
- since 1 December
2018

Partial
specialisation
of Chambers

- OJ 2019, C 246,
p. 2
- from 27 September
2019 to 31 August
2022

Court of Justice and General Court: Some differences



Standard procedure before the General Court



- Written part of the procedure

- Internal reflections

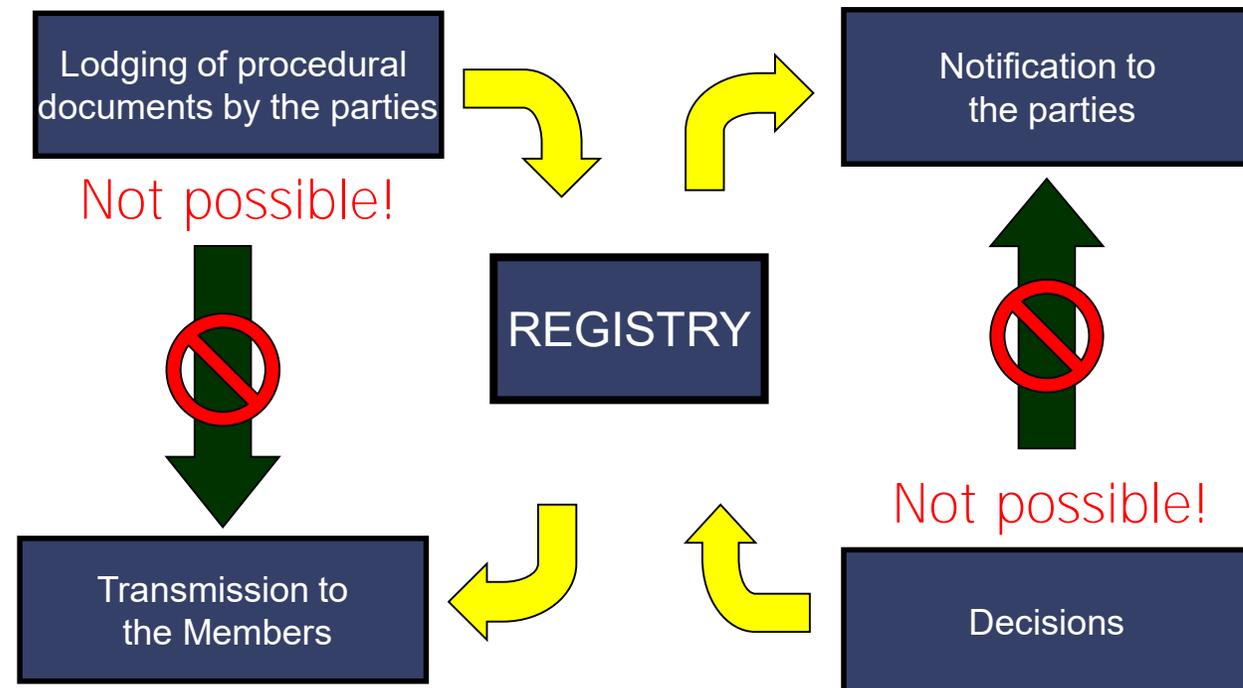
- Measures of organisation of procedure and/or measures of inquiry

- Oral part of the procedure

- Deliberations

- Delivery of the judgment

Proceedings - Role of the Registries



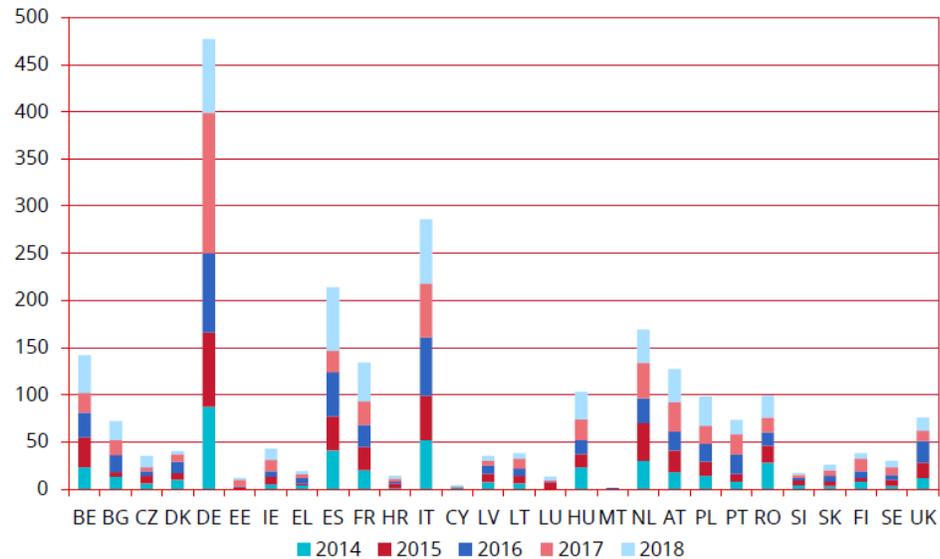
Proceedings - Role of the Registries

- The Registries keep you **informed** about all procedural decisions and steps
- The Registries give **advice** as regards to practical aspects related to the written and oral parts of the procedure
- The Registries might **help** in complex procedural situations, but they never take a decision for you
- The Registries don't give **any information** concerning the **calculation of time-limits**
- The Registries **act immediately** in case of an urgent need

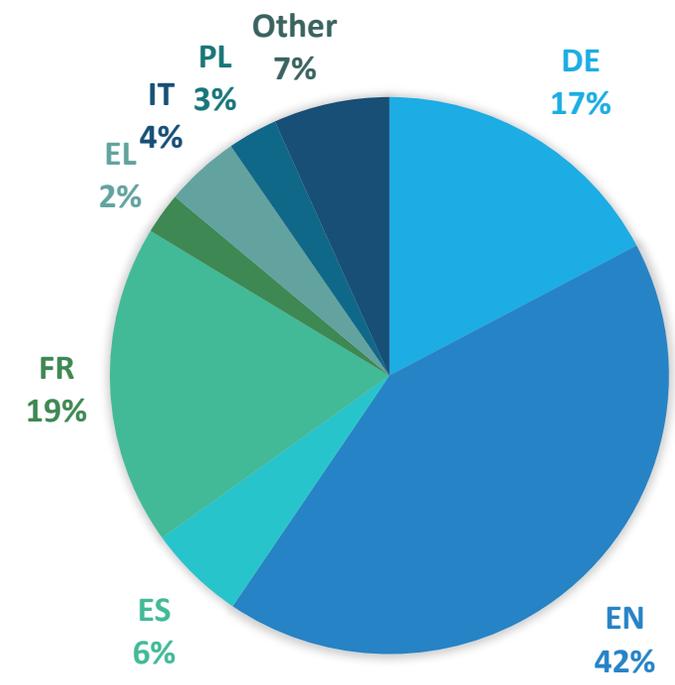
Language difficulties in written and oral submissions

Languages

New cases —
References for a preliminary ruling by Member State (2014-2018)



NEW CASES GC 2018



Use of the language of the case

Direct actions and appeals

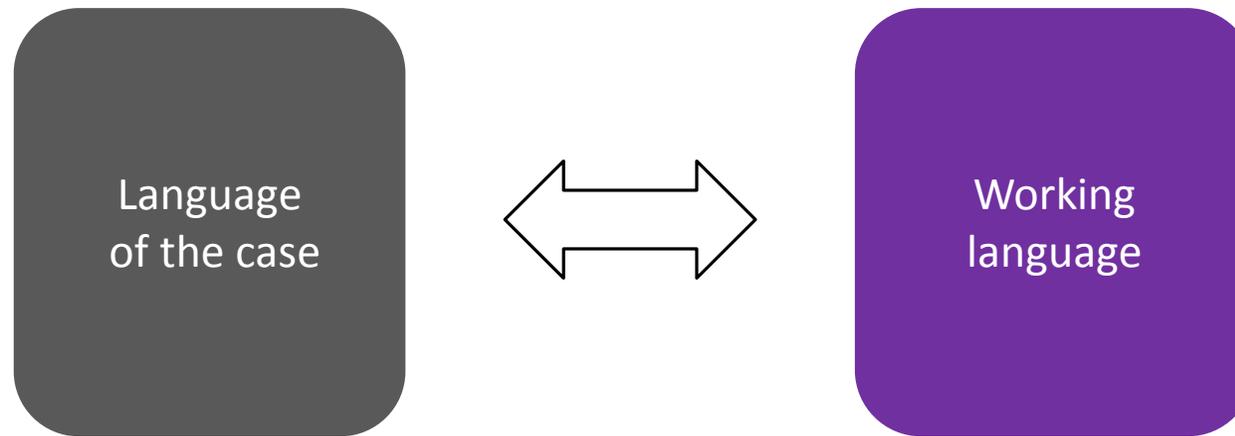
➤ By the parties:

- Written pleadings
- Annexes (if in another language – translation is needed)
- Hearing
- Derogation: an intervening Member State is entitled to use its official language

➤ By the Courts:

- Correspondence
- Minutes
- Decisions
- Hearing: Judges and Advocates General may use an other official language of the EU that the language of the case

Language difficulties in written submissions



Language difficulties in oral submissions



Source: Court of Justice of the European Union

- read carefully the recommendations given by the Interpretation Directorate
- try to speak freely, clearly and slowly
- if possible, send your notes to the Interpretation Directorate in advance
- be prepared for simultaneous interpretation

Procedural issues in recent case law

Cases before the General Court

Independent legal representation

Order of 8 May 2018, Spieker v EUIPO (Science for a better skin) (T-92/18, not published, EU:T:2018:289), under appeal

Order of 30 May 2018, PJ v EUIPO – Erdmann & Rossi (Erdmann & Rossi) (T-664/16, EU:T:2018:517), under appeal

Order of 8 April 2019, Electroquimica Onubense v ECHA (T-481/18, EU:T:2019:227)

Opinion of Advocate General Bobek of 24 September 2019 in Joined Cases Uniwersytet Wrocławski and Poland v REA (C-515/17 P and C-561/17 P, EU:C:2019:774)

Cases before the General Court

Applications lodged out of time

Order of 12 October 2018, Hungary Restaurant Company and Evolution Gaming Advisory v Commission (T-416/18, not published, EU:T:2018:705)

Order of 14 March 2019, Hungary Restaurant Company and Evolution Gaming Advisory v Commission (C-700/18 P, not published, EU:C:2019:215)

Order of 30 April 2019, Romania v Commission (T-530/18, EU:T:2019:269), under appeal

Judgment of 26 June 2019, NRW. Bank v SRB (T-466/16, not published, EU:T:2019:445), under appeal

Cases before the General Court

Documents lodged by e-Curia – Article 56a of the RP GC

Order of 12 July 2019, Louis Vuitton Malletier v EUIPO – Wisniewski (Representation of a chequerboard pattern) (T-105/19, not published, EU:T:2019:549)

Order of 16 September 2019, Brand IP Licensing v EUIPO – Facebook (lovebook) (T-728/18, not published, EU:T:2019:664)

Appeals

Determination as to whether appeals should be allowed to proceed (Article 170b of the RP CJ)

Order of 10 July 2019, Meblo Trade v EUIPO (C-359/19 P, not published, EU:C:2019:591)

Order of 15 July 2019, Herrero Torres v EUIPO (C-369/19 P, not published, EU:C:2019:620)

Order of 10 September 2019, Wirecard Technologies v EUIPO (C-375/19 P, not published, EU:C:2019:714)

Order of 16 September 2019, Primed Halberstadt Medizintechnik v EUIPO (C-421/19 P, not published, EU:C:2019:745)

Order of 16 September 2019, Kiku v CPVO (C-444/19 P, not published, EU:C:2019:746)

Order of 24 September 2019, Hesse v EUIPO (C-426/19 P, not published, EU:C:2019:778)

Order of 30 September 2019, All Star v EUIPO (C-461/19 P, not published, EU:C:2019:797)

Order of 1 October 2019, Stada Arzneimittel v EUIPO (C-460/19 P, not published, EU:C:2019:803)

Thank you for your
attention



The preliminary reference procedure – Practical advice for lawyers

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Daniel Sarmiento
Uría Menéndez / Universidad Complutense de Madrid
Trier, 9 October 2019

Contenido

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2. The questions referred
3. Procedures involved
4. The written procedure
5. The oral phase
6. The judgment of the Court
7. Conclusions

1 Requesting a reference

1 Requesting a reference

1. A link with EU Law
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 1. The main argument or simply one more
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 3. Challenging a Parliamentary Act

2 The questions referred

2 The questions referred

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3 Procedures involved

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4 The written procedure

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5 The oral phase

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6 The judgment of the Court

6 The judgment of the Court

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3. Temporal scope
4. Limitation of effects
5. Res iudicata?

7 Conclusion

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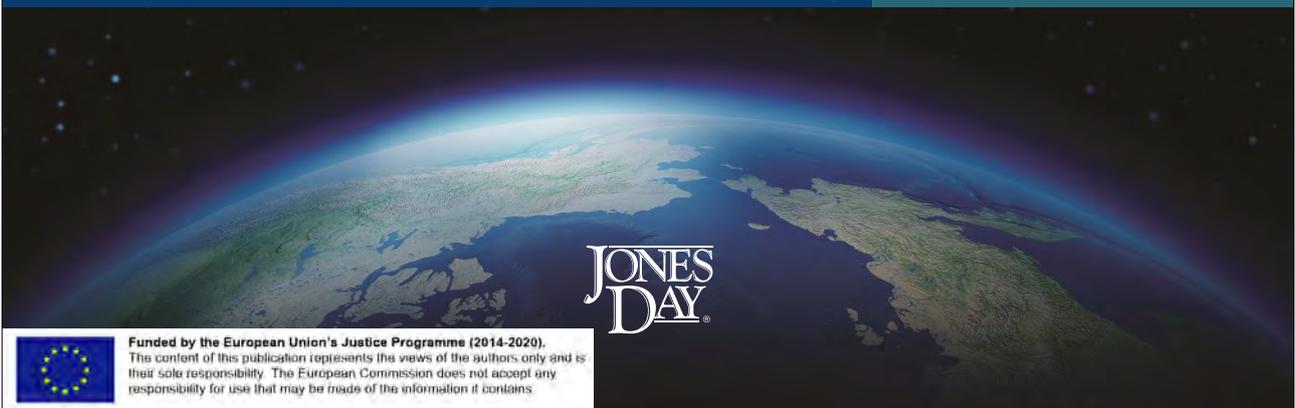
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DIRECT ACTIONS BEFORE THE GENERAL COURT

Eileen Lagathu and Claire Lavin
ERA seminar – Litigating European Union law - 9 October 2019



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1. Introduction

2. Focus on applications for interim measures before the General Court

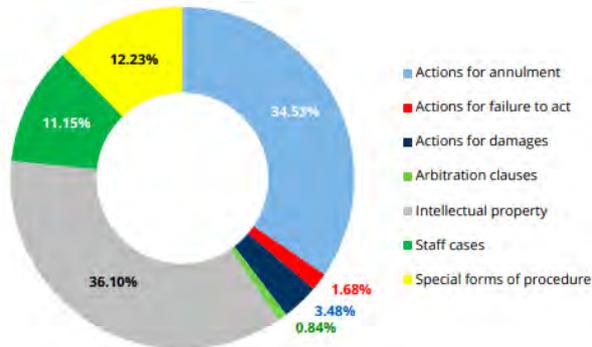
3. Focus on actions for annulment before the General Court

4. Practical aspects of the procedure

INTRODUCTION – DIRECT ACTIONS (1/3)

- Article 1(2)(i) of the Rules of Procedure of the General Court (hereafter, “**RP**”):
“direct actions’ means actions brought on the basis of Articles 263 TFEU, 265 TFEU, 268 TFEU, 270 TFEU and 272 TFEU”.
 - Article 263 TFEU → **Action for annulment**
 - Article 265 TFEU → **Action for failure to act**
 - Article 268 TFEU → **Action for damages**
 - Article 270 TFEU → **Staff cases**
 - Article 272 TFEU → **Arbitration clauses**
- Possibility of applying for urgent procedures under certain circumstances. Focus on applications for **interim measures** (Articles 278 and 279 TFEU).

INTRODUCTION – DIRECT ACTIONS (2/3)



	2014	2015	2016	2017	2018
Actions for annulment	423	332	297	371	288
Actions for failure to act	12	5	7	8	14
Actions for damages	39	30	19	23	29
Arbitration clauses	14	15	10	21	7
Intellectual property	295	302	336	298	301
Staff cases			163	86	93
Appeals	36	36	39		
Special forms of procedure	93	111	103	110	102
Total	912	831	974	917	834

Source: General Court statistics in the CJEU 2018 annual report (p. 238), available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-04/ra_2018_en.pdf

- Setting aside staff cases and IP litigation, **actions for annulment** represent approximately 65% of the cases brought before the General Court.
- Requests for **interim measures** form the bulk of the “special forms of procedure”.
- We will focus on both of these today so as to cover 65% to 89% of the cases other than staff and IP.

5



INTRODUCTION – DIRECT ACTIONS (3/3)

Action for damages – 268 TFEU

- Non-contractual liability of the EU for damage caused by its institutions or civil servants in the performance of their duties
- Need to establish (i) a violation of EU law, (ii) the existence of a damage, (iii) a causal link
- **Time limit:** 5 years from the event giving rise to the damage + 10 days

Action for failure to act – 265 TFEU

- Seeking the liability of an EU institution for its inaction
- Standing: Member states and “other institutions” or a natural/legal person who would have been addressees of the act (the latter cannot be a mere recommendation/opinion)
- Request for action within 2 months of said request
- **Time limit:** 2 months + 10 days from the expiry of the above 2 month deadline (i.e., 4 months + 10 days from the request for action)

Arbitration clauses – 272 TFEU

- Dispute over an arbitration clause included in a contract concluded by or on behalf of the European Union.
- The arbitration clause confers exclusive jurisdiction on the EU Court of Justice to rule on the contractual dispute.

Staff cases – 270 TFEU

- Seeking the annulment of an EU act and/or damages
- Disputes between the EU institutions/bodies and its civil servants/contractual staff
- Mandatory prior administrative proceedings
- 3 months + 10 days to lodge a complaint (as part of the prior administrative proceedings)
- **Time limit:** 3 months + 10 days to lodge an action for annulment against the decision adopted in response to the complaint

6



2. FOCUS ON APPLICATIONS FOR INTERIM MEASURES BEFORE THE GENERAL COURT

FOCUS ON APPLICATIONS FOR INTERIM MEASURES BEFORE THE GENERAL COURT – PURPOSE AND CONDITIONS

- It is not a standalone procedure. It is available in relation to all direct actions
- Principle: legal actions before EU courts do not have a suspensory effect
- Exception: suspension or other interim measures (e.g., periodic penalty) may be granted
 - The application to suspend the operation of a measure can only be filed by the applicant who challenged that measure in the main proceedings.
 - The application for any other interim measure can be filed by a main party to the main proceedings.
- Three cumulative conditions (strictly construed by EU courts):
 - **Urgency**: preventing the occurrence of a serious and irreparable harm to the applicant.
 - **Fumus boni juris**: the pleas put forward and contesting the legality of the act in the main proceedings (and in support of the application for interim measures) must not be *prima facie* unfounded.
 - **Balance of interests**: on balance, the applicant's interest in having the interim measures granted prevail over those of the defendant or third parties.

FOCUS ON APPLICATIONS FOR INTERIM MEASURES BEFORE THE GENERAL COURT – PROCEDURE

- An application for interim measures may be filed simultaneously or after the application in the main proceedings.
- The application for interim measures must be :
 - submitted separately from the application in the main proceedings; and
 - sufficient in itself for the judge (generally the President of the General Court) to hear the case without having to examine the application in the main proceedings.
- The defendant is given a short time to submit observations.
- A hearing does not necessarily take place (if it does, the hearing will usually be informal).
- The judge decides on the application by way of reasoned order. Unless the order specifies otherwise, the interim measures lapse upon delivery of the judgment in the main proceedings.

ADMISSIBILITY ISSUES – OVERVIEW

- An action for annulment is admissible if the following three **cumulative** conditions are met :

1. The act is reviewable

2. The applicant has an interest to act (*locus standi*) and to see the act annulled

3. The application is submitted within the prescribed time limits

ADMISSIBILITY ISSUES – THE ACT MUST BE REVIEWABLE (1/3)

- An EU act may be subject to judicial review by the General Court if it :
 - i. is adopted by an EU institution, and
 - ii. is intended to produce binding legal effects vis-à-vis third parties.
- Preparatory, confirmative and purely internal acts are not challengeable.
- **Binding act** : broad acceptance since the *AETR* case: “*all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects*” (*AETR*, Case 22/70, para 42).

ADMISSIBILITY ISSUES – THE ACT MUST BE REVIEWABLE (2/3)

- **Definitive act** : see *IBM/Commission*, Case 60/81:
 - In **principle**, “*an act is open to review only if it is a measure definitively laying down the position of the [institution] on the conclusion of that procedure*” (para 10)
 - The review of a preparatory act “*might make it necessary for the Court to arrive at a decision on questions on which the [EU institution] has not yet had an opportunity to state its position and would as a result **anticipate the arguments on the substance of the case***” (para 20).
 - “*whilst measures of a purely preparatory character may not themselves be the subject of an application [for annulment], any legal defects therein may be relied upon in an action directed against the **definitive act for which they represent a preparatory step***” (para 12)
 - **Exception**: “*acts or decisions adopted in the course of the preparatory proceedings not only [bear] all the legal characteristics referred to above but in addition [are] themselves **the culmination of a special procedure** distinct from that intended to permit the [institution] to take a decision on the substance of the case*” are reviewable (para 11).

ADMISSIBILITY ISSUES – THE ACT MUST BE REVIEWABLE (3/3)

- Examples of **reviewable acts** include:
 - a Commission decision finding the existence of an infringement and fining a company;
 - compulsory requests for information sent by the Commission to which addressees have to reply as part of competition law administrative proceedings (Article 18(3) of Regulation 1/2003 – as an example, see *Qualcomm*, Case T-371/17).
- Examples of **non-reviewable acts** include:
 - initiation of proceedings and a statement of objections in competition law proceedings (*IBM/Commission*, Case 60/81, para 21);
 - non-compulsory requests for information sent during competition law administrative proceedings; and
 - a refusal by the Commission to accede to a party's request under investigation to disclose documents in the Commission's file (*Cement*, Cases T-10-92 to T-12/92 and T-15/92, para 42).

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ADMISSIBILITY ISSUES – STANDING AND INTEREST TO SEE THE ACT ANNULLED (1/2)

- Proving sufficient standing (*locus standi*) depends on the type of applicant.
 - **Privileged applicants** have an interest to act without having to prove it. These applicants include EU institutions and Member States (Article 263(2) TFEU)
 - **Semi-privileged applicants** (Court of Auditors, ECB and the Committee of Regions) have an interest to act insofar as the action seeks to safeguard their prerogatives (Article 263(3) TFEU)
 - **Non-privileged applicants** (natural or legal persons) may seek the annulment of (Article 263(4) TFEU):
 - an act addressed to them;
 - an act which is of **direct** and **individual** concern to them; or
 - a regulatory act which is of **direct** concern to them and does not entail implementing measures.
- In addition, the applicant's interest to see the act annulled must exist until the date of the judgment.

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ADMISSIBILITY ISSUES – STANDING AND INTEREST TO SEE THE ACT ANNULLED (2/2)

- Examples of **individuals** who are **directly and individually concerned** by EU measures:
 - When a merger is authorized by the European Commission, the parties' competitors have standing to seek the annulment of the merger clearance (*Cisco Systems*, Case T-79/12)
 - Final decision of incompatibility of a State aid measure directly and individually affects the beneficiary of the aid (*British Aerospace*, Case C-294/90).
- Example of individuals that are **directly concerned** by the annulment of **regulatory acts** which do not require implementing measures.
 - A decision of the EU Chemical Agency which identifies a substance as very high concern is a regulatory act which does not require implementing measures as it only gives rise to information obligations for legal persons involved in the manufacturing of such substance (*Cindu Chemicals*, Case T-95/10, paragraphs 63-68, 71, 73).
 - **Note:** “implementing measures” are not necessarily those which implement directives at national level. An example of “implementing measures” includes for instance national authorities’ decisions granting or refusing import certificates and applying levies set out in the relevant EU act (*T&L Sugars and Sidul Açucares*, Case C-456/13 P, paragraphs 40-42).

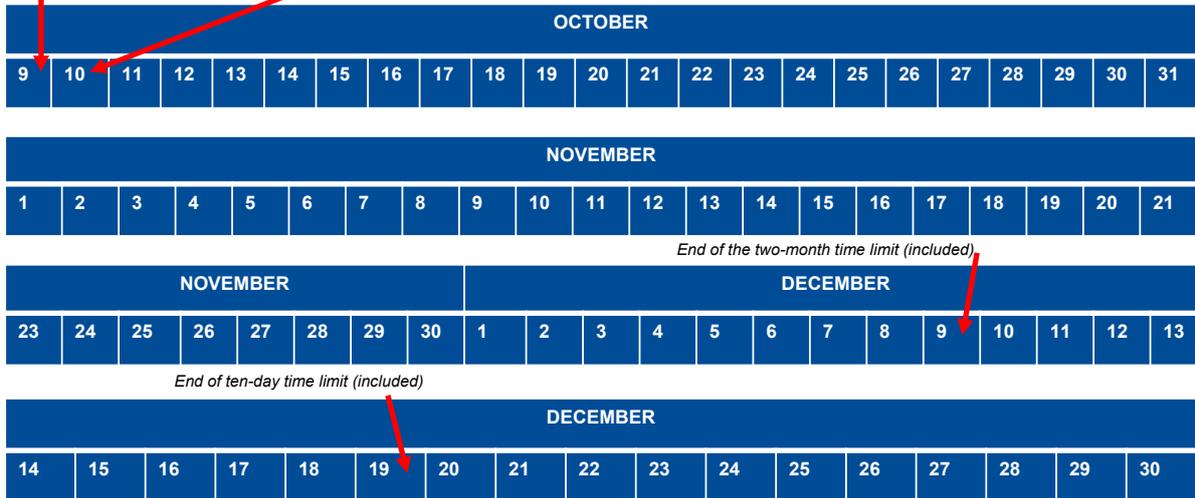
ADMISSIBILITY ISSUES – COMPLIANCE WITH THE PRESCRIBED LEGAL TIME LIMITS (1/2)

- Two-month time limit: Mandatory time limit which the General Court can raise of its own motion. Article 263(6) TFEU provides that “[t]he proceedings provided for in this Article shall be instituted within **two months** of the **publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be**”.
- 10-day extension on account of distance: Article 60 of the RP provides that “[t]he procedural time limits shall be extended on account of distance by a single period of 10 days.”
- 14-day extension for measures published in the Official Journal: Article 59 of the RP provides that “where the time limit [...] runs from the publication of [the] measure in the [OJEU], that time limit shall be calculated [...] from the end of the fourteenth day after such publication”.
- Calculation of time limits: Article 58 of the RP provides that time limits
 - include Saturdays, Sundays and official holidays; and
 - start at the moment at which an event occurs, bearing in mind that the day on which the event took place is not taken into account.

ADMISSIBILITY ISSUES – COMPLIANCE WITH THE PRESCRIBED LEGAL TIME LIMITS (2/2)

Notification of a decision

Time limit starts running



Note: 19 December 2019 is a Thursday and not an official holiday



3.2 OTHER CONDITIONS



OTHER CONDITIONS – GROUNDS FOR ANNULMENT

- “Public policy” pleas – which can be raised by the judge of its own motion – are usually differentiated from other pleas.

Public Policy pleas

- Lack of competence
- Infringement of an essential procedural requirement

Substantive pleas

- Infringement of the Treaties or any rule of law relating to their application
- Misuse of powers

- The review is based on the facts and law as they stand at the time of the contested measure.

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4. PRACTICAL ASPECTS OF THE PROCEDURE

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GENERAL INFORMATION (1/3)

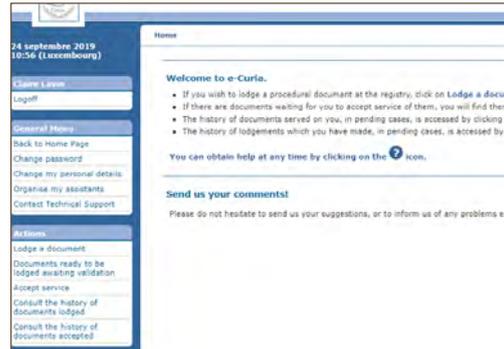
- **Main procedural rules:** Statutes of the Court of Justice + Rules of Procedure of the General Court
- **Where to find relevant documents concerning the procedure before the General Court ?**
 - At the following webpage: https://curia.europa.eu/jcms/jcms/Jo2_7040/en/ (to access it: www.curia.europa.eu > General Court > Procedure)



<p>Registry</p> <p>Procedure</p> <p>Statistics of judicial activity</p> <p>From 20 to 2020</p>	<p>Procedure</p> <p>Texts governing procedure</p> <ul style="list-style-type: none"> - Excerpts of Treaties - Statute of the Court of Justice of the European Union (1-5-2019) - Rules of Procedure of the General Court (1-12-2018) - Rules of Procedure of 2 May 1991, as last modified on 19 June 2012 (1-7-2013) - Provisional rules for the implementation of the Rules of Procedure of the General Court (1-12-2018) - Decision (EU) 2016/2287 of the General Court of 15 September 2016 concerning the security rules applicable to information on material produced in accordance with Article 125(1) and (2) of the Rules of Procedure - Decision of the General Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia - Conditions of Use of e-Curia (1-12-2018) <p>Notices in the Official Journal of the European Union</p> <ul style="list-style-type: none"> - Election of the Presidents of the General Court (O) 2016, C 392, p. 2) - Election of the Vice-President of the General Court (O) 2016, C 392, p. 2) - Assignments of Judges to Chambers (O) 2019, C 139, p. 2) - Composition of the Grand Chamber (O) 2016, C 392, p. 2)
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GENERAL INFORMATION (2/3)

- **Parties must be represented by an EEA-qualified lawyer** (Article 19 of the Statute of the Court of Justice). The lawyer must lodge a power of attorney + a certificate proving that he/she is authorized to practice in the EEA.
- **How to lodge an action and other submissions?**
 - Since 2018, parties **must** lodge their submissions electronically through the **e-Curia system**.
 - Lawyers must first set up an account to be able to login
 - The platform is available at www.curia.europa.eu/e-Curia.
 - When the Registry serves a procedural document on the parties, their representative receives an email notifying him/her that the document is available. Service is deemed to have been accepted 7 days after the notification email is sent.
- **Role of the General Court's Registrar** : the Registrar is in charge of acceptance, transmission and custody of all procedural documents and for effecting service (Article 35 of the RP)



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GENERAL INFORMATION (3/3)

- **Language of a case:**
 - Principle: the language of the case is chosen by the applicant
 - Main exception : when the defendant is a Member State or a natural/legal person having the nationality of a Member State, the language of the case is the official language of that State
- At any stage of the procedure, the General Court may take measures of **organisation of procedure** or of **inquiry** (Article 88 of the RP)

Measures of organisation of the procedure (Article 89 RP)

- Putting questions to the parties
- Inviting the parties to make written or oral submissions on certain aspects of the proceedings
- Asking the parties or third parties for information which the General Court considers necessary for the proceedings
- Asking the parties to produce any material relating to the case
- Summoning the parties to meetings

Measures of inquiry (Article 91 RP)

- Personal appearance of the parties
- Request to a party for information or the production of any material to the case
- Oral testimony
- The commissioning of an expert's report
- An inspection of the place or of a thing

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PRACTICAL ASPECTS OF THE WRITTEN PROCEDURE – MAIN STEPS

1. **Electronic submission of the application initiating the action for annulment** (see Article 76 RP as regards the contents of the application)
 2. **Submission of the defence** within two months of service on the defendant of the application lodged by the applicant (see Article 81 of the RP as regards the contents of the application)
 3. Potentially **reply** submitted by the applicant and **rejoinder** submitted by the defendant within the prescribed time limits (Article 83 of the RP)
- Third parties may submit applications to **intervene** in the procedure (Article 142-145 RP). Main steps of an intervention include:
 1. Submission of a request for intervention within six weeks following the publication of the summary of the application for annulment in the Official Journal of the EU
 2. Observations of the main parties
 3. Order of the President of the General Court granting or rejecting the application to intervene.

PRACTICAL ASPECTS OF THE WRITTEN PROCEDURE – LIMITATIONS OF NUMBER OF PAGES

- Article 75 of the RP / Para 105 of the Practice Rules of the General Court
 - Application for an action for annulment → 50 pages
 - Defence → 50 pages
 - Reply → 25 pages
 - Rejoinder → 25 pages
 - Statement in intervention → 20 pages
 - Observations on the statement in intervention → 15 pages
- Para 106 of the Practice Rules “[a]uthorisation to exceed those maximum lengths will be given only in cases involving particularly complex legal or factual issues”

PRACTICAL ASPECTS OF THE WRITTEN PROCEDURE – SUBMISSION OF EVIDENCE AND PLEAS

- Submission of **evidence** :
 - Principle: evidence submitted in the “*first exchange of pleadings*” (Article 85(1) of the RP)
 - Exception: evidence submitted in the reply or rejoinder or before the closure of the oral procedure if the delay in submitting the evidence is justified (Articles 85(2) and 85(3) of the RP) (e.g., if new facts have occurred or if the party was not in possession of the evidence earlier).
- Submission of **new pleas** during the procedure:
 - Article 84(1) of the RP: “[n]o *new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure*”
 - Note: difference between **new** pleas and **amplified** pleas (BASF, Case C-96/76, para 18 and Mannesmannröhren-Werke, Case T-44/00, paras 128 and 194).
 - An amplified plea is one that (directly or indirectly) develops a plea which has been previously submitted. Amplified pleas may be introduced in the course of the proceedings as opposed to new pleas.

PRACTICAL ASPECTS OF THE ORAL PROCEDURE – HEARING

- A hearing may be arranged on the General Court's own motion or at the request of a main party. Alternatively, the General Court may consider it is in a position to rule without a hearing (Article 106 of the RP)
- Parties are often invited by the General Court to focus their pleadings on specific issues.
- **Preparation of the hearing**
 - 3 weeks before the hearing, a **summary report for the hearing** can be provided to parties (para 147 of the Practice Rules). However, the communication of such is no longer systematic.
 - Draft pleading notes + rehearse pleading as the latter is subject to a time limitation (generally 15 minutes for the main parties – see para 162 of the Practice Rules)
 - Anticipate questions that judges could ask
- **The hearing** (Para 162 of the Practice Rules)
 1. Parties' pleadings
 2. Questions asked by the General Court
 3. Possible final replies

PRACTICAL ASPECTS OF THE ORAL PROCEDURE – CLOSURE OF THE PROCEDURE, JUDGMENT AND PAYMENT OF COSTS

- **Closure of the oral procedure**

- The oral procedure is closed at the end of the hearing (Article 111 of the RP)

- **Judgment**

- The judge-rapporteur drafts a judgment which is then reviewed by the judges of the chamber during deliberations
- Once the final version of the judgment is approved by the chamber, the judgment is proof-read and translated
- The judgment is delivered in open court (Article 118 of the RP)

- **Payment of costs**

- In principle, the unsuccessful party bears the costs (Article 134 of the RP).³³

QUESTIONS?





ERA WORKSHOP OF 9 OCTOBER 2019 – DIRECT ACTIONS

EILEEN LAGATHU / CLAIRE LAVIN

CASE STUDY 1 – COMPETITION LAW

By Decision of 30 May 2008 (the ‘**2008 Decision**’), relating to proceedings pursuant to Article 101 TFEU, the Commission imposed a fine of EUR 200 million on an oil company, ABC SA (‘**ABC**’), for participating in a cartel (the ‘**Original fine**’).

Alpha SA (‘**Alpha**’), which was the parent company of ABC during the period of the abovementioned infringement, was found liable jointly and severally for the payment of the Original fine to the extent of EUR 180 million.

On 21 July 2008, ABC paid the Original fine in full and brought an action for the annulment of the 2008 Decision.

On 28 July 2008, Alpha simultaneously and independently also brought an action for the annulment of the 2008 Decision and, alternatively, for the reduction of the Original fine imposed jointly and severally on ABC and Alpha (‘**Alpha’s action for annulment**’).

Alpha’s action for annulment was based on six pleas. Pleas two to six concerned the fine. In the first plea, however, Alpha challenged the assessment by the Commission in the 2008 Decision, of the evidence Alpha had adduced to rebut the presumption of its decisive influence over its wholly-owned subsidiary ABC. It alleged that the Commission’s reasoning was incorrect in rejecting the information presented in order to show that it had not exercised a decisive influence over the commercial conduct of its subsidiary.

On 12 October 2008, the Commission lodged its defence.

By letter dated 22 October 2008, Alpha asked the Court to be authorised to lodge a reply.

By decision of 11 November 2008, the request was granted.

On 12 January 2009, Alpha lodged the reply.

With respect to the first plea, in essence, Alpha criticized the lack of reasoning of the 2008 Decision with regard to the rejection of the information presented by Alpha in order to rebut the presumption of a decisive influence.

Q1 – What do you think of this first plea? What do you think the Court will say?

On 31 March 2009, the Commission lodged its rejoinder.

On 23 July 2010, the Commission wrote a letter to ABC asking it to fill out a “common payment declaration” confirming that its payment of 21 July 2008 had been made on behalf of both Alpha and itself. The Commission added that “*without such confirmation, if the 2008 Decision is annulled in relation to ABC, the Commission will repay the sum of EUR 200 million*”

with interest [at a standard rate]” and that “if all or part of the fine is upheld in relation to Alpha, it will demand payment of the sum remaining due from Alpha with default interest at the rate of 6.09%”.

By letter of 22 September 2010, ABC informed the Commission that it had paid the fine “*in its capacity as joint and several debtor*”, without filling out the “common payment declaration”.

On 24 November 2010, the Commission wrote to Alpha to inform it of ABC’s letter of 22 September 2010 and of the fact that ABC had refused to complete the common payment declaration.

Alpha’s action against the 2008 Decision (the ‘**Alpha judgment**’) was dismissed by judgment of 7 June 2013.

The action brought by ABC against the 2008 Decision was partly upheld by a separate judgment of 7 June 2013 (the ‘**ABC judgment**’). The Court found that the fine should be reduced for reasons specific to ABC. No appeal was lodged against the ABC judgment.

By letter of 24 June 2013, the Commission informed Alpha that, in compliance with the ABC judgment, it would repay ABC the amount of the reduction in the fine decided by the Court.

As the Alpha judgment upheld the fine imposed on Alpha, the Commission also asked Alpha for the payment of the amount outstanding (corresponding to the reduction of ABC’s fine), together with default interest at the rate of 6.09% from 23 July 2008.

Pursuant to the judgment of 7 June 2013, the Commission repaid ABC, with value date of 5 July 2013, a total of EUR 120 million (principal amount paid in excess plus interest).

By letter of 8 July 2013, the Commission informed Alpha that the amount due by the latter was EUR 140 million including default interest of EUR 30 million.

On 18 July 2013, Alpha paid the Commission the EUR 140 million claimed in the letter of 8 July 2013.

On 6 August 2013, Alpha lodged an appeal against the Alpha judgment, seeking primarily its annulment, and, alternatively, a reduction of the fine. In the final alternative, it sought an exemption from the payment of default interest that may have run as of the 2008 Decision.

By application lodged on 1 September 2013, Alpha brought an action for annulment against the letters of 24 June and 8 July 2013 (the ‘**Contested letters**’) before the General Court, seeking, in the alternative, the reduction of the sums demanded in those letters, and in the further alternative, the annulment of the default interest.

The appeal against the Alpha judgment was dismissed by order of 7 February 2014.

Specifically, on the alternative claim seeking an exemption from the payment of default interest, the Court of Justice found as follows:

“89 This claim must be dismissed as manifestly inadmissible in that it is directed, not against the Alpha judgment, but against the Commission’s letter of 8 July 2013 which is, furthermore, the subject of an action of Alpha before the General Court.”

Q2 – What do you think of the action for annulment against the Contested letters? If you were the Commission, what objection would you raise?

At the time, an unrelated competition law case was pending before the Court of Justice, concerning a situation of joint and several liability of companies that were no longer part of the same group at the moment of the decision imposing the fine.

Q3 – As Alpha’s advisor, you are diligently following all the developments in relation to the legal issues at stake in your client’s case and you are of course aware of this case pending before the Court of Justice. What procedural step would you expect next in your client’s case?

Supporting materials

Judgment of the Court of Justice of 10 September 2009, Case C-97/08 P, *Akzo Nobel NV and Others v Commission*, ECLI:EU:C:2009:536

58 It is clear from settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company [...], having regard in particular to the economic, organisational and legal links between those two legal entities [...].

59 That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking for the purposes of the case-law mentioned in paragraphs 54 and 55 of this judgment. Thus, the fact that a parent company and its subsidiary constitute a single undertaking within the meaning of Article [101 TFEU] enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement.

60 In the specific case where a parent company has a 100% shareholding in a subsidiary which has infringed the Community competition rules, first, the parent company can exercise a decisive influence over the conduct of the subsidiary [...] and, second, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary [...].

61 In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent exercises a decisive influence over the commercial policy of the subsidiary. The Commission will be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market [...].

CASE STUDY 2 – ACCESS TO DOCUMENTS

MSK is a pharmaceutical company whose headquarters are located in Japan. It has been developing a drug called “Solestine” which treats serious skin inflammations such as dermatitis (also known as eczema). MSK is at phase 3 of the development of the drug and would like to sell it in the European Union. In accordance with EU rules, it requested in April 2018 a market authorization from the European Medicines Agency (the ‘EMA’). The EMA, whose role is to protect and promote public health through the evaluation and supervision of medicines for human use, delivers an opinion on the compatibility of the drug with public health standards. This opinion is then submitted to the European Commission who relies on it to grant the market authorization.

As part of its application for a market authorization, MSK was required to (a) explain the product composition and its therapeutic use, and to (b) submit manufacturing processes and results of clinical trials (*i.e.*, actual tests and data assessing the use of the product in humans). These documents included commercially sensitive information.

In September 2018, the EMA issued a positive opinion as regards the marketing of the drug Solestine and in December 2018, the European Commission issued the marketing authorization for the European Union. MSK therefore started selling the drug in April 2019. The selling of such drug was controversial as its use could give rise to serious side effects such as nausea, fever or even jaundice.

On 15 March 2019, pursuant to Regulation No 1049/2001 which enables any legal person registered in the European Union to have access to documents retained by EU institutions, a German public health association asked the EMA to have access to all of the documents provided by MSK in April 2018 as part of its request for a marketing authorization for the drug Solestine. In accordance with Article 4(4) of Regulation No 1049/2001, in a letter dated 29 March 2019, the EMA consulted MSK on this access to documents. The EMA declared that it was considering giving partial access to these documents, notably to results of clinical trials. However, on account of Article 4(2) second indent, the EMA did not intend to give access to documents regarding the manufacturing process owing to their commercially sensitive nature whose disclosure would harm MSK’s commercial interests.

As a renowned EU lawyer, MSK reached out to you to challenge the access contemplated by the EMA, in particular the disclosure of results of clinical trials. In a letter dating 8 April 2019, MSK replied to the EMA’s consultation and challenged the disclosure of the results of clinical trials.

The EMA rejected MSK’s arguments and on 10 April 2019, issued a decision granting access in the conditions it had initially considered (including results of clinical trials but excluding manufacturing processes). This decision did not lead to the effective communication of said documents because the German public health association insisted to have access to all documents (including documents regarding manufacturing processes) and therefore asked the EMA to adopt a confirmatory decision on the basis of Article 7(2) of Regulation No 1049/2001. Therefore, the EMA reached out to MSK on 14 June 2019 to seek its position a second time. In a letter dated 20 June 2019, MSK maintained the position expressed in its letter of 8 April 2019.

On 26 August 2019, pursuant to Article 8(1) of Regulation 1049/2001, the EMA adopted a confirmative decision (the “**contested measure**”) granting the same partial access which it had granted in its first decision of 10 April 2019. The contested measure referred to the possibility for MSK to challenge it in accordance with Article 263 TFEU and to request any interim measure to prevent the disclosure of the documents until the General Court rules on the main proceedings.

As part of discussions with MSK, you suggest to submit an application for annulment of the contested measure and to request in parallel the suspension of the execution of the contested measure. During client meetings, MSK specifies the following items.

- a) MSK has a specific decision process regarding litigation. Any decision to litigate a case must be first approved by the board of directors. Since the next board meeting will take place on 4 November 2019, an application for annulment could not be submitted to the General Court before that date.
- b) MSK wants to limit legal fees to the very minimum. Although it understands that the application for interim measures needs to be submitted separately from the application in the main proceedings, it wishes the application for interim measures to entail the least drafting possible and therefore asks that the interim measure application be as short as possible with numerous references to the main application.
- c) Regarding the serious and irreparable harm to put forward in the application for interim measures, MSK asserts that the company would suffer serious and irreparable damage if such commercially sensitive information was released. Notably, its competitors could use this information at no cost. In addition, its employees would likely suffer harm as their names were not made confidential in the documents the EMA will give access to and these employees could face retaliation measures if the public knew which types of tests they conducted on animals.

However, MSK has limited evidence to show that any damage suffered would be serious.

- d) As part of the interim proceedings, MSK wishes to attend a hearing as the latter would be crucial to ensure that both parties are heard.

Q1 – What practical legal advice do you provide to MSK for the preparation of both applications? Please include two substantive arguments that could justify the annulment of the contested measure.

On 5 November 2019, the applications for an action for annulment and for interim measures are submitted. The EMA is notified of the applications later during the week.

MSK becomes aware that the EMA adopted a new decision on 12 November 2019 realizing that results of clinical tests were indeed commercially sensitive. In this decision, the EMA therefore refuses to give access to documents (including results of clinical tests) which MSK considered to be confidential.

Q2 – What legal advice can you provide to MSK as regards the conduct of both pending proceedings before the General Court?

Supporting materials

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

Article 2

Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.
2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
3. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.
4. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.

[...].

Article 4

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:
 - a) [...];
 - b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.
2. The institutions shall refuse access to a document where disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property,
 - [...],

unless there is an overriding public interest in disclosure.

[...].

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

[...]

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

[...]