Council of the
European Union

Brussels, 23 December 2020
(OR. en)

13902/20

JUR 619
COUR 48
INST 321

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Report of the Court of Justice on the functioning of the General Court

Delegations will find attached a letter from Mr. Koen Lenaerts, President of the Court of Justice, to Mr. Michael Roth, President of the General Affairs, received by the Council on 21 December 2020, transmitting the report on the functioning of the General Court provided by Article 3(1) of 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, as well as the report itself and the observations of the General Court on the draft report.

The two written contributions of external consultants, which were submitted by the Court of Justice in the languages in which they were drafted (respectively German and Spanish) and in French, will be circulated by separate documents (13902/20 ADD 1 and 13902/20 ADD 2) in the respective language versions.

COURT OF JUSTICE OF
THE EUROPEAN UNION

The President

Luxembourg, 21 December 2020

Mr Michael Roth
President of the General Affairs Council
Council of the European Union
175, rue de la Loi
B-1048 Bruxelles

Dear President,

As provided in Article 3(1) of 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, the Court of Justice has been invited to draw up, by 26 December 2020, a report for the European Parliament, the Council and the Commission on the functioning of the General Court, using external consultants.

The report is enclosed herewith in all the official languages of the European Union.

Two written contributions of the aforementioned external consultants (in the language in which the contributions were drafted and in French) and observations of the General Court on the draft report (in all the official languages) are enclosed with the report.

Yours faithfully,

Koen LENAERTS

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INTRODUCTION

On 16 December 2015, the EU legislature adopted a reform of the European Union's judicial structure. This involved doubling, in three successive stages, the number of judges at the General Court and transferring to the General Court, on 1 September 2016, first instance jurisdiction in disputes between the European Union and its staff, hitherto devolved to the Civil Service Tribunal. As stated in recital 5 of Regulation 2015/2422, [1] '[m]aking use of the possibility provided for by the Treaties of increasing the number of Judges of the General Court would allow for a reduction within a short time of both the volume of pending cases and the excessive duration of proceedings before the General Court'.

In the context of monitoring the implementation of that reform, the Court of Justice was requested, pursuant to Article 3 of Regulation 2015/2422, to submit two reports to the European Parliament, the Council and the Commission.

The first of those reports, referred to in Article 3(2) of Regulation 2015/2422, was submitted on 14 December 2017 and related to possible changes in the attribution of jurisdiction in relation to questions referred for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. The Court of Justice concluded that, at that stage, it was not appropriate to transfer part of its jurisdiction over preliminary rulings to the General Court. That conclusion was based in particular on the finding that the requests for a preliminary ruling brought before the Court of Justice are handled promptly in a context where dialogue with the courts of the Member States has never been as intense.

That said, the examination carried out by the Court of Justice and the General Court has revealed that many appeals were brought in cases which had already been examined twice, firstly by an independent Board of Appeal and then by the General Court, and that many of those appeals were dismissed by the Court of Justice as manifestly unfounded or manifestly inadmissible. In the interests of the proper administration of justice, in order to enable the Court of Justice to concentrate on cases which require greater focus, Regulation 2019/629[2] thus introduced, for appeals relating to such cases, a procedure that enables the Court of Justice to allow an appeal, in whole or in part, only where it raises an issue that is important with regard to the unity, consistency or development of EU law (prior determination as to whether appeals should be allowed to proceed).

[1] 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, p.14).
[2] Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ 2019 L 111, p.1).

The second of the reports provided for in Regulation 2015/2422 is referred to in Article 3(1) thereof, which states:

By 26 December 2020, the Court of Justice shall draw up a report, using an external consultant, for the European Parliament, the Council and the Commission on the functioning of the General Court.

In particular, that report shall focus on the efficiency of the General Court, the necessity and effectiveness of the increase to 56 Judges, the use and effectiveness of resources and the further establishment of specialised chambers and/or other structural changes.

Where appropriate, the Court of Justice shall make legislative requests to amend its Statute accordingly.

This document has been produced in response to that provision. The contribution, as external advisers, of Mr K. Rennert, President of the Bundesverwaltungsgericht (Germany), and of Mr L.M. Díez-Picazo Giménez, President of the Third Chamber of the Tribunal Supremo (Spain), to the work prior to its adoption by the Court of Justice is particularly noteworthy,[3] as is that of the General Court. [4] The work also notably involved consulting regular users of the General Court (lawyers, staff of the institutions, bodies, offices and agencies of the EU, and representatives of the governments of Member States).

It reports on the implementation of the increase in the number of judges at the General Court and the accompanying measures adopted by this Court as part of the reform of the judicial architecture of the European Union, as at 30 September 2020. It also provides an evaluation of the results that can be observed on that same date[5] and recommends measures aimed at optimising the use of the resources available, from a perspective of continuous improvement of the quality and responsiveness of the European public justice system.

In view of the relatively short period for implementation of the reform (the first additional judges took up their duties in April 2016) and the fact that it was staggered (seven of the last additional judges took office in September 2019, the eighth and last judge in the third stage has still not been appointed, and neither has the twelfth and final judge of the first stage), this report is by nature limited as regards the definitiveness of the analysis of the outcome of the reform. This limitation is all the more pertinent in view of the three-yearly rotation that occurred at the General Court in September 2019 (with the departure of eight judges) and the impact of the public health crisis on the work of the General Court from March 2020 onwards. Although at no time have the two courts ceased their activities, the fact remains that it was impossible for the General Court to set any hearings between 16 March and 25 May 2020 and that, even after that date, numerous parties to disputes requested that hearings already set be postponed due to the difficulties encountered in travelling and the isolation measures imposed in some Member States. Given the nature of its disputes and its rules of procedure, the General Court does not give a ruling without first hearing the

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[3] The external advisers met with the representatives of the Court of Justice on 16 January 2020. On the basis of the conversations that took place on that occasion and of the analysis of the documentation package sent to them, each of the external advisers sent their contribution to the Court of Justice, expressing their thoughts during that preliminary stage of the process of drawing up the report. The preparatory documents submitted by Mr Rennert (dated 27 February 2020) and Mr Díez-Picazo Giménez (dated 15 March 2020) can be found in Annex 1 to this report. Following the communication of his draft report by the Court of Justice, Mr Rennert considered that, in the context of the COVID-19 pandemic, the document dated 27 February 2020 sufficiently reflected his position. After receiving the replies from the Court of Justice to the questions raised in his document, Mr Díez-Picazo Giménez shared his observations on the draft report at a meeting held on 2 September 2020.

[4] The General Court was called upon to provide information and data for the preparatory work and was given an opportunity to submit comments on the draft report on 20 October 2020. These comments can be found in Annex 2 to this report.

[5] The date chosen enables us to have statistics covering three full quarters of work for 2020 and also to take into account time constraints in terms of the adoption and translation of this report.

parties, except where the main parties have not requested a hearing or where the case lends itself to being disposed of by way of an order. These circumstances therefore had a definite impact on the number and nature of the cases completed by the General Court in 2020.

IMPLEMENTATION OF THE INCREASE IN THE NUMBER OF JUDGES AT THE GENERAL COURT

Genesis of the reform

As is apparent from the recitals of Regulation 2015/2422, the need to reform the judicial structure of the European Union comes from the steady increase seen in the number of cases brought before the General Court since its creation (itself a result of the increase in the number and diversity of legal acts adopted by the institutions, bodies, offices and agencies of the European Union) and in their volume and complexity.

This trend resulted in the length of proceedings being stretched out excessively, a fact that became apparent from several rulings[6] by the Court of Justice highlighting the General Court's infringement of the reasonable time principle as stemming from the right to a fair hearing, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. Some of those findings themselves gave rise to actions for damages. [7]

Measures of both an organisational[8] and a procedural[9] nature enabled the General Court to become more efficient prior to the adoption of the reform, although they have not proved sufficient to cope with the increase in workload while also complying with the quality requirements imposed on the European Union courts. Thus, the legislature considered that recourse to the possibility, provided for by the Treaties, of increasing the number of judges at the General Court would make it possible

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6 Judgment of 17 December 1998, *Baustahlgewebe* v *Commission* (C-185/95 P, EU:C:1998:608, paragraph 47); judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission* (C-385/07 P, EU:C:2009:456, paragraph 188); order of 26 March 2009, *Efkon* v *Parliament and Council* (C-146/08 P, not published, EU:C:2009:201, paragraph 53); judgment of 26 November 2013, *Gascogne Sack Deutschland* v *Commission* (C-40/12 P, EU:C:2013:768, paragraph 102); judgment of 26 November 2013, *Groupe Gascogne* v *Commission* (C-58/12 P, EU:C:2013:770, paragraph 96); judgment of 26 November 2013, *Kendrion* v *Commission*, C-50/12, EU:C:2013:771, paragraph 106; judgment of 30 April 2014, *FLSmidth* v *Commission* (C-238/12 P, EU:C:2014:284, paragraph 123); judgment of 12 June 2014, *Deltafina* v *Commission* (C-578/11 P, EU:C:2014:1742, paragraph 90); judgment of 19 June 2014, *FLS Plast* v *Commission* (C-243/12 P, EU:C:2014:2006, paragraph 142); judgment of 9 October 2014, *ICF* v *Commission* (C-467/13 P, not published, EU:C:2014:2274, paragraph 60); judgment of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission* (C-580/12 P, EU:C:2014:2363, paragraph 20); judgment of 21 January 2016, *Galp Energía España and Others* v *Commission* (C-603/13 P, EU:C:2016:38, paragraph 58); judgment of 9 June 2016, *CEPSA* v *Commission* (C-608/13 P, EU:C:2016:414, paragraph 67); judgment of 9 June 2016, *PROAS* v *Commission* (C-616/13 P, EU:C:2016:415, paragraph 84) and judgment of 9 June 2016, *Repsol Lubricantes y Especialidades and Others* v *Commission* (C-617/13 P, EU:C:2016:416, paragraph 101).

7 Cases T-479/14, *Kendrion* v *EU*, T-577/14 *Gascogne Sack Deutschland & Gascogne* v *EU*, T-725/14 *Aalberts Industries* v *EU*, T-40/15 *ASPLA & Armando Álvarez* v *EU* and T-673/15 *Guardian Europe* v *EU*.

8 In addition to optimising working methods, it should be noted in this respect that, from 2014 until the implementation of the first phase of the reform in 2016, nine additional legal secretaries were assigned to the chambers, amounting to one legal secretary per chamber.

9 In July 2015, the General Court adopted a new set of rules of procedure with the goal of improving efficiency in its procedures. See the CJEU press release of 19 June 2015: 'The efforts already undertaken over a number of years to improve the efficiency of the Court have continued at a procedural level with a view to strengthening the Court's capacity to deal with cases within a reasonable time and in accordance with the requirements of a fair trial, as required under the Charter of Fundamental Rights of the European Union' (https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-06/cp150073en.pdf).

to reduce, within a short period, both the volume of pending cases and the excessive length of proceedings before this Court.

Phasing in of the increase in the number of judges

Provisions of Regulation 2015/2422

In order to take into account the General Court's evolving caseload, the legislature made provisions for the number of judges to be doubled, which would be staggered over three phases.

In the first phase, in order to reduce the backlog of cases quickly, 12 additional judges were to take office when the Regulation entered into force on 24 December 2015. [10]

In the second phase, in September 2016, first instance jurisdiction over European Union civil service cases and the seven posts of the judges sitting at the European Union Civil Service Tribunal ('the Civil Service Tribunal') were to be transferred to the General Court, on the basis of the legislative request announced by the Court of Justice, that request being called upon to consider the arrangements for transferring the seven posts of judges sitting at the Civil Service Tribunal and the staff and resources of that court. [11]

In the third and last phase, the remaining nine judges were to take office in September 2019, without any additional legal secretary or other member of staff being recruited on that occasion. Internal re-organisation measures within the institution were to ensure that efficient use was made of existing human resources, which should be equally distributed between all the judges, without prejudice to the decisions taken by the General Court concerning its internal organisation. [12]

Thus, in accordance with Article 48 of the Statute of the Court of Justice of the European Union ('the Statute'), as amended by Article 1(2) of Regulation 2015/2422:

'The General Court shall consist of:

(a) 40 Judges as from 25 December 2015;

(b) 47 Judges as from 1 September 2016;

(c) two Judges per Member State as from 1 September 2019'.

Actual entry into service of additional judges

Owing to the constraints and uncertainties associated with the procedure for judicial appointments (possible prior selection procedure at national level, hearing and opinion of the panel provided for in Article 255 TFEU, appointment by common agreement by the governments of the Member States, taking an oath before the Court of Justice), the phases did not in fact follow the scheduled timetable.

Thus, of the 12 judges foreseen for the first phase:

- seven judges took office on 13 April 2016;
- three judges took office on 8 June 2016;
- one judge took office on 19 September 2016;

[10] Recital 8 of Regulation 2015/2422.
[11] Recital 9 of Regulation 2015/2422.
[12] Recital 10 of Regulation 2015/2422.

- one judge has still not been appointed to date.

As regards the seven judges foreseen for the second phase (coinciding with the dissolution of the Civil Service Tribunal and the transfer to the General Court of first instance jurisdiction over disputes between the European Union and its staff members): [13]

- five judges took office on 19 September 2016;
- one judge took office on 8 June 2017;
- one judge took office on 4 October 2017.

Lastly, as regards the nine judges who were to join in the third phase, the number of which was reduced to eight as a result of the United Kingdom's withdrawal from the European Union: [14]

- seven judges took office on 26 September 2019;
- one judge has still not been appointed to date.

Changes in the composition of members since 2016

Variability and incompleteness

Due to the combined effect of the three-yearly rotations, the additional judges taking office under the reform, the constraints associated with the appointment process, and the withdrawal of the United Kingdom:

- on 30 September 2020, there were 50 judges at the General Court, with four new appointments still expected;
- of those 50 judges, 19 took up their duties in 2016, two of them took up their duties in 2017 and 15 took up their duties in 2019, with the result that more than 70% of serving judges have been in office since April 2016 or more recently, and 30% of serving judges have been in office since September 2019.

This is a relevant factor in the analysis of the outcome of the reform, given that the stability of the composition of the court and the experience of serving judges are indicators of efficiency, [15] both quantitative and qualitative.

Gender balance

Pursuant to recital 11 of Regulation 2015/2422, '[i]t is of high importance to ensure gender balance within the General Court. In order to achieve that objective, partial replacements in that Court should be organised in such a way that the governments of Member States gradually begin to nominate two Judges for the same partial replacement with the aim therefore of choosing one

[13] Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p.137).

[14] See the eighth paragraph of the preamble to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, which refers to 'all consequences of the United Kingdom's withdrawal from the Union as regards the United Kingdom's participation in the institutions, bodies, offices and agencies of the Union, in particular the end, on the date of entry into force of this Agreement, of the mandates of all members of institutions, bodies and agencies of the Union nominated, appointed or elected in relation to the United Kingdom's membership of the Union'.

[15] This was emphasised by the President of the General Court in the letters that he sent to the then President of the Council of the European Union (in April 2015) and the Conference of Representatives of the Governments of the Member States (in March 2018), informing them of the imminent expiry of the term of office of judges at the General Court in the context of the partial replacement (documents accessible via the Council register).

woman and one man, provided that the conditions and procedures laid down by the Treaties are respected'. [16]

On 31 December 2015, of the 28 judges at the Court, 22 were men (79%) and 6 were women (21%).

On 30 September 2020, of the 50 judges at the Court, 35 were men (70%) and 15 were women (30%).

Since the entry into force of Regulation 2015/2422 on 24 December 2015, the governments of the Member States have agreed to 39 appointments of judges to the General Court: men accounted for 26 (67%) of these appointments and women for 13 (33%) of them.

Of these 39 appointments, 15 of them were made in 2019, when a judge appointed to the Court of Justice was replaced, the last partial replacement at the General Court took place and the third phase of the reform commenced in September: 8 of the appointments were for men (53%) and 7 appointments were for women (47%).

Although these figures, particularly the most recent ones, show a tendency towards greater gender parity in the appointments made, the fact remains that the current composition of the General Court still does not meet that objective. It must, however, be pointed out that neither the General Court nor the Court of Justice has any influence on the appointment of judges and advocates general, which falls within the purview of the governments of the Member States after consulting the panel provided for in Article 255 TFEU.

Changes in staff numbers at the General Court

First phase

The first phase gave rise to the creation, by the budgetary authority, of the posts needed to set up 12 new judges' offices, which included 3 legal secretaries (AD function group) and 2 assistants (AST function group), taking into account the reassignment to those new offices of the 9 additional legal secretary posts granted by the budgetary authority in 2012. To that end, 27 AD posts and 24 AST posts were created. At the same time, in order to enable the Registry of the General Court to cope with the increase in workload resulting from the change in the structure of the court, its staff was also increased, with 5 new AD posts and 12 new AST posts. [17]

Second phase

The second phase gave rise to the creation of the posts needed to set up 7 new judges' offices, taking into account the posts transferred to the General Court following the dissolution of the Civil Service Tribunal. Thus, 13 AD posts and 7 AST posts were created.

Third phase

In accordance with recital 10 of Regulation 2015/2422, '[in] order to ensure cost-effectiveness', the third phase 'should not entail the recruitment of additional legal secretaries or other support staff.

[16] The objective of ensuring a balance between men and women at the General Court was referred to in recital 5 of Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ 2019 L 111, p.1).

[17] As regards the institution's departments, it must nevertheless be pointed out that, despite the intensification of judicial activity, it was necessary to reduce staff numbers as part of a budgetary cost-cutting measure (-6.5% in 5 years in the period 2013-2017).

Internal re-organisation measures within the institution should make sure that efficient use is made of existing human resources, which should be equal for all Judges, without prejudice to the decisions taken by the General Court concerning its internal organisation'.

Consequently, the institution made no request for posts linked to the implementation of the third stage of the reform to be created.

In order to ensure that the composition of the judges' offices becomes progressively more equal while respecting particular individual situations, the General Court adopted transitional arrangements under which, until 31 December 2020:

- the offices of the judges whose term of office lasts until 2022 and those of the judges whose term of office was renewed until 2025 are composed of three legal secretaries and two assistants;
- the offices of the judges who took up their duties in September 2019 comprise two legal secretaries and two assistants (it was initially envisaged that the additional judges' offices would have two legal secretaries and one assistant, but redeployments of staff within the institution ultimately enabled those offices to have two legal secretaries and two assistants);
- a flexible mechanism was implemented with effect from 1 January 2020, consisting of making the legal secretaries working for offices where there were three legal secretaries available for offices with only two.

For the period from 1 January 2021 to September 2022, all judges' offices (with the exception of those of the President and the Vice-President) will be staffed equally thanks to the following arrangements:

- each office will comprise two legal secretaries and two assistants;
- three legal secretaries will be assigned to each of the 10 chambers and will provide their services to all the judges in the chamber, according to the needs identified. [18] In particular, these legal secretaries will enable the court to direct a greater number of resources to wherever the need for assistance with heavy caseloads and/or complex cases arises.

ACCOMPANYING MEASURES ADOPTED BY THE GENERAL COURT

The incorporation of new judges and their staff required the General Court to make some structural, organisational and procedural changes in order to enable the court to adapt to the new parameters created by its expansion and the subsequent transfer of jurisdiction following the dissolution of the Civil Service Tribunal.

The essential purpose of these measures was to contribute to efficiency at the court and consistency in the case-law.

In that context, it is important to emphasise certain specific features of the proceedings before the General Court. The General Court deals primarily with direct actions in often technical and/or commercial fields, which not only raise points of law but also involve complex factual situations. Its work thus involves the task of making findings of fact which, in certain cases, may prove to be particularly laborious, a point that was raised by Mr Díez-Picazo Giménez. The length of the parties' pleadings and the volume of the case files is proof of this.

[18] In that regard, the future internal organisation of the General Court takes note of the Court of Auditors' suggestion in its Special Report No 14/17 ('Performance review of case management at the Court of Justice of the European Union') concerning the '[i]mplementation of a policy allowing for a more flexible allocation of existing référendaires'.

Moreover, cases brought to the General Court regularly give rise to further disputes concerning matters of procedure, in particular where numerous applications to intervene are made (which may themselves give rise to particularly time-consuming confidentiality requests).

Measures aimed at contributing to the court's efficiency

Performance monitoring barometers

Since the early 2010s, the General Court has relied on a series of performance monitoring barometers. These barometers were diversified when the third phase of the reform was implemented.

In substance, the barometers consist of a quarterly review of reports and statistics by the Conference of Presidents of Chambers, led by the President of the General Court, aimed at:

- identifying cases where there is a delay in respecting internal deadlines[19] and ensuring that they are monitored regularly (including cases where proceedings have been stayed);
- quantifying, where appropriate, the accumulated days of delay for each judge-rapporteur (including changes in the delay accumulated over the last 2 years);
- presenting the number of cases completed per judge-rapporteur (including how this has evolved over the past 3 years);
- listing the cases assigned (or reassigned) per judge-rapporteur since the last three-yearly rotation;
- presenting all the cases completed by a judgment being issued in the course of the last year, showing the length of proceedings broken down according to the stage each case is at.

This quarterly review is supplemented, every 6 weeks, by a process measuring the day-to-day workload (which corresponds to cases ready to be judged) in order to optimise the use of resources in the judges' offices, ensure compliance with internal deadlines in cases and, more generally, speed up and streamline the handling of pending cases.

This exercise consists of examining the tables showing the complete case portfolio for each judge-rapporteur and highlighting which cases are 'ready for judgment', in other words those that are ready to be analysed and dealt with immediately by the judge-rapporteur, in order to identify any potential situations where particular offices are overloaded with work or, conversely, any capacity for handling cases that is likely to arise temporarily in other judges' offices. This examination ultimately makes it possible to assess the need to reassign cases from one judge-rapporteur to another, in accordance with Article 27(3)[20] of the Rules of Procedure of the General Court, thereby evening out the workload and facilitating the handling of cases.

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[19] In this regard, it is important to point out that, as part of the implementation of the reform, the General Court adapted some of its internal time limits in order to take account of the varying complexity of the different types of case: the time allowed for submitting the preliminary report was thus reduced by 25% in comparison with the standard period (from 4 to 3 months) in intellectual property cases and was extended by 25% in competition, state aid and trade protection measure cases, the complexity and volume of which are substantially above average. This development also reflects a suggestion made by the Court of Auditors in its special report No 14/17 regarding the setting of time limits adapted to the complexity of the cases.

[20] According to that provision: '[in] the interests of the proper administration of justice, and by way of exception, the President of the General Court may, before the presentation of the preliminary report referred to in Article 87, by reasoned decision and after consulting the Judges concerned, designate another Judge-Rapporteur. If that Judge-Rapporteur is not attached to the Chamber to which the case was first assigned, the case shall be heard and determined by the Chamber in which the new Judge-Rapporteur sits'.

Furthermore, also every 6 weeks, the presidents of chambers draw up provisional tables listing the cases in which draft decisions are to be sent to the unit that read through and revise judgments, and then to the Directorate-General for Multilingualism at different intervals (6 weeks, 3 months and 6 months). All of this data makes it possible to organise the work of the departments involved afterwards, at the deliberation stage, to provide timely information on the court's priorities and to avoid the bottlenecks that often arise at certain times of the year.

Strengthening the involvement of the President and the Vice-President in judicial activity

The President and the Vice-President of the General Court do not sit permanently in an ordinary formation of three or five judges. [21] However, their participation in the work of the chambers was strengthened at the third stage of the reform (previously their participation was limited, as far as the President was concerned, to dealing with proceedings for interim measures and, as regards the Vice-President, to replacing judges prevented from sitting in formations of five judges).

Thus, pursuant to the decision of 30 September 2019 on the formation of chambers, [22] in the course of each judicial year, the Vice-President sits in each of the 10 chambers sitting with five judges, on the basis of one case per chamber[23].

Furthermore, the President – who continues to be the judge responsible for ruling on applications for interim measures – also replaces judges prevented from sitting in five-judge formations. The Vice-President covers in the five-judge chambers when the President is prevented from doing so. He also replaces the President as the judge hearing applications for interim measures if the President is prevented from attending.

These two measures were adopted in order to allow the court to benefit from the President and the Vice-President's experience, in particular in cases referred to an extended formation[24]. They also seek to enable the President and the Vice-President to work directly with all of the judges at the General Court on court cases.

Adaptation of internal management style

In order to ensure the efficient management of resources, the General Court has set up various mechanisms with the aim of facilitating decision-making processes, in particular at plenum level.

The plenum is the main forum of the General Court, bringing together all of its members (judges and registrar). It is held once a month, but can be held more frequently if the circumstances so require. Since 1 July 2015, the holding of the plenum has been enshrined in the Rules of Procedure, and its powers have been expressly provided for therein. [25] Particular legal points (referrals to

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[21] They both sit in the Grand Chamber, however.

[22] OJ 2019 C 372, p.3

[23] According to the following order:
- the first case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the First Chamber, the Second Chamber, the Third Chamber, the Fourth Chamber and the Fifth Chamber;
- the third case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the Sixth Chamber, the Seventh Chamber, the Eighth Chamber, the Ninth Chamber and the Tenth Chamber.

[24] Under Article 28 of the Rules of Procedure, the three-judge chamber initially seised of the case, the President and the Vice-President of the General Court may propose to the plenum that cases be referred to an extended formation of five judges or to the Grand Chamber.

[25] Article 42(1) on the plenum states as follows: 'Decisions concerning administrative issues and the decisions referred to in Articles 7, 9, 11, 13, 15, 16, 18, 25, 28, 31 to 33, 41, 56a and 224 shall be taken by the General Court at the

extended formations), institutional or administrative matters (in particular, the external activities of members (Article 8 of the Code of Conduct for Members and former Members of the Court of Justice of the European Union), decisions to appoint legal secretaries and the work of the various committees) are discussed at the plenums.

The constraints associated with enlarging the complement of members led the General Court to establish, on 11 December 2019, a management board composed of the President, the Vice-President and five elected members, whose role is partly, by way of delegation, to exercise some of the powers the plenum has with regard to certain staff matters and, partly, to assist the President of the General Court, when necessary and at his request, on particular topics that are to be debated at the plenum of the General Court.

The General Court also has various committees and focus groups, offshoots of the plenum, tasked mainly with preparing the decisions of the plenum. These include, namely:

- the Rules of Procedure Committee, responsible for the procedural supervision of the work of the General Court and for preparing draft amendments to the Rules of Procedure;
- the Ethics Committee, which has the task of advising and assisting members and former members of the General Court on their ethical obligations;
- the Data Protection Committee, which is called upon to hear complaints against decisions taken by the Registrar where the latter is responsible for processing data in the judicial field; [26]
- the 'Institutional matters' focus group, dedicated to exploring different institutional issues in detail.

The members of these committees and the chair of each committee are appointed by the Court on a proposal made by the President after consulting the Vice-President.

The informal working groups for areas in which the General Court has specific chambers (intellectual property and civil service), chaired by the Vice-President as part of his task of maintaining consistency in the case-law, should also be mentioned. [27]

Finally, the importance of the Conference of Presidents of Chambers, at which the President, Vice-President and the 10 presidents of chambers meet twice a month, should also be underlined. Its main objectives are to discuss the situation regarding the work of each chamber, to examine the quarterly statistics circulated by the President of the General Court's office, to consider working methods and to undertake the coordination of the handling of pending cases, including with regard to decisions to publish Court Reports.

Measures aimed at contributing to the consistency of the case-law

Case-law that is consistent is a key element of quality in the administration of justice in that it ensures legal certainty and equality before the law. The significant increase in the number of judges at the General Court was accompanied by measures designed to meet this need, which becomes more acute as the size of the court increases.

plenum in which all the Judges shall take part and have a vote, save as otherwise provided in these Rules. The Registrar shall be present, unless the General Court decides to the contrary'.

[26] Decision of the General Court of 16 October 2019 establishing an internal mechanism regarding the processing of personal data by the General Court when acting in its judicial capacity (OJ 2019 C 383, p.4).

[27] See paragraph II.B.2. infra.

Modification of the judicial structure

From September 2007 until September 2016, the internal judicial organisation of the General Court was based on the principle that each chamber of three judges sat in a single formation, comprising the President of the Chamber and two fixed judges. Thus, during the three-year period of 2013-2016 and before the new judges in the first phase of the reform took up their duties, the General Court consisted of nine chambers with three judges, presided over by nine presidents of chambers.

In order to avoid an excessive increase in the number of court formations and the resulting coordination difficulties, from September 2016 the court was structured into nine chambers of five judges, each being able to sit in two formations of three judges presided over by the president of the chamber sitting with five judges.

This new structure retains the three-judge panel as the ordinary court formation, facilitates the referral of cases to five-judge formations and the replacement of judges prevented from sitting in the same chamber and confers on the nine presidents of chambers an enhanced role in the coordination of pending cases and consistency of case-law. [28]

In the third phase of the reform in September 2019, a tenth chamber was added using the same model. Furthermore, the way in which the three-judge formations are composed was adjusted to ensure a mix within the chambers. [29] The chambers, composed of five judges, now sit in six formations with three different judges, each presided over by the same president of chamber. Each judge is therefore required to sit with all the other judges in the chamber, which enhances consistency and collegiality in the work of the chamber.

Role of the Vice-President

Until September 2016, due to the excess workload of the Court, the Vice-President of the General Court assumed the role of President of Chamber and an actively presiding Judge. The Vice-President was thus participating fully in the judicial activity of the court, like the other presidents of chambers, in addition to his role assisting the President.

In order to meet the increased coordination needs associated with the doubling of the number of judges, the Vice-President's duties changed in September 2016. Since then the Vice-President has had a specific mission, consisting of leading a wide-ranging legal analysis team for the purposes of coordination, consistency, assistance in issuing decisions, legal oversight, putting issues into perspective and knowledge-sharing. [30]

On that basis, the Vice-President oversees the work of working groups (whose role consists, inter alia, of monitoring contributions to the case-law and any discrepancies that arise), prepares case-law analyses, organises training for the legal secretaries and prepares guidelines and documents for assistance in issuing decisions. [31] The role also involves a prior coordination of cases by means of

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[28] See CJEU press release No 35/16 of 4 April 2016 (https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-04/cp160035en.pdf).

[29] It should be noted that, as at 30 September 2020, the General Court consisted of 50 judges. Since the President and the Vice-President are not assigned permanently to a chamber, the remaining 48 judges were assigned to 8 chambers sitting with 5 judges and 2 chambers sitting with 4 judges.

[30] At the same time, the role of Vice-President also entails some judicial functions: substituting the President as the judge hearing applications for interim measures if the President is prevented from doing so, participating in the work of the five-judge formation, on the basis of one case per year and per chamber.

[31] This task thus supplements that which had hitherto been assigned to the Conference of Presidents of Chambers (which meets twice-monthly), consisting of examining – upon the initiative of the President, the Vice-President or one of the Presidents of Chamber – whether particular cases that raise new or complex points of law should be discussed between the chambers or even referred to the Grand Chamber.

an early warning system based on the examination of the preliminary reports, the notes on admissibility and the memoranda exchanged in connection with all the cases, even before they are discussed in chambers conferences. That examination is essential in that it seeks to detect whether the solutions proposed by the judge-rapporteur might conflict with existing case-law or those suggested by another judge-rapporteur. It means that a warning system can be implemented during the early stages of the procedure.

In addition, two amendments – which entered into force on 1 December 2018 – were introduced into the Rules of Procedure of the General Court in order to give the Vice-President of the Court the power to assume the role of Advocate General[32] and to propose to the plenum, in the same way as the President of the General Court and the chamber initially seised of the case, that a case be referred to an extended chamber of five judges or to the Grand Chamber. [33] These are instruments designed to reinforce the means available to the Vice-President of the General Court to carry out his task of coordinating pending cases and contributing to consistency in the case-law.

Establishment of specialised chambers

The system for assigning cases is provided for under Articles 25 and 26 of the Rules of Procedure of the General Court.

Under those provisions, the President of the General Court assigns cases to the chambers. Each president of chamber then submits, for the cases assigned to his or her chamber, a proposal for the appointment of a judge-rapporteur and a court formation (with three judges) to the President of the General Court, who gives a decision.

The criteria according to which cases are to be allocated by the President among the chambers are laid down in a decision of the General Court, published in the Official Journal. [34]

Until September 2019, those criteria provided that cases were to be allocated across all of the chambers, according to four separate rotas (competition cases, state aid, trade protection measures; intellectual property matters; staff cases; and 'other cases'[35]) established on the basis of the order of registration of cases at the Registry, it being understood that the President of the General Court could derogate from those rotas to take account of the fact that particular cases may be related or to ensure a balanced allocation of the workload.

Those criteria changed significantly in September 2019, with the introduction of two groups of specialised chambers:

- four chambers (the First, Fourth, Seventh and Eighth Chambers) are assigned EU civil service disputes (cases brought under Article 270 TFEU and, as the case may be, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union), in accordance with a rota based on the order of registration of cases at the Registry;
- the other six chambers (the Second, Third, Fifth, Sixth, Ninth and Tenth Chambers) are assigned intellectual property disputes (trade marks, designs and plant varieties).

The remaining cases are allocated among all the 10 chambers according to the two rotation systems previously provided for, namely those concerning, respectively, competition, state aid and trade protection measure cases, and 'other cases'.

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[32] It should be noted that, as at 30 September 2020, this power has not been exercised.

[33] Amendments to Article 3(3) and Article 28(2) of the Rules of Procedure of the General Court (OJ 2018 L 240, p.67).

[34] OJ 2019 C 372, p.2

[35] This category covers a wide variety of subject areas, including: common foreign and security policy (restrictive measures), banking and financial disputes, public procurement, access to documents and agricultural policy.

This system enables two specific types of disputes (staff cases and intellectual property) to be dealt with by the two smaller groups of chambers (with their respective 20 and 28 judges) whilst at the same time ensuring that the chamber receives a caseload that covers a wide range of subject areas.

ASSESSMENT OF THE EFFECTS OF THE REFORM

According to recital 5 of Regulation 2015/2422, the objective of the General Court's reform was twofold: to reduce in the near future both the volume of cases pending before the court and the excessive length of the proceedings. Furthermore, in the interests of the authority, consistency, clarity and, ultimately, the quality of the case-law, the increase in the General Court's capacity to decide cases should also lead to a greater number of cases being referred to an extended chamber consisting of five judges. [36]

The effects of the reform will thus be assessed in the light of those objectives. However, in order to give the most complete account of the effects of the reform, it was deemed appropriate to base the analysis on a more varied set of quantitative and qualitative indicators, recognised as relevant for assessing the performance of judicial systems. [37]

Quantitative indicators

Trends relating to new cases

Trends in the new cases brought are not, in themselves, an indicator of the performance of the court. They may, however, without being precisely measurable, reflect the degree of confidence of citizens in the court and/or the degree of distrust or dissatisfaction with the defendant institutions, bodies, offices or agencies. Furthermore, the number of cases brought depends on the legislative activity of the latter and on how the jurisdiction of the European Union evolves.

Nevertheless, the number and the nature of new cases both have an impact on the analysis of certain performance indicators (particularly the number of pending cases and, potentially, the number of cases completed) and must, on that basis, first of all be described.

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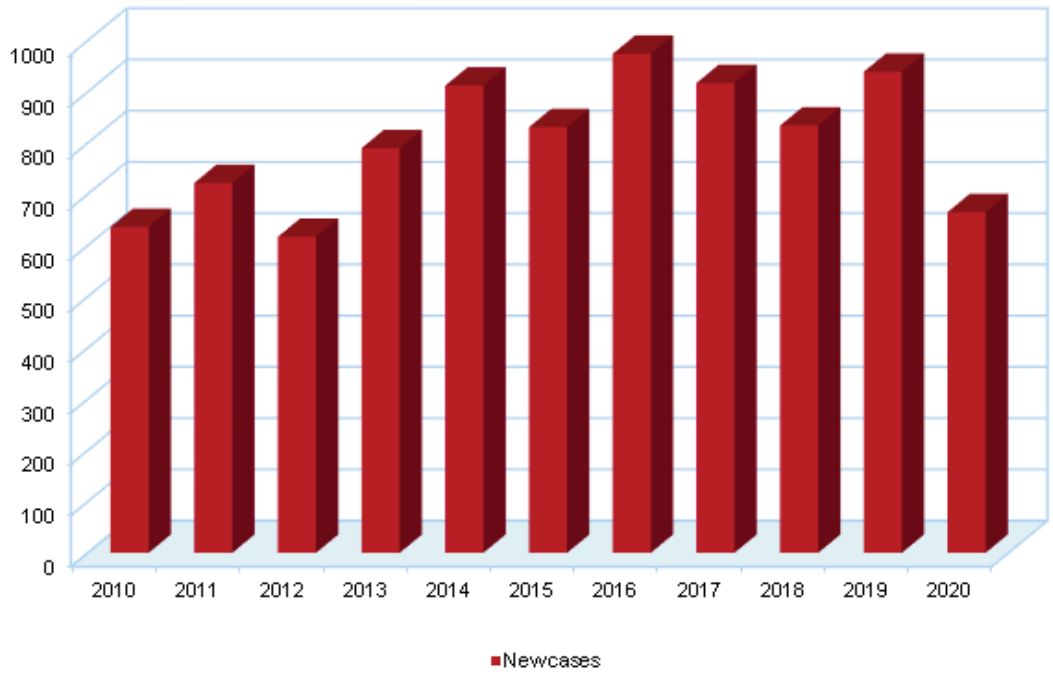
[36] 'Activity of the General Court in 2018' by Marc Jaeger, President of the General Court, Annual Report 2018 – Judicial Activity, p.159. See also CJEU press release No 35/16 of 4 April 2016 (https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-04/cp160035en.pdf), which underlines that the new judicial structure of the General Court 'will facilitate the referral of cases to five-Judge formations', and the press release of the Council of the European Union of 3 December 2015, which states that the reform 'will also allow the General Court to decide more cases in chambers of five judges or in grand chamber which will enable a more in-depth deliberation on important cases' (https://www.consilium.europa.eu/en/press/press-releases/2015/12/03/eu-court-of-justice-general-court-reform/).

[37] See, in that regard, the work carried out by the European Commission for the Efficiency of Justice (CEPEJ) under the auspices of the Council of Europe, and by the European Commission, in particular the EU justice scoreboard (https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf) and the 'EU Quality of Public Administration Toolbox' (https://op.europa.eu/en/publication-detail/-/publication/886d2a37-d651-11e7-a506-01aa75ed71a1/language-en/format-PDF/source-130699699) as well as the various studies conducted in the context of the 'Justice' programme.

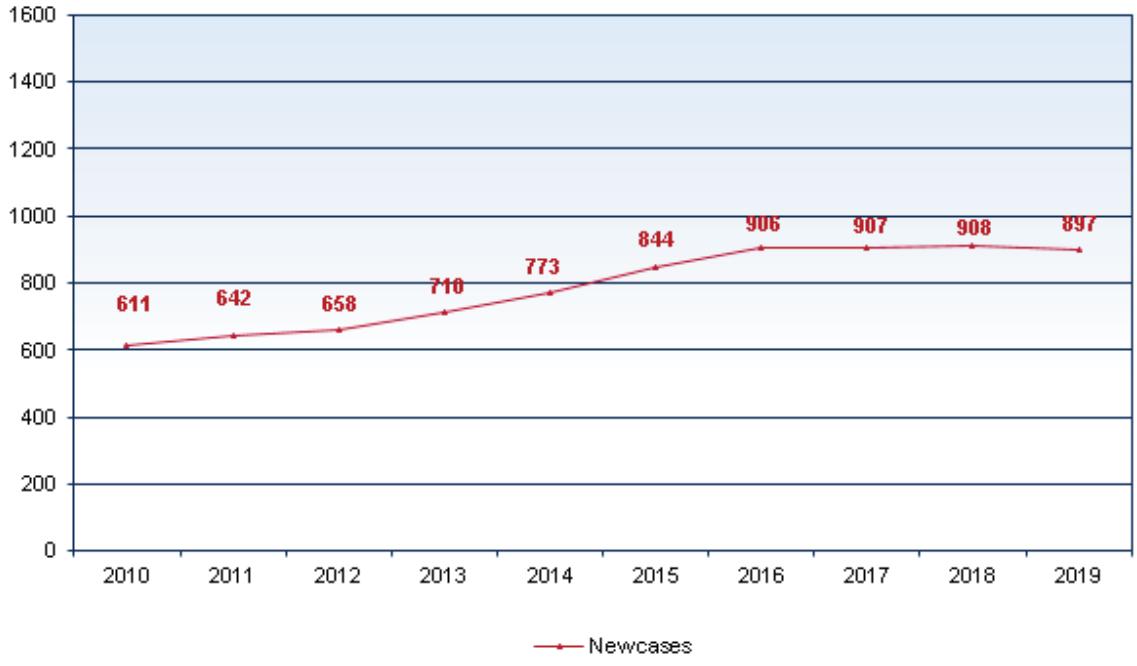
Overall figures



	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
New cases	636	722	617	790	912	831	974	917	834	939	665

Data as at 30/09/2020

General activity of the General Court – Three-year averages (new cases)



Three-year averages are calculated by taking into account the data for the year 'n' and for the years 'n-1' and 'n-2'.

The following findings can be drawn from these overall figures:

- in the years preceding the reform, the number of cases brought before the General Court increased regularly, with a growth of around 38% from 2010 to 2015; [38]
- the implementation of the second stage of the reform, in September 2016, generated an increase in the number of cases brought in connection with the transfer of jurisdiction over staff cases, representing 163 cases in 2016 (123 of which were initially brought before the Civil Service Tribunal and transferred to the General Court) and between 80 and 100 cases every year between 2017 and 2018;
- since 2016, the number of new cases has somewhat stabilised;
- the level of new cases has slightly come down in 2020, due to the public health crisis. [39]

[38] Calculations are based on the three-year averages, which smooth out the sharp ups and downs shown in the annual figures (which are subject to short-term factors) and enable a fairer picture of the overall trends to be gleaned.

[39] According to the data as at 15 October 2020, there were 691 new cases.

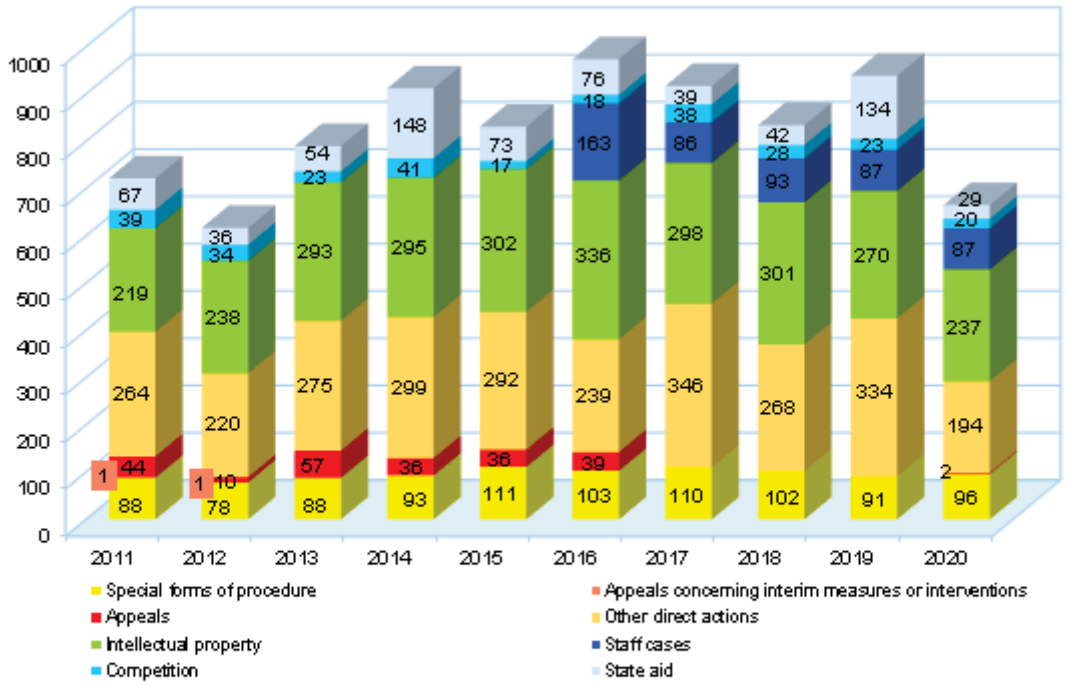
Allocation by subject matter

New cases – Subject matter of the action

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Access to documents	21	18	20	17	48	13	25	21	17	6
External action by the European Union	2	1		2	1	2	2	2	6	2
Accession of new States			1							
Agriculture	22	11	27	15	37	20	22	25	12	12
State aid	67	36	54	148	73	76	39	42	134	29
Overseas Countries and Territories Association			1							
Citizenship of the Union				1					1	1
Arbitration clause	5	8	6	14	15	10	21	7	8	7
Economic, social and territorial cohesion	3	4	3	3	5	2	3		3	
Competition - Company mergers	4	5	3	1	3	7	3	8	4	16
Competition - Agreements, decisions and concerted practices	23	23	18	33	12	8	31	12	11	2
Competition - Public undertakings				1						
Competition - Dominant position	6		2	6	2	3	4	8	8	2
Culture			1			1				
Financial provisions (budget, financial framework, own resources, combating fraud)		1		4	7	4	5	4	5	4
Company law				1	1					
Law governing the institutions	44	41	44	67	53	52	65	71	148	54
Education, vocational training, youth and sport	2	1	2		3	1		1	1	
Employment			2							
Energy	1		1	3	3	4	8	1	8	8
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	3	2	12	3	5	6	10	4	6	3
Environment	6	3	11	10	5	6	8	7	10	6
Area of freedom, security and justice	1		6	1		7		2	1	
Taxation	1	1	1	1	1	2	1	2		
Freedom of establishment				1				1		
Free movement of capital					2	1		1		
Free movement of goods			1		2	1				
Freedom of movement for persons					1	1	1	1	2	
Freedom to provide services		1		1		1				
Public procurement	18	23	15	16	23	9	19	15	10	8
Restrictive measures (external action)	33	59	41	69	55	28	27	40	42	22
Commercial policy	11	20	23	31	6	17	14	15	13	15
Common fisheries policy	3		3	3		1	2	3		
Economic and monetary policy	4	3	15	4	3	23	38	27	24	33
Economic and monetary policy - Supervision of credit institutions										1
Common foreign and security policy			2			1			1	
Industrial policy				2						
Social policy	5	1		1		1		1	1	
Intellectual and industrial property	219	238	294	295	303	336	298	301	270	237
Consumer protection			1	1	2	1		1	1	1
Approximation of laws			13		1	1	5	3	2	
Research and technological development and space	4	3	5	2	10	8	2	1	3	3
Trans-European networks			3				2	1	1	1
Public health	2	12	5	11	2	6	5	9	5	5
Social security for migrant workers			1							
Tourism			2							
Transport	1		5	1				1	1	2
Customs union and Common Customs Tariff	10	6	1	8		3	1		2	
Total EC Treaty/TFEU	**587**	**527**	**645**	**777**	**684**	**669**	**721**	**638**	**761**	**480**
Staff Regulations	47	12	57	42	36	202	86	94	87	89
Special forms of procedure	88	78	88	93	111	103	110	102	31	96
OVERALL TOTAL	**722**	**617**	**790**	**912**	**831**	**974**	**917**	**834**	**939**	**665**

Data as at 30/09/2020

New cases – Nature of proceedings[1]



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	722	617	790	912	831	974	917	834	939	665

[1] On 1 September 2016, 123 staff cases and 16 special forms of procedure in this area were transferred to the General Court.

Data as at 30/09/2020

The following trends can be observed from the analysis of this data:

- the steady number and predominance of intellectual property cases, representing around one third of all new cases brought; [40]
- the steady number of disputes involving staff;
- a degree of stability in the level of competition litigation, which remains low (about 20 applications per year on average since 2015) but for which the individual caseload (in terms of volume and complexity) is far higher than the average for cases in other areas;
- the importance of state aid disputes, for which the caseload is also characterised by its volume and level of complexity;
- a steady number of recurring disputes, representing a limited number of cases: trade protection measures, access to documents, public procurement, agriculture;
- the exposure of the court to the legislative, regulatory and decision-making activity of the institutions, bodies, offices and agencies, as illustrated by the emergence of cases – sometimes numerous and complex – in new fields, such as disputes concerning restrictive measures under the CFSP, disputes in the field of chemical substances [41] or, more recently, disputes related to prudential rules in banking and finance.

[40] It must, however, be pointed out that those cases individually represent a significantly lower workload than the average workload of cases in other areas (with the exception of special forms of procedure, which have a lower workload average than that of intellectual property cases).

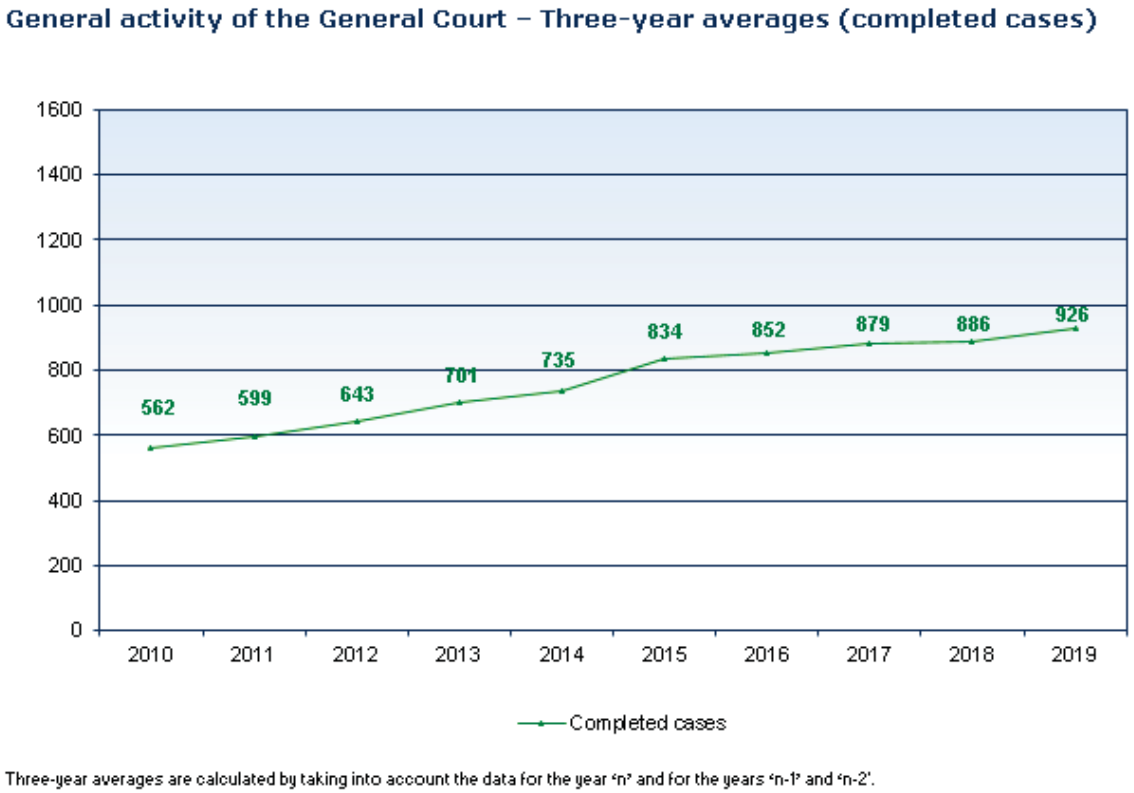
[41] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission

CONCLUSION

Implementation of the reform was accompanied by a slight increase (of around 5 to 10%) in the number of new cases, corresponding to the transfer of jurisdiction in staff cases. Since 2016, the number of cases brought can be regarded as stable overall, albeit with a slight reduction in 2020 due to the public health crisis.

Trends relating to cases completed

The number of cases closed each year depends on the resources allocated, the efficiency of the working methods and, potentially, the number of new cases brought.



Data as at 30/09/2020

It is apparent from the three-year average figures shown above that the number of completed cases has been constantly increasing since 2010. This increase has followed this pattern since the implementation of the reform.

By studying the yearly data, however, this finding can be described and qualified further. Thus, with regard to the number of cases completed:

Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2007 L 136, p.3).

- in 2015 – the year prior to implementation of the first two phases of the reform – there was a peak, with 987 cases;
- in 2016 the number fell to 755 cases, followed by an initial increase in 2017 (+18.5%) and then a second one in 2018 (+12.7%), reaching 1009 cases, which was a historical record for the Court;
- in 2019 the number dropped (-13.4%) to 874 cases;
- during the 4 years preceding the reform (from 2012 to 2015), the General Court decided on average 797.7 cases per year; over the 4 years since the first phase of the reform (from 2016 to 2019), it decided on average 883.2 cases per year, representing an increase of 10.7%;
- in 2020 the number fell during the first three quarters; based on an extrapolation to a full year, this would work out at approximately 700 cases. [42]

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Completed cases	527	714	688	702	814	987	755	895	1 009	874	509

Data as at 30/09/2020

It is difficult to draw definitive conclusions from this analysis, since not enough time has yet passed to assess the results of a staggered reform, the first phase of which took place in April 2016 and the last phase in September 2019.

Nevertheless, it may be relevant that the 2 years in which there was a drop in productivity (2016 and 2019) were years when both a partial renewal and implementation of the phases of the reform took place. On those two occasions, experienced judges left the court and were replaced by new judges, and additional judges were appointed. The court had to alter both its structure and its working methods to adapt to the growing size of the institution. Furthermore, each triennial rotation brings about a reorganisation of the chambers and the reassignment of certain cases (20% of all

[42] According to the data as at 15 October 2020, 599 cases were completed.

pending cases had to be reallocated to another judge-rapporteur in September 2019, which had an impact on the preliminary investigation and hearing of several cases).

These exceptional circumstances [43] could not, objectively, have failed to have an impact on the efficiency of the court. That impact is particularly visible when comparing the respective results of the first three quarters of the calendar year and the fourth quarter, which was the period immediately after the three-yearly rotation and the implementation of the second phase and third phase of the reform (which took place in September 2016 and 2019).

	2012	2013	2014	2015	2016	2017	2018	2019
Completed cases *Full year*	688	702	814	987	755	895	1009	874
Completed cases *Q1-Q3*	504	529	559	705	587	666	639	698
Completed cases *Q4*	184	173	255	282	168	229	370	176

This table shows that the fall in productivity observed in 2019 was due to a particularly unproductive fourth quarter (-52.4% compared with the same period in 2018) while the first three quarters show a high level of activity (+9.2% compared with the same period in 2018). The same phenomenon can be observed in 2016, and in 2013 – also a partial renewal year.

The General Court's actual capacity to decide cases could only, in normal circumstances, have been assessed at the end of 2020 at the earliest. However, the effects of the public health crisis, in particular the fact that the General Court could not set any hearings between 16 March and 25 May 2020 and the practical difficulties encountered since then, means that the 2020 results cannot be regarded as representative.

CONCLUSION

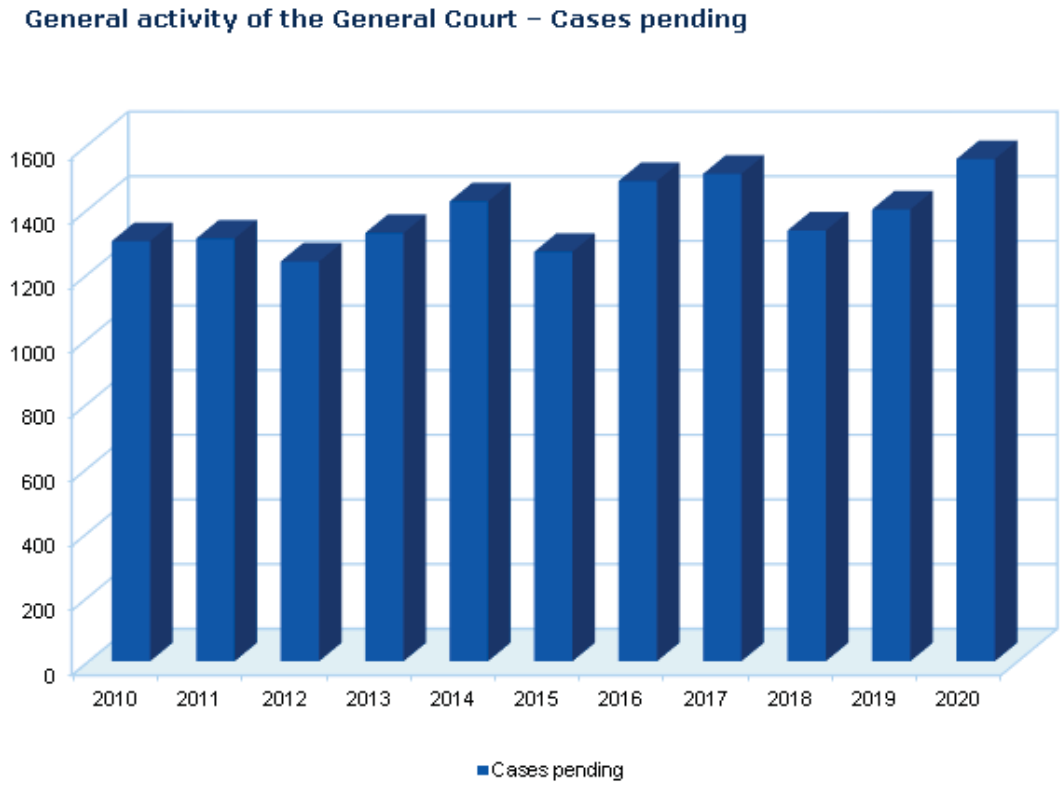
The implementation of the reform was combined with an overall increase in the number of cases closed and enabled the court to reach a record high of cases completed in 2018. However, firstly the fact that so little time has passed since the last phase of the reform and, secondly, the impact of the triennial rotations on the General Court's efficiency along with its reorganisation in 2016 and 2019, mean that it is not possible to assess fully, as yet, the effects of the reform on the General Court's case handling capacity. This is especially so since 2020 cannot be regarded as a representative year due to the disruption caused by the public health crisis.

[43] Of the 50 judges in office on 30 September 2020, only 14 of them (30%) had taken up their duties before the implementation of the reform.

Trends relating to cases pending

Pending cases are an indicator of the overall workload of the court at a given moment. Their number depends on the number of incoming cases against the number of cases completed. A fall in the number of cases pending is one of the objectives of the reform, in accordance with recital 5 of Regulation 2015/2422.

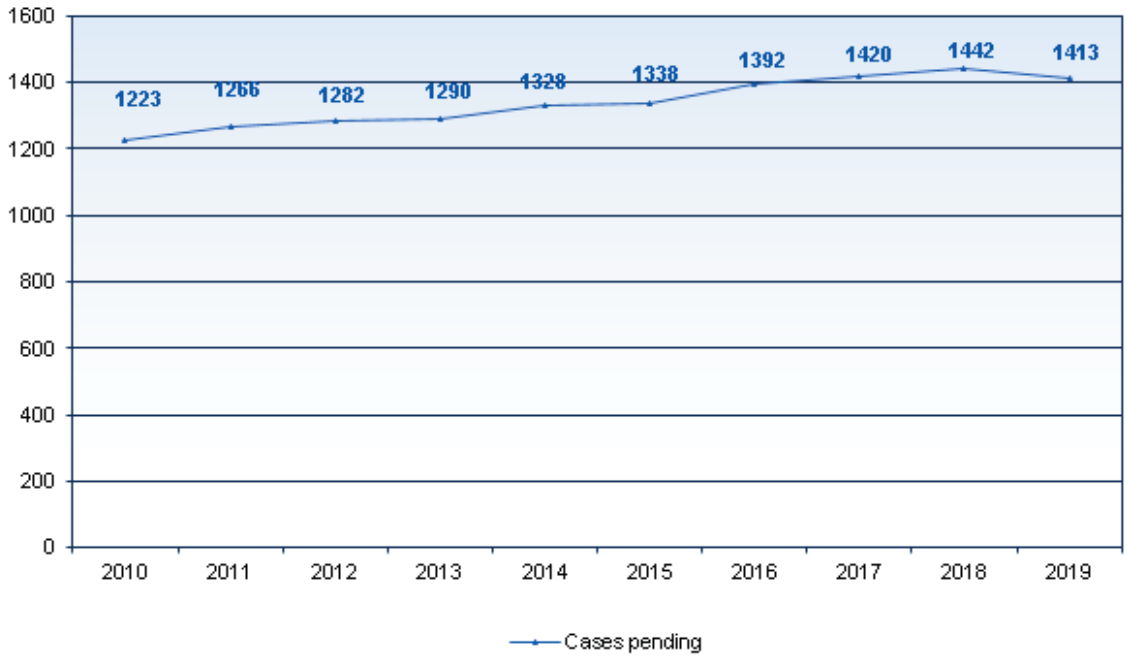
Overall figures



	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Cases pending	1 300	1 308	1 237	1 325	1 423	1 267	1 486	1 508	1 333	1 398	1 554

Data as at 30/09/2020

General activity of the General Court – Three-year averages (cases pending)



Three-year averages are calculated by taking into account the data for the year 'n' and for the years 'n-1' and 'n-2'.

The above data shows that, following an increase in 2016 and 2017 that was linked, in particular, to the transfer of cases from the Civil Service Tribunal (123 cases) and a large group of related banking and financial cases brought (99 cases), the number of pending cases fell significantly in 2018 (-175 cases, representing an 11.6% drop).

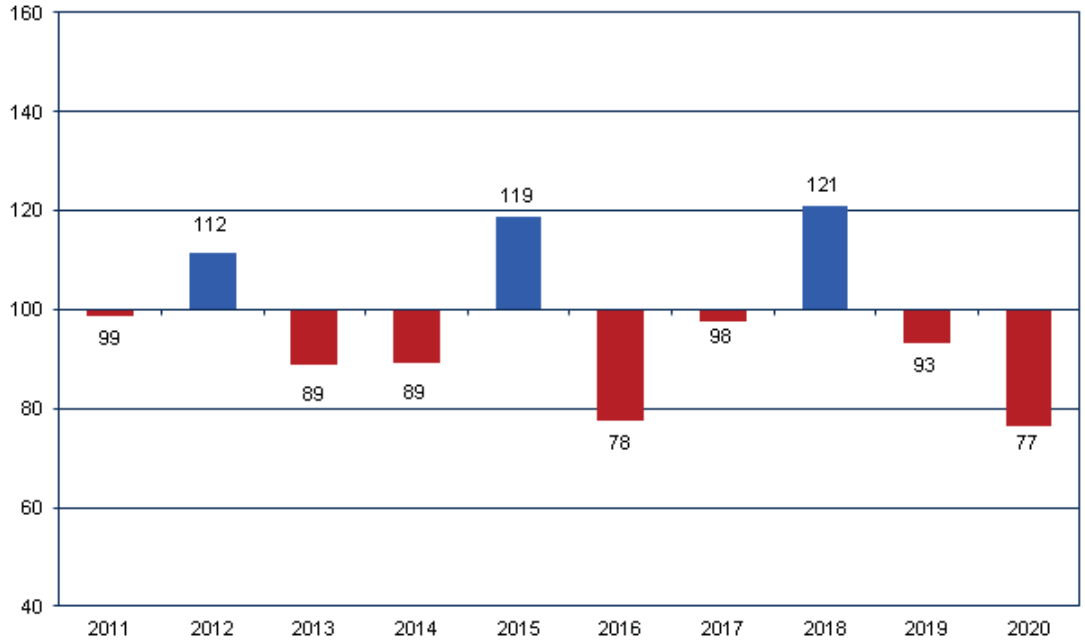
The increase in the number of pending cases in 2019 and 2020 is still, however, a cause for concern. [44] It could perhaps be explained, at least in part, by the fall in productivity examined previously, following the partial renewal and the complete overhaul of the judicial structure in 2019, in combination with the public health crisis. The General Court will need to employ all the internal resources it can to respond to this unsatisfactory finding as quickly as possible, so that it may be considered a mere passing trend.

The case clearance rate of 121% witnessed in 2018 gives an indication of the performance that the court is capable of once fully operational.

[44] According to the data as at 15 October 2020, there were 1 490 cases pending.

General activity of the General Court –

Clearance rate



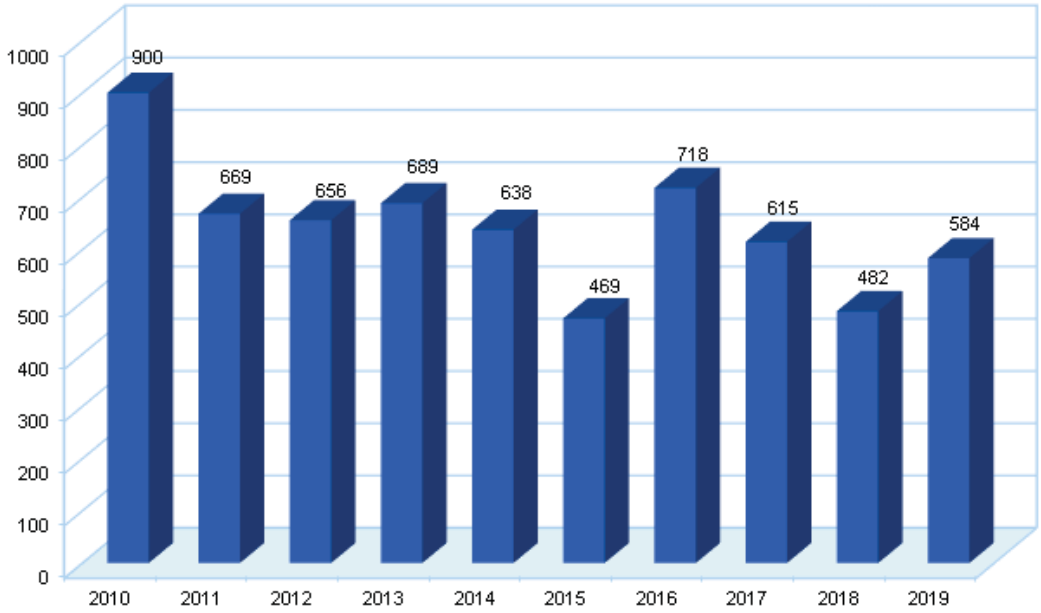
Expresses the ratio of completed cases to new cases, as a percentage. A value greater than 100 % indicates that more cases were completed than new ones brought in that particular year.

The clearance rate is an indicator defined by the Council of Europe's CEPEJ (European Commission for the Efficiency of Justice) and reproduced in the European Commission's EU Justice Scoreboard.

Data as at 30/09/2020

It should also be pointed out that the theoretical duration of pending cases underwent a gradual improvement after the increase which occurred in 2016 as a result of the transfer of staff cases. This figure expresses the time, in number of days, needed to dispose of the number of pending cases by the end of the year, based on the number of completed cases during that same year.

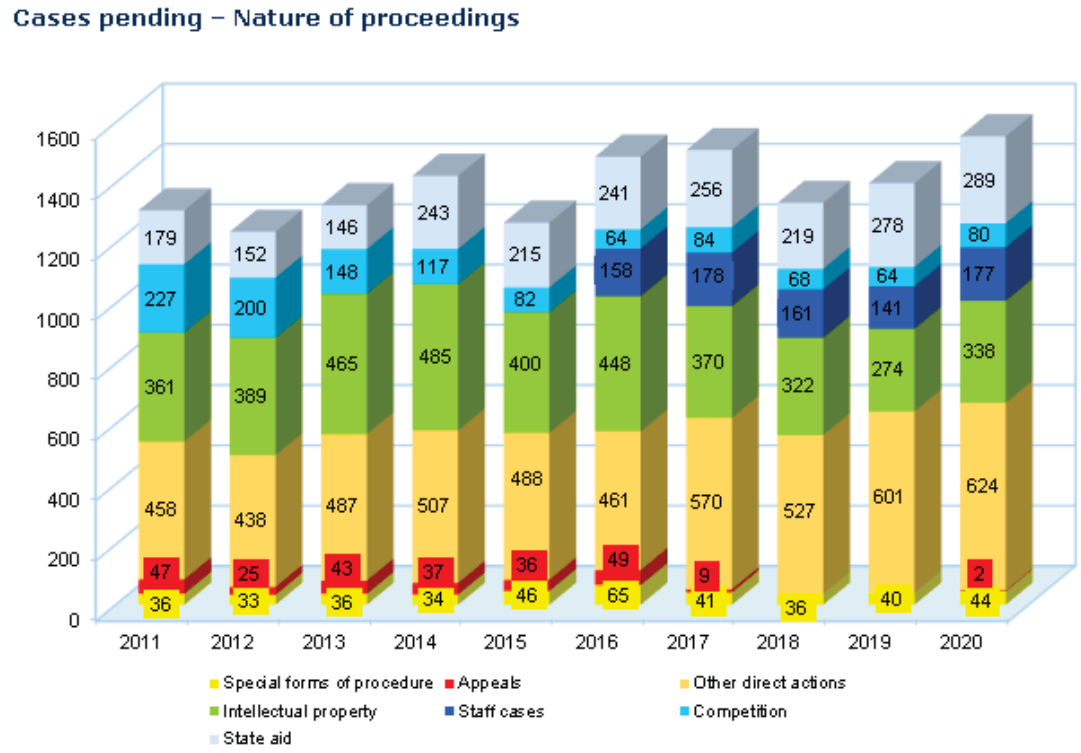
General activity of the General Court –
Theoretical expiry period of the number of pending cases ('disposition time')



Expresses in number of days the time needed to settle the number of pending cases by the end of the year, based on the number of completed cases during that same year.

Disposition time is an indicator defined by the Council of Europe's CEPEJ (European Commission for the Efficiency of Justice) and reproduced in the European Commission's EU Justice Scoreboard.

Additional data



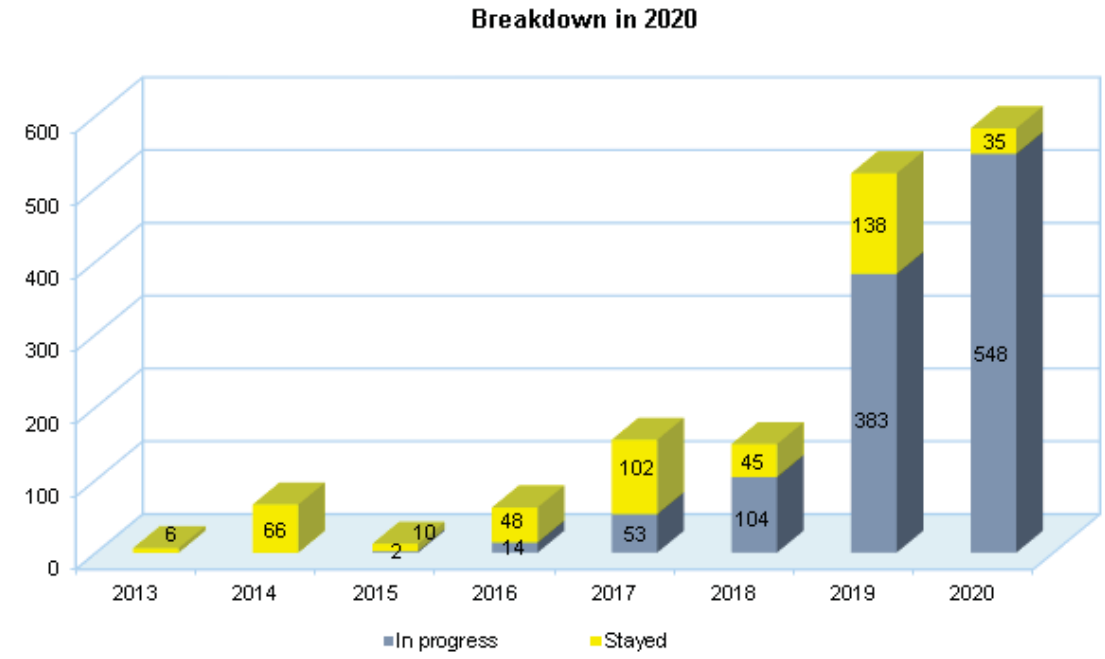
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	1 308	1 237	1 325	1 423	1 267	1 486	1 508	1 333	1 398	1 554

Data as at 30/09/2020

The allocation of pending cases by subject matter in 2020 reveals:

- an upward trend in the 'other direct actions' category, which is partly explained by the existence of two large groups of related cases (representing almost 200 cases) in the field of banking and finance, on the one hand, and pension rights of former Members of the European Parliament, on the other;
- a continuing significant proportion (more than 20%) of intellectual property cases;
- the relative stability, since 2016, of cases relating to staff matters, competition and state aid.

Cases pending – Breakdown by year case was brought



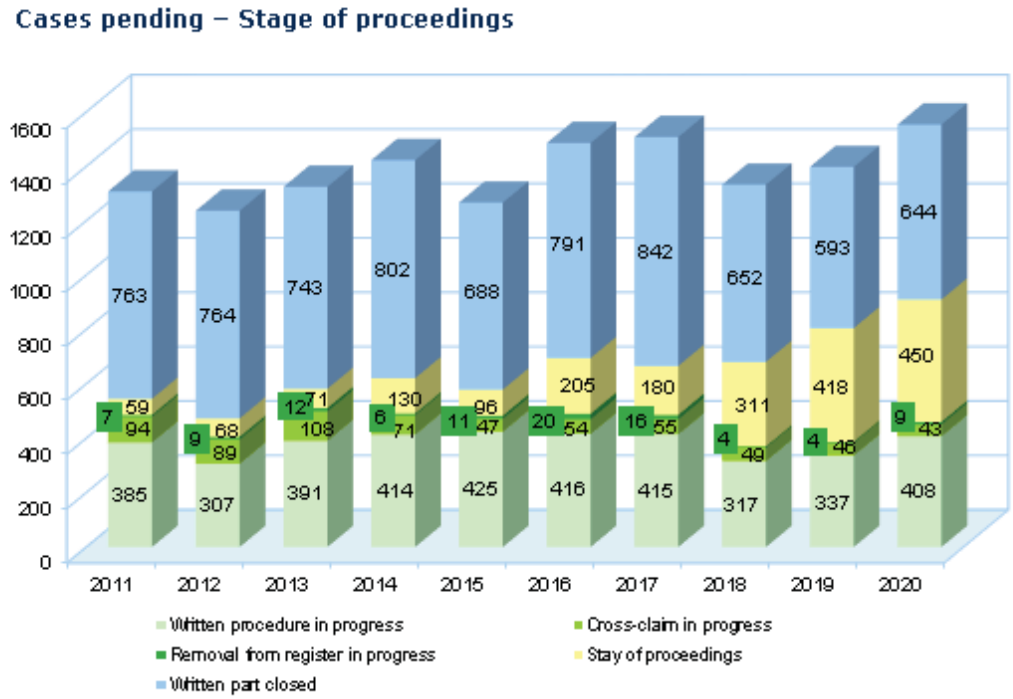
Year case brought	2013	2014	2015	2016	2017	2018	2019	2020
Total	6	66	12	62	155	149	521	583

Data as at 30/09/2020

This data shows that nearly 80% of cases pending at the General Court are cases that were brought recently (from 2018 to 2020) and that more than 70% of the cases pending have been brought since 2019. Cases which were brought before 2017 have either had a stay of proceedings or are ongoing cases which had previously experienced a stay of proceedings.

Among the pending cases, it is interesting to note that a large, historically unprecedented number of cases, have had proceedings stayed. A stay of proceedings is a procedural decision based on Article 69 of the Rules of Procedure of the General Court that has the effect of suspending all procedural time limits. [45] Several situations may justify the stay of proceedings: the request of a main party with the agreement of the other main party, where there is a related or linked case pending before the Court of Justice (an appeal or question referred for a preliminary ruling) for which the outcome should be awaited in order for the General Court to be able to rule on the case, or in other particular cases where the proper administration of justice so requires (for example in groups of related cases, where the General Court has identified one or more test cases). Using a stay of proceedings may be an efficient way to handle cases, since the legal reasoning adopted either by the General Court in a test case or by the Court of Justice in a related or linked case may be transposed to stayed proceedings that raise the same point of law. Even if the number of cases with stayed proceedings is very high, it should be pointed out that six groups of cases alone – each concerning the same points of law – represent more than 70% of all the stayed proceedings. Nevertheless, it is important for the General Court to ensure that the audi alteram partem principle can be fully observed after the resumption of proceedings that have been stayed.

[45] With the exception of the time limit for an application to intervene set out in Article 143(1) of the Rules of Procedure.



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total	1 308	1 237	1 325	1 423	1 267	1 486	1 508	1 333	1 398	1 554

Data as at 30/09/2020

In the above graph, cases which are ready for analysis by the judge-rapporteur are those in which the written part of the procedure is closed. The volume of this category of cases, which is an indicator of the court's current workload, has decreased significantly in absolute terms since the implementation of the reform. This decrease is all the more significant when the volume of cases in which the written part of the procedure is closed is contrasted against the number of judges.

During the 3 years preceding the implementation of the reform, the average number of cases in which the written part of the procedure was closed was 26.6 cases per judge. As at 30 September 2020, that number was 12.9 cases per judge. [46] Although this reduction in workload is real, it should be noted that the number of legal secretaries assigned on average to each judge has, at the same time, also decreased, [47] albeit to a lesser extent.

[46] Calculation based on 30 September 2020.

[47] Taking into account the nine legal secretaries assigned to the chambers between 2014 and 2016 and the implementation of the third phase of the reform, which entailed no change in the number of legal secretary posts, the reduction in the number of legal secretaries assigned on average to each judge is approximately 22%.

However, an assessment of the average workload must also take into consideration all the cases in which each judge sits and not only the cases in which they act as judge-rapporteur. Decisions given by the courts of the European Union are the result of collegiate work in which all the judges in the chamber hearing a case actively participate. As is apparent from the analysis carried out below (see III.B.1. below), the number of cases referred to an extended chamber, which was very low before the reform, increased as soon as the reform was implemented. Thus, while 1.1% of the cases completed in 2015 were dealt with by a chamber of five judges, this figure rose to around 6.7% in 2019 and 8.6% in 2020. The working time that judges spend acting as sitting judges has therefore increased as part of the drive for quality.

CONCLUSION

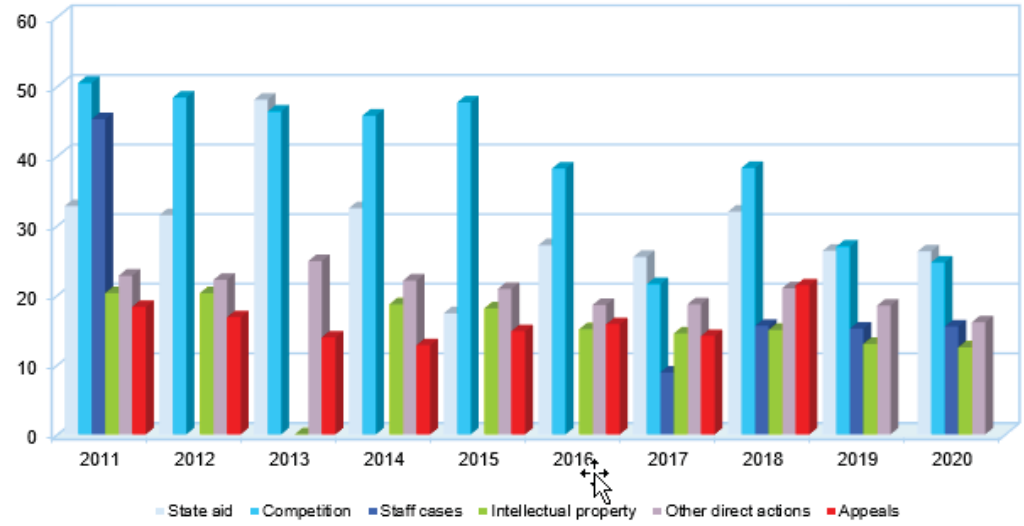
The number of pending cases, following a transitional increase related to the transfer of civil service cases, decreased in 2018 as a result of the implementation of the reform. An analysis of the number of cases pending when this report was drawn up reveals an increasing proportion, among these, of cases with stayed proceedings and a substantial reduction in the average workload per judge-rapporteur. At the same time, the working time that judges spend acting as sitting judges has increased in a drive for quality. The increase in the number of cases pending in 2019 and 2020 is a cause for concern even if it can be considered to be linked, at least in part, to a partial renewal and complete reorganisation of the court in September 2019 on the one hand, and the public health crisis on the other. The General Court will need to employ all the internal resources it can to respond to this unsatisfactory finding as quickly as possible, so that it may be considered a mere passing trend.

Trends related to the length of proceedings

The excessive length of proceedings before the General Court lies at the origin of the European Union's judicial architecture reform. The right to have one's case judged within a reasonable time is a facet of the right to an effective remedy, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. Moreover, in commercial litigation, slowness in the handling of disputes has a negative impact on the situation of the companies involved. Length of proceedings is therefore a key performance indicator for courts. On that basis, reducing the length is one of the objectives of the reform, in accordance with recital 5 of Regulation 2015/2422.

Overall figures

Length of proceedings (in months) - Cases disposed of by judgment or order



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
State aid	32.8	31.5	48.1	32.5	17.4	27.2	25.5	32.0	26.4	26.3
Competition	50.5	48.4	46.4	45.8	47.7	38.2	21.6	38.3	27.0	24.7
Staff cases	45.3						8.9	15.6	15.2	15.5
Intellectual property	20.3	20.3	18.7	18.7	18.1	15.1	14.5	15.0	13.0	12.5
Other direct actions	22.8	22.2	24.9	22.1	20.9	18.6	18.7	21.0	18.5	16.1
Appeals	18.3	16.8	13.9	12.8	14.8	15.8	14.1	21.4		
All cases	**26.7**	**24.8**	**26.9**	**23.4**	**20.6**	**18.7**	**16.3**	**20.0**	**16.9**	**15.1**

Data as at 30/09/2020

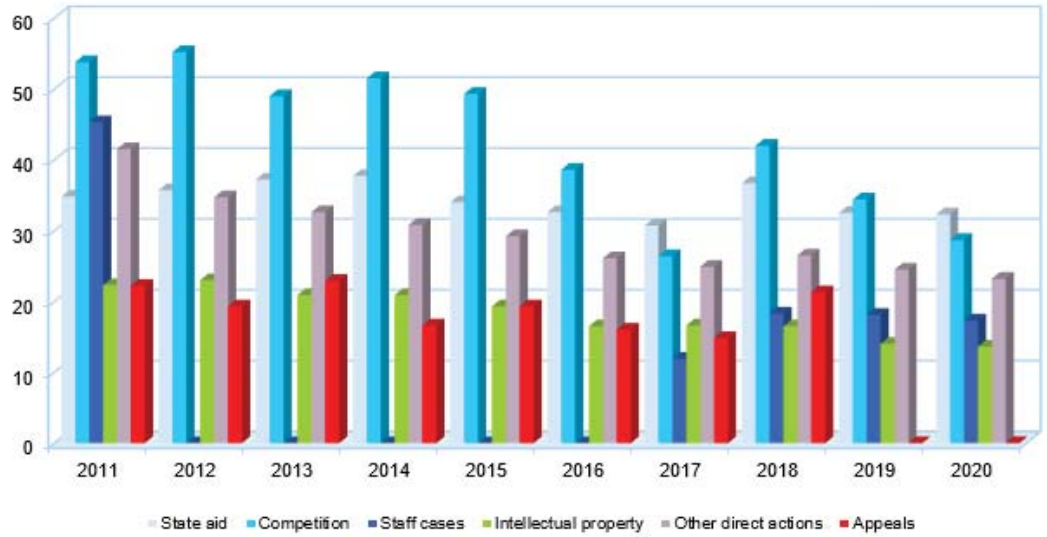
The drive to reduce the length of proceedings began in 2013; disposition times continued to come down when the reform was implemented, reaching the lowest levels in the history of the court. The length of proceedings in 2019 is thus 16.9 months on average, which represents a reduction of 3.7 months (-18.0%) compared with 2015. However, this time reduction, which was again confirmed in 2020, [48] is unequally distributed in terms of the subject matter of litigation. [49]

Through an analysis of the length of proceedings in relation only to cases disposed of by a judgment (with or without a hearing) it is possible to report on the situation as regards cases where there has been a full examination by the court (cases disposed of by an order, which are excluded from this data, undergo a more summary examination and proceedings, taking into consideration the grounds for disposing of the case).

[48] It should be noted, however, that the proportion of cases closed by means of an order was particularly high during the first three quarters of 2020 (49% of cases closed by an order), which in part explains that finding.

[49] As regards staff cases in particular, the length of proceedings has not changed.

Length of proceedings (in months) - Cases disposed of by judgment



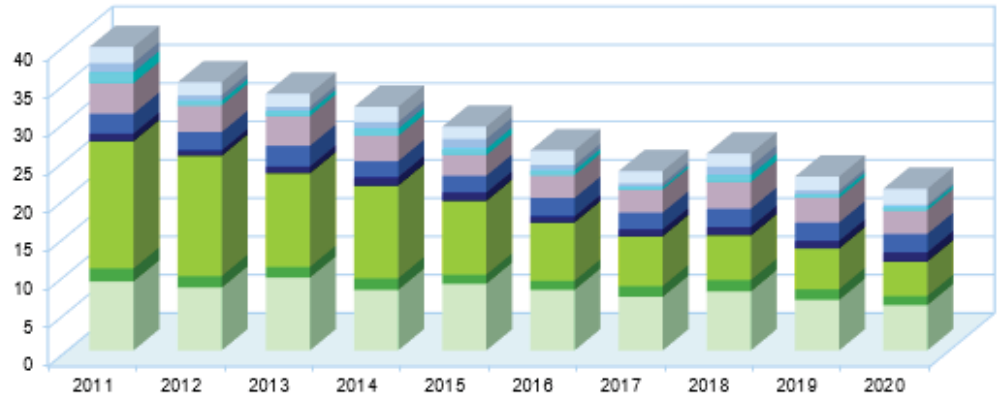
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
State aid	34.8	35.7	37.2	37.7	34.0	32.6	30.7	36.7	32.5	32.3
Competition	53.8	55.2	49.0	51.5	49.3	38.6	26.4	42.0	34.4	28.7
Staff cases	45.3						11.9	18.3	18.1	17.3
Intellectual property	22.3	23.0	20.9	20.9	19.3	16.5	16.6	16.5	14.0	13.6
Other direct actions	41.5	34.7	32.6	30.8	29.2	26.1	24.9	26.5	24.5	23.2
Appeals	22.2	19.3	22.9	16.6	19.3	16.0	14.8	21.3		
All cases	**34.6**	**31.5**	**30.5**	**28.4**	**25.5**	**22.1**	**19.5**	**23.3**	**19.7**	**17.9**

Data as at 30/09/2020

The reduction seen here is even more marked. The length of proceedings for cases closed by means of a judgment in 2019 is thus 19.7 months on average, a reduction of 5.8 months (-22.7%) compared with 2015, and that trend was confirmed again during the first three quarters of 2020 (17.9 months on average). The reduced length is particularly noticeable in competition cases and intellectual property cases. It is, however, more limited in the field of state aid and staff cases.

Additional data

Length of proceedings per stage of procedure (in months) - Cases disposed of by judgment (with a hearing)



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Written part of the procedure	9.0	8.2	9.5	7.9	8.7	7.9	7.0	7.7	6.6	5.9
Translation of written pleadings finished	1.7	1.5	1.4	1.5	1.2	1.2	1.4	1.5	1.4	1.2
Preliminary report	16.6	15.7	12.2	12.1	9.6	7.6	6.5	5.8	5.3	4.5
Conference	1.0	0.7	0.9	1.1	1.1	0.8	0.9	1.1	1.0	1.2
Setting hearing date	2.6	2.4	2.7	2.1	2.2	2.4	2.2	2.4	2.4	2.4
Deliberations	4.0	3.5	3.9	3.3	2.7	3.0	3.0	3.5	3.2	3.1
Reading	1.4	0.6	0.6	0.9	0.8	0.6	0.3	0.9	0.5	0.4
Correction	1.2	0.7	0.6	0.9	1.3	0.7	0.5	1.1	0.5	0.3
Translation of judgments	2.1	1.7	1.7	2.0	1.6	1.9	1.6	1.7	1.8	2.1
Total	**39.6**	**35.0**	**33.5**	**31.8**	**29.2**	**26.1**	**23.4**	**25.7**	**22.7**	**21.1**

Data as at 30/09/2020

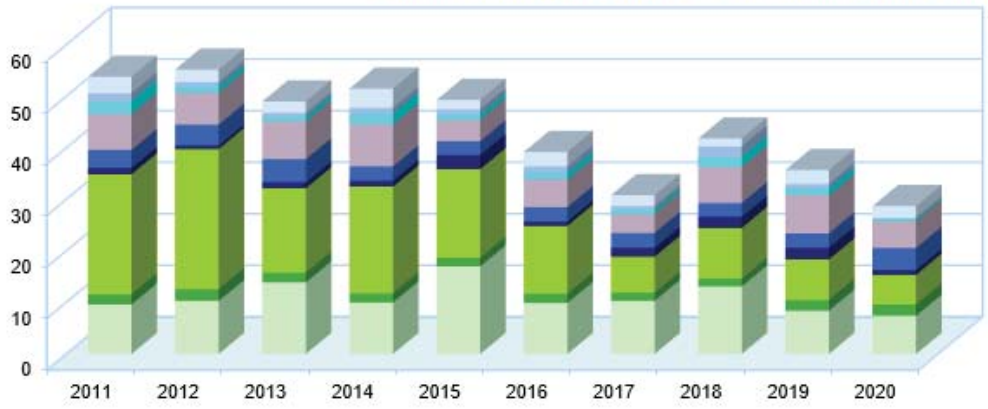
The above data indicates the length of proceedings for each stage of the procedure in respect of cases closed by a judgment in which a hearing took place. These are the cases that undergo the most comprehensive investigation by the General Court and are generally cases of the greatest importance. The reduction in the length of proceedings can be observed in similar proportions (-6.5 months between 2015 and 2019, or -22.3%). The first three quarters of 2020 show a further reduction (-1.6 months or -7.0%).

It is interesting to note that the stage of the procedure entitled 'Preliminary report' became very noticeably shorter: from 9.6 months in 2015 to 5.3 months in 2019 (-4.3 months or -44.8%) and to 4.5 months in 2020 (a further 15.0% drop). This stage is the period between when the last written pleadings of the parties are translated into the language of deliberation and the submission – by the judge-rapporteur – of the preliminary report [50] to the chamber. It includes not only the length of preparation time, as such, of the analysis document, but also the period during which the case may have had to wait because of priority being given to other cases (mainly older cases). The substantial reduction in the time taken up by this stage of a case's progression through the court shows that the reform has facilitated greater availability of judge-rapporteurs and their offices, as well as a more fluid case management process.

That finding is even more striking with regard to competition cases closed by a judgment in which a hearing was held.

[50] The preliminary report is the document in which the judge-rapporteurs set out their analysis of the facts and the points of law in the case, as well as the procedural options that they recommend. It is a key document for dealing with the case.

Length of proceedings per stage of procedure (in months) - Competition cases disposed of by judgment (with a hearing)



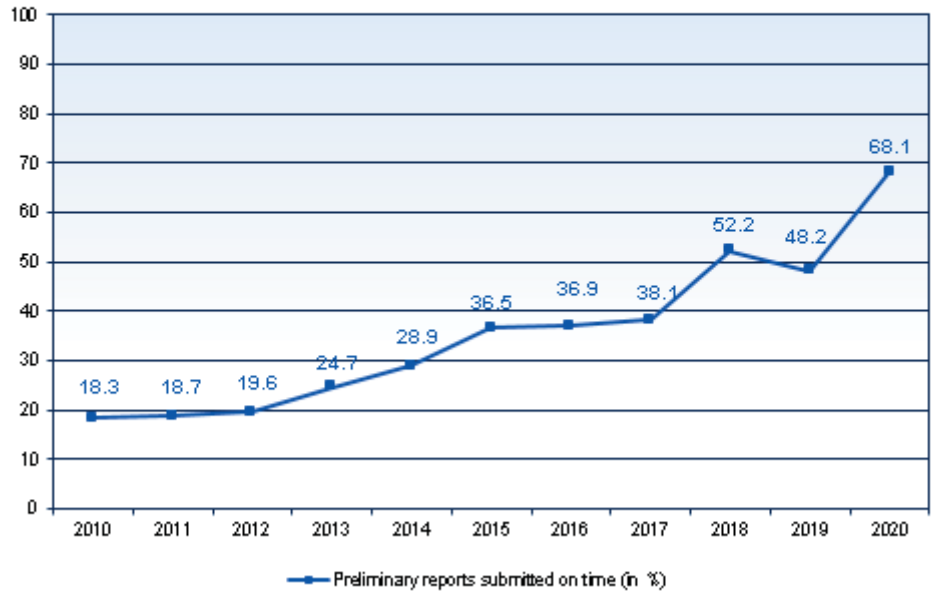
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Written part of the procedure	9.6	10.3	13.9	10.0	17.0	9.9	10.3	13.1	8.4	7.4
Translation of written pleadings finished	2.0	2.3	1.9	1.8	1.7	1.8	1.6	1.5	2.1	2.2
Preliminary report	23.3	27.2	16.4	20.7	17.2	13.2	7.0	9.9	7.9	5.8
Conference	1.2	0.6	1.1	1.1	2.7	0.8	1.7	2.1	2.2	0.9
Setting hearing date	3.5	4.1	4.5	2.8	2.7	2.8	2.9	2.7	2.8	4.3
Deliberations	7.0	6.3	7.4	8.2	4.2	5.4	3.8	7.1	7.4	5.3
Reading	2.4	1.0	0.8	2.0	0.9	1.2	0.6	1.8	1.3	0.3
Correction	1.6	1.0	0.8	1.2	1.1	1.3	0.8	2.1	0.9	0.2
Translation of judgments	3.2	2.4	2.2	3.7	1.8	2.8	2.1	1.5	2.7	2.3
Total	**53.8**	**55.2**	**49.0**	**51.5**	**49.3**	**39.2**	**30.8**	**41.8**	**35.7**	**28.7**

Data as at 30/09/2020

The length of the 'Preliminary report' stage fell from 17.2 months in 2015 to 7.9 months in 2019, a drop of 9.3 months (-54%). That trend was confirmed in 2020 (-26.6% compared with 2019).

The fact that the judge-rapporteurs are looking at case files earlier than before is also corroborated by the data regarding compliance with the internal deadlines for submission of the preliminary report, despite the fact that the time limit set for intellectual property cases was shortened by 25%, applying from September 2018 onwards. The graph below shows the trend since 2010 in the percentage of preliminary reports submitted within the time limits set by the General Court. Even if the rate of compliance with internal deadlines is still not 100%, the trend is favourable.

Rate of compliance with time limit for submission of preliminary report



Data as at 30/09/2020

CONCLUSION

Implementation of the reform has had a significantly favourable impact on the length of proceedings. However, the reduction observed is distributed unequally among the different fields of law which disputes arise. There is a particularly marked reduction for competition cases and intellectual property cases. A detailed analysis of the length of the stages in the procedure shows that this quicker turnaround stems from a more fluid case management process, which was facilitated thanks to the resources allocated to the court under the reform. This reduction in length will need to increase and will also need to apply to types of cases which, at present and on the whole, have seen only a slight reduction or perhaps none at all (state aid and staff cases in particular).

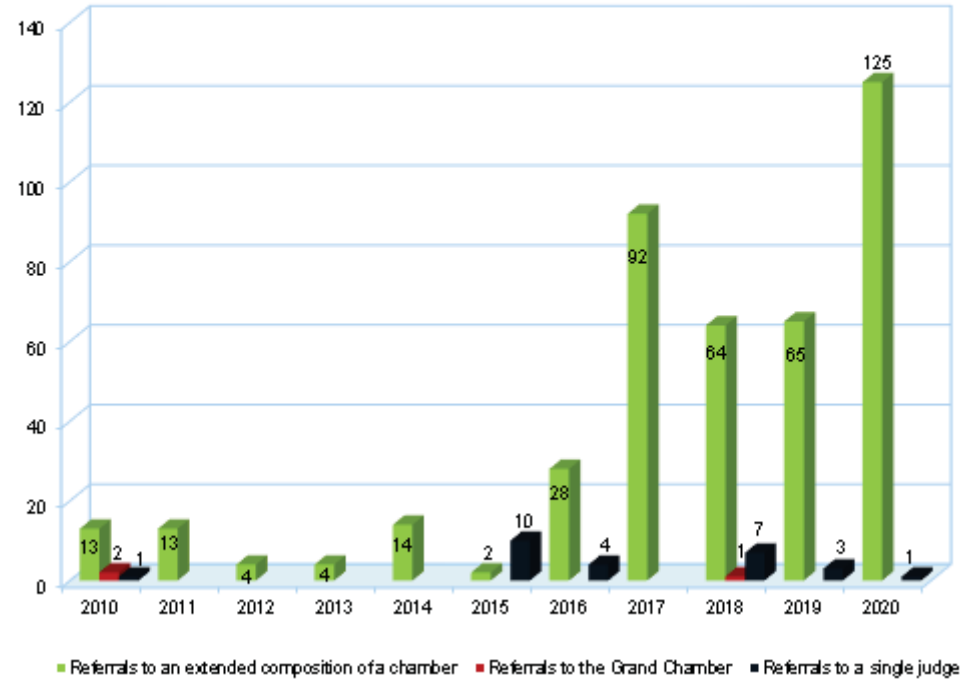
Qualitative indicators

Composition of the formations of the court

One of the objectives of the reform was to facilitate the referral of cases to a chamber larger than the three-judge composition (to a chamber of five judges or the Grand Chamber). Formations of the court (chambers) comprising more judges are effective in generating a more thorough debate and providing a greater representation of the legal systems, and they also strengthen the authority and consistency of the case-law.

Under Article 28(1) of the Rules of Procedure, '[w]henever the legal difficulty or the importance of the case or special circumstances so justify, a case may be referred to the Grand Chamber or to a Chamber sitting with a different number of Judges'. The referral decision is taken by the plenum of the General Court following a proposal by the chamber hearing the case, the Vice-President or the President of the General Court.

Number of cases referred to an extended composition of a chamber, the Grand Chamber or a single judge



Data as at 30/09/2020

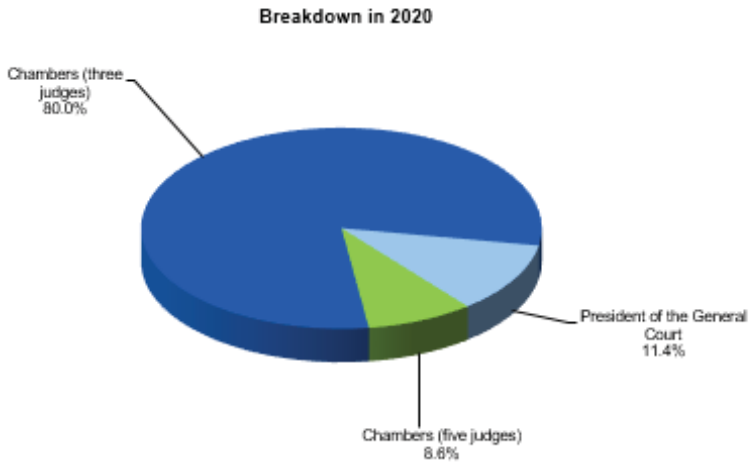
It can be observed that the number of cases referred to an extended chamber (the breakdown by year is based on the date of the referral decision) dipped to very low levels until 2015 and then increased as soon as the reform was implemented, moderately at first in 2016, and then more noticeably from 2017 onwards. Referrals before a single judge remain at very modest numbers, and referrals to the Grand Chamber since 2010 have been rare.

Decisions to refer cases to extended compositions of chambers with five judges have a slight time lag as regards the breakdown of judgments handed down by type of formation hearing the case, considering the time needed to deal with cases between the referral and the issuing of the judgment

(chamber conference, potential measures of organisation of procedure, convening and holding the hearing, deliberations, translation).

The figures displayed below show that decisions to refer to five-judge chambers taken during the continuation of the implementation of the reform from 2016 onwards are reflected in the proportion of cases completed (by a judgment or by an order) by five-judge chambers in 2018 (8.6%), 2019 (6.7%) and 2020 (8.6%), given that on average only 1.8% of cases were disposed of in five-judge chambers between 2011 and 2015. Overall, however, the three-judge composition remains by far the most frequently employed court formation, representing an average of 85% of the cases disposed of between 2018 and 2020 (to 30 September).

Completed cases – Formation hearing the action



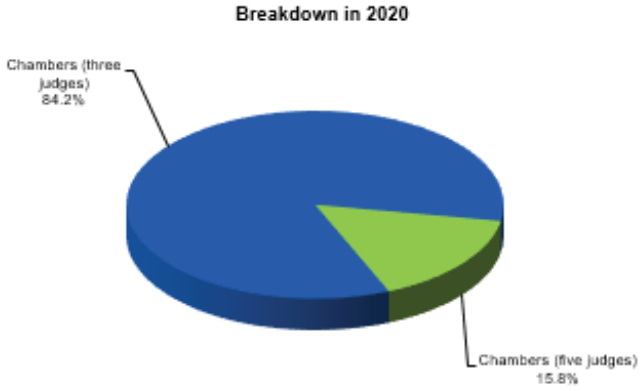
	2011			2012			2013			2014			2015		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Appeal Chamber	15	16	31	17	23	40	13	47	60	21	32	53	23	14	37
President of the General Court		54	54		47	47		38	38		46	46		44	44
Chambers (five judges)	19	6	25	9		9	7	1	8	9	7	16	8	3	11
Chambers (three judges)	359	245	604	328	264	592	378	218	596	398	301	699	538	348	886
Single judge													1	8	9
Total	**393**	**321**	**714**	**354**	**334**	**688**	**398**	**304**	**702**	**428**	**386**	**814**	**570**	**417**	**987**

	2016			2017			2018			2019			2020		
	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total	Judgments	Orders	Total
Grand Chamber											1	1			
Appeal Chamber	25	13	38	29	17	46	9	2	11		2	2			
President of the General Court		46	46		80	80		43	43		47	47		58	58
Chambers (five judges)	10	2	12	13	5	18	84	3	87	50	9	59	41	3	44
Chambers (three judges)	408	246	654	450	301	751	546	317	863	499	261	760	218	189	407
Single judge	5		5				5		5	5		5			
Total	**448**	**307**	**755**	**492**	**403**	**895**	**644**	**365**	**1009**	**554**	**320**	**874**	**259**	**250**	**509**

Data as at 30/09/2020

As regards solely cases disposed of by means of a judgment, from 2018 to 2019, 134 judgments were delivered by chambers of five judges, which is more than the total for the whole 2010-2017 period (83 judgments). Generally speaking, the proportion of judgments delivered by chambers of five judges rose sharply in 2018 and 2019 compared to the average seen since 2010 (multiplication by a factor of approximately 4), a trend which is confirmed in the statistics for the first three quarters of 2020 (15.8% of judgments handed down by chambers of five judges).

Cases completed by judgment - Formation hearing the action



	2010		2011		2012		2013		2014	
	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]
Grand Chamber										
Appeal Chamber	22	7.6%	15	3.8%	17	4.8%	13	3.3%	21	4.9%
Chambers (five judges)	8	2.8%	19	4.8%	9	2.5%	7	1.8%	9	2.1%
Chambers (three judges)	255	88.5%	359	91.3%	328	92.7%	378	95.0%	398	93.0%
Single judge	3	1.0%								
Total	**288**		**393**		**354**		**398**		**428**	

	2015		2016		2017		2018		2019		2020	
	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]	Judgements	% [1]
Grand Chamber												
Appeal Chamber	23	4.0%	25	5.6%	29	5.9%	9	1.4%				
Chambers (five judges)	8	1.4%	10	2.2%	13	2.6%	84	13.0%	50	9.0%	41	15.8%
Chambers (three judges)	538	94.4%	408	91.1%	450	91.5%	546	84.8%	499	90.1%	218	84.2%
Single judge	1	0.2%	5	1.1%			5	0.8%	5	0.9%		
Total	**570**		**448**		**492**		**644**		**554**		**259**	

(1) Compared with total number of cases completed by judgment.

Data as at 30/09/2020

CONCLUSION

Over the years prior to the reform, due to the growing backlog of cases, circumstances dictated that the use of extended formations of chambers, which were in common use between 1995 and 2005, was to a certain degree abandoned.

The General Court's new structure has enabled it to increase referrals to such formations in a targeted way whenever the legal difficulty, the importance of the case or special circumstances so justify, in particular with regard to certain cases of the greatest legal, economic, financial or institutional importance.

This development has contributed to more thorough debates, a greater representation of the legal systems and a strengthening of the authority and consistency of the case-law. It could be further enhanced and facilitated by changing the way in which cases are assigned to chambers of judges (see Chapter IV. Prospects for development).

Appeals against decisions of the General Court

Appeal rate

The rate of appeals before the Court of Justice against decisions of the General Court is an indicator of the level of acceptability for litigants, whether applicants, defendants or interveners, of those decisions.

Appeals to the Court of Justice against decisions of the General Court

	2011			2012			2013			2014			2015		
	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %
State aid	10	37	**27%**	18	52	**35%**	16	52	**31%**	15	77	**19%**	22	75	**29%**
Competition	49	90	**54%**	24	60	**40%**	28	73	**38%**	15	44	**34%**	32	61	**52%**
Staff cases	1	1	**100%**												
Intellectual property	39	201	**19%**	41	190	**22%**	38	183	**21%**	33	209	**16%**	64	333	**19%**
Other direct actions	59	204	**29%**	47	208	**23%**	62	202	**31%**	47	231	**20%**	85	290	**29%**
Appeals *				0	2	**0%**							0	2	**0%**
Special forms of procedure **				2	2	**100%**									
Total	158	533	**30%**	132	514	**26%**	144	510	**28%**	110	561	**20%**	203	761	**27%**

	2016			2017			2018			2019			2020		
	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %	Decisions against which appeals were	Decisions open to challenge	Appeal rate %
State aid	23	56	**41%**	8	25	**32%**	20	55	**36%**	38	86	**44%**	6	16	**38%**
Competition	17	41	**41%**	5	17	**29%**	21	35	**60%**	28	39	**72%**	1	6	**17%**
Staff cases	0	0	**0%**	8	37	**22%**	15	79	**19%**	32	110	**29%**	15	56	**27%**
Intellectual property	48	276	**17%**	52	297	**18%**	68	295	**23%**	57	315	**18%**	33	168	**20%**
Other direct actions	75	253	**30%**	61	236	**26%**	69	249	**28%**	97	297	**33%**	35	155	**23%**
Special forms of procedure **				3	3	**100%**	1	1	**0%**	3	3	**100%**			
Total	163	626	**26%**	137	615	**22%**	194	714	**27%**	255	850	**30%**	91	402	**23%**

* Decisions of the General Court rejecting applications to intervene submitted as part of appeals against decisions of the Civil Service Tribunal are covered here.

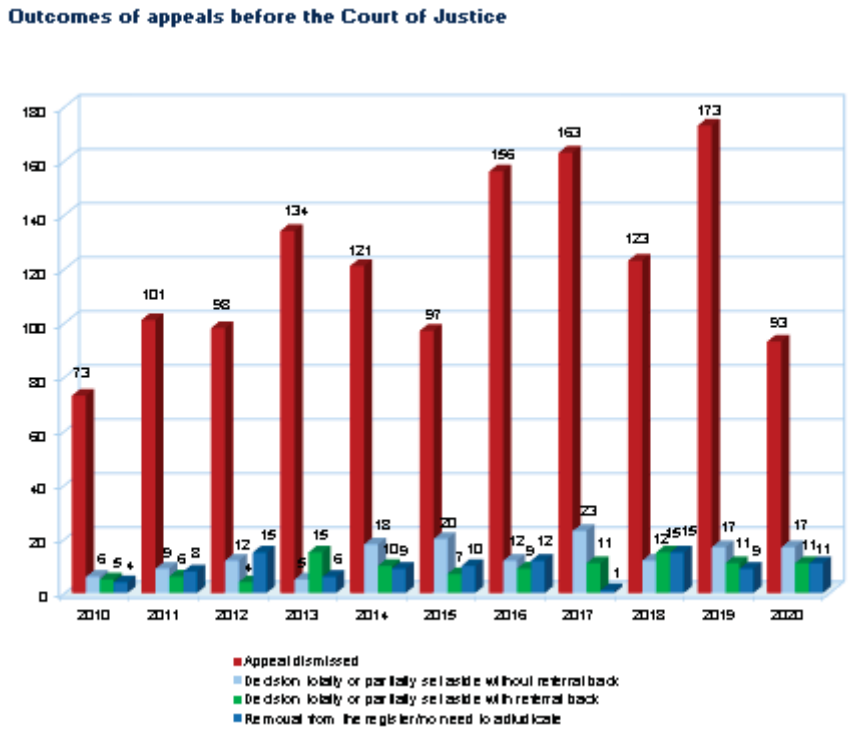
** Decisions of the General Court ruling on applications under the 'special forms of procedure' category are covered here, without prejudice as to whether such a decision is in fact open to challenge.

Data as at 30/09/2020

The figures show that the average appeal rate for the period 2010-2015 (a rate of 26.7%) is equivalent to that recorded in the period 2016-2019 (namely 26.2%). A high rate of appeal in 2019 (30%) can be explained in part by the great importance of certain state aid and competition cases, giving rise inevitably to an exceptionally high rate of decisions being challenged. That state of affairs is not confirmed by the figures for the first three quarters of 2020 (23% appeal rate). However, an explanation for those figures can be partially found in cyclical factors, namely:

- the lesser impact of the prior admission procedure for appeals (which entered into force on 1 May 2019) on the number of appeals brought before the Court of Justice in intellectual property cases;
- the particularly high proportion of cases closed by an order in the first three quarters of 2020 (49% of cases completed were done so by way of an order), given that the rate of appeal against orders is usually significantly lower than the rate of appeal against judgments, due to the very nature of orders (no need to adjudicate or appeal dismissed on grounds of inadmissibility, lack of jurisdiction or manifestly lacking any foundation in law).

Appeal success rate



Data as at 30/09/2020

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Appeal dismissed	73	101	98	134	121	97	156	163	123	173	93
Decision totally or partially set aside without referral back	6	9	12	5	18	20	12	23	12	17	17
Decision totally or partially set aside with referral back	5	6	4	15	10	7	9	11	15	11	11
Removal from the register/no need to adjudicate	4	8	15	6	9	10	12	1	15	9	11
Total	**88**	**124**	**129**	**160**	**158**	**134**	**189**	**198**	**165**	**210**	**132**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Success rate (totally or partially set aside)	12.5%	12.1%	12.4%	12.5%	17.7%	20.1%	11.1%	17.2%	16.4%	13.3%	21.2%

Data as at 30/09/2020

The success rate of appeals is an indicator which makes it possible, to some extent, to assess the legal accuracy of first instance decisions. Nevertheless, reliable conclusions may be drawn only after an analysis of the grounds for annulment of the General Court's contested decisions, in particular where an abnormally high success rate is found.

Considering the average length of the appeal proceedings before the Court of Justice, the relevant years for assessing the possible impact of the reform are 2018 and 2019. There is no significant difference between the success rates observed in those years (16.4% and 13.3%, respectively) and the rates recorded for the years 2010 to 2017. It should be noted, however, that the data relating to the first three quarters of 2020 show a high rate of annulments or decisions being set aside (21.2%). The prior admission procedure (whereby the Court of Justice determines whether an appeal should be allowed to proceed) that entered into force on 1 May 2019 has had an impact on comparability between rates in 2020 and in previous years. Indeed, this procedure has resulted in a lower number of appeals in intellectual property cases, the success rate of which was always lower than the average success rate in other areas. With no definitive conclusion being able to be drawn as yet from this data, it will be necessary to observe how this rate develops in the future and, if necessary, to analyse the reasons behind this decrease.

Rate of admissibility of intellectual property appeals under Article 58a of the Statute

Since the entry into force on 1 May 2019 of the mechanism for determining whether appeals should be allowed to proceed, introduced by Regulation 2019/629, 71 appeals resulting from this procedure have been brought. [51] All these appeals concerned judgments or orders by the General Court ruling on appeals brought against decisions of the boards of appeal of the EUIPO or the Community Plant Variety Office.

[51] By way of reminder, the mechanism for determining whether appeals should be allowed to proceed, provided for in Article 58a of the Statute of the Court of Justice of the European Union, relates only to decisions of the General Court concerning a decision of an independent board of appeal of one of the agencies and offices listed in that article and of any independent board of appeal set up after 1 May 2019 within any other office or agency of the Union, which has to be seised before an action may be brought before the General Court. In accordance with that provision, the appeal must raise an issue that is significant with respect to the unity, consistency or development of EU law.

None of those appeals has been allowed: 5 appeals were dismissed as inadmissible, 49 were not allowed to proceed and 17 are still being heard. These figures depend to a certain extent on the relevance and quality of the applications for the appeal to be allowed to proceed but may also be regarded as an indicator that the General Court has preserved the unity, consistency and development of EU law in that area.

CONCLUSION

An analysis of the information relating to the rate of the appeals brought against decisions of the General Court and the success rate of those appeals does not, at this stage, enable a conclusion to be reached on the existence of a trend showing an overall decrease or increase in the quality of those decisions. Nevertheless, attention should be paid to this point. It will thus be useful, in the future, to ensure that the rate of appeals and the success rate of appeals are monitored accurately and specifically in order to have some indicators of the quality of the General Court's work.

Furthermore, the low admission rate of appeals relating to intellectual property may be regarded as an indicator of the General Court having preserved the unity, consistency and development of EU law in that area, given that that rate also depends on the relevance and quality of the applications for admission.

Level of judicial review

Investigation of cases

Measures of organisation of procedure, measures of inquiry, witnesses, experts

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Number of cases with measures of organisation of procedure*	269	306	307	288	363	368	319	425	480	476	565
Number of parties to whom measures of organisation of	490	606	593	541	711	772	666	882	942	917	1177
Number of measures of inquiry	10	11	14	8	26	16	11	45	38	28	17
Number of witness examinations	0	0	0	0	1	0	0	0	0	0	0
Number of appointments of experts	0	0	0	0	0	0	0	0	0	0	0

* Written questions and requests for production of documents will be counted as measures of organisation of procedure.

The Rules of Procedure provide, inter alia, that in order to investigate cases, the General Court can adopt measures of organisation of procedure (which are intended to ensure that cases are prepared for hearing, procedures carried out and disputes resolved[52]) by means of a decision, or measures of inquiry by means of an order. [53] The number of measures of this type adopted by the General Court is therefore an indicator of the amount of work the court does in terms of investigating cases and, therefore, of the level of judicial review – especially of the facts – carried out.

Between the period 2010-2015 and the period 2016-2019, the data shows:

- as regards measures of organisation of procedure, an increase of 34.1% in terms of the number of cases where they are used and an increase of 37.6% in terms of the number of parties to whom they are addressed;
- as regards the number of measures of inquiry, an increase of 114.8%;
- the continued absence of oral testimony from witnesses (except in 2014) and of experts being commissioned.

The data for 2020 also shows an accentuation of that phenomenon as regards measures of organisation of procedure, with more activity in this area in those three quarters than that seen over a whole year in the years 2017 to 2019. This finding is explained in part by the questions put to the parties in a significant number of cases in order to manage the procedural consequences of the public health crisis. Some cases had to be investigated by means of written questions in view of the difficulty and even, in certain cases, the impossibility of parties' representatives being able to travel for a hearing.

CONCLUSION

The implementation of the reform was accompanied by a significant increase in the work carried out as part of the General Court's investigation of cases. This, together with the circumstance of cases being referred more regularly to extended chambers, is a demonstration of the fact that the judicial review process has become more thorough.

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[52] Under Article 89(3) of the Rules of Procedure of the General Court, '[m]easures of organisation of procedure may, in particular, consist of:
(a) putting questions to the parties;
(b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;
(c) asking the parties or third parties for the information referred to in the second paragraph of Article 24 of the Statute;
(d) asking the parties to produce any material relating to the case;
(e) summoning the parties to meetings'.

[53] Under Article 91 of the Rules of Procedure of the General Court, '[w]ithout prejudice to Articles 24 and 25 of the Statute, the following measures of inquiry may be adopted:
(a) the personal appearance of the parties;
(b) a request to a party for information or for production of any material relating to the case;
(c) a request for production of documents to which access has been denied by an institution in proceedings relating to the legality of that denial;
(d) oral testimony;
(e) the commissioning of an expert's report;
(f) an inspection of the place or thing in question'.

Perception by users

The indicator relating to user perception supplements the analysis based on quantified and objective indicators by taking into account a subjective assessment by the recipients of the European public justice service.

Number of applications for rectification, applications relating to a failure to adjudicate and applications for interpretation

Rectification is a procedure used after the handing down of the judgment or the service of the order in question. As regards the General Court, its objective is to rectify by means of an order any clerical mistakes, calculation errors or obvious inaccuracies, either of its own motion or at the request of a party. [54]

In addition, if the General Court has failed to adjudicate, either on a specific head of claim or on costs, any party wishing to rely on that may apply to the General Court to supplement its decision. [55]

Lastly, if the meaning or scope of a judgment is in doubt, the General Court will construe it on application by any party or any institution of the EU establishing an interest therein. [56]

The number of these procedures, which relate to judgments and orders issued by the General Court, is an indicator of how those affected by the decisions perceive them, irrespective of the actual outcome of those procedures.

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Applications for rectification	2	2	1	9	5	7	5	10	12	8	3
Applications relating to a failure to adjudicate	0	0	0	0	0	0	0	1	1	1	0
Applications for interpretation	1	0	0	0	2	0	1	2	1	1	0
Total	**3**	**2**	**1**	**9**	**7**	**7**	**6**	**13**	**14**	**10**	**3**

In view of the small overall volume of instances recorded, caution is required in interpreting this data. Still, it can be observed that the average number of procedures for rectification and interpretation or procedures relating to a failure to adjudicate, brought in the period 2016-2019 (10.7), more than doubled compared to the period of 2010-2015 (4.8), exceeding proportionally the increase in the number of cases completed between those two periods.

Consultation with users of the General Court

Users of the General Court are essentially those involved in legal proceedings (private parties, natural or legal persons, and Member States, institutions, bodies, offices and agencies of the EU). In order to prepare this report, bilateral meetings were held between their representatives (lawyers, agents of the institutions, bodies, offices and agencies of the EU, agents representing the

[54] Article 164 of the Rules of Procedure of the General Court.
[55] Article 165 of the Rules of Procedure of the General Court.
[56] Article 168 of the Rules of Procedure of the General Court.

governments of the Member States) and representatives of the Court of Justice, for consultation purposes.

From the discussions held it became clear that a number of observations were generally shared by the representatives that were consulted. These can be summarised as follows:

- there was great confidence in and a high level of satisfaction with the court and the way in which is carries out its mission;
- even though it is too early to assess all the effects of the reform, the first trends observed have been judged positively;
- although users have noticed a decrease in the length of proceedings in intellectual property cases, the length of proceedings in complex commercial cases, in particular in the field of state aid, did not appear to benefit from such a favourable development;
- the importance of the qualitative aspects of the General Court's decisions under the implementation of the reform was emphasised;
- it was observed that the number of cases completed has not increased significantly and that the number of pending cases has not been reduced;
- wishes were expressed for the procedure to be managed more promptly, more regularly and more actively (e.g. assessing the expediency of a more widespread use of a single exchange of pleadings, trying to reduce the time gap between closing the written part of the procedure and the date of the hearing, developing the use of written questions in preparation for the hearing, developing the practice of inviting the parties to informal meetings to prepare cases during the written procedure) following on from the recent increase seen in the number of measures of organisation of procedure;
- the risk of certain discrepancies arising between the different chambers was mentioned (in particular as regards the handling of procedural issues) and the importance of maintaining consistency in the case-law was emphasised;
- the development of the use of extended chambers of five judges was welcomed very favourably and it was pointed out that using the Grand Chamber could also prove appropriate in order to provide clear guidance ('leading cases') in certain areas, as could the creation of an intermediate chamber of nine judges formed by two chambers joining together;
- the fact that chambers specialising in intellectual property and staff matters have been established was also welcomed very favourably as an element of quality, consistency and efficiency; it was felt that it could be appropriate to evaluate the possibility of developing this approach in other areas so as to funnel the handling of certain cases to particular chambers while avoiding the exclusive allocation of a given dispute to a single chamber and ensuring that each chamber has a sufficiently diverse caseload;
- holding a hearing in certain cases was considered to be of low added value and some ideas were suggested for addressing this issue (e.g. requiring there to be a real reason for a request for a hearing and allowing specific issues to be focused on during the oral submissions, developing the use of orders dismissing the action as manifestly lacking any foundation in law and developing the use of judgments without a hearing);
- some potential efficiency gains were mentioned in connection with the prompt and expeditious handling of inadmissible applications.

CONCLUSION

The perception by users of the General Court of the effects of the reform cannot be assessed accurately and definitively yet. It may be inferred from the feedback given that the perception of the effects of the reform are, on the whole and at this current stage, positive. Nevertheless, users of the General Court have expressed expectations that the efficiency of the court and the quality of court decisions can be further enhanced in the context of the implementation of the reform.

PROSPECTS FOR DEVELOPMENT

The General Court has assumed, in areas falling under the mechanism for the prior admission of appeals, [57] greater responsibility in the context of reviewing the legality of the acts of the offices and agencies concerned, in particular as regards decisions taken by the EUIPO. In those areas, the Court of Justice's intervention is effectively limited solely to situations in which the appeal raises an important issue with respect to the unity, consistency or development of EU law. The General Court must therefore utilise the capacity for adjudication it has gained since the last reform of the judicial architecture to further increase the quality of its decisions, while at the same time reducing the rate of appeals in areas which do not fall under that mechanism.

As provided for in the second subparagraph of Article 3(1) of Regulation 2015/2422, the purpose of this report is to examine 'the further establishment of specialised chambers and/or other structural changes'.

Thanks to the analysis set out above and the observations of both external consultants and users of the General Court, three possible approaches can be outlined with a view to achieving the objectives of quality and efficiency in the justice system.

Streamlining the allocation of cases: setting up specialised chambers and balancing the workload

In September 2019, the General Court introduced specialised chambers to hear staff cases and intellectual property cases. The purpose of this specialisation was to mitigate any diverging outcomes that may arise from a large body of similar disputes being divided among 10 chambers, each comprising six benches of judges. It also means that expertise in these subject areas can be developed and efficiency enhanced.

[57] See footnote 51.

As both the users of the General Court and Mr Rennert have emphasised, there are other areas of disputes that might lend themselves to some form of specialisation. [58] Without this leading to a scenario where certain types of cases are assigned solely to one chamber, the idea that certain matters be allocated to a more limited number of chambers rather than all of the 10 chambers should be envisaged. This number should be determined according to the number and complexity of the cases in each area concerned. This idea could be developed effectively based on an assessment of the system that was put in place for intellectual property cases (assigned to six chambers) on the one hand, and for staff cases (assigned to four other chambers) on the other.

The purpose of any extension of that approach would be to limit the occurrence of cases involving particular subject matter being scattered across all the chambers, whilst providing guarantees as to the diversity and cross-disciplinary nature of each chamber's caseload. In that context, it should be noted that Mr Díez-Picazo Giménez has stressed the importance of General Court judges retaining their generalist profile and of preventing them from being confined to a limited type of subject matter. At the meeting with the representatives of the General Court, Mr Díez-Picazo Giménez thus drew a distinction between the specialised profile of judges in certain subject areas, which should not be a factor in the selection criteria for their appointment to the General Court, and the specialisation of certain chambers at the General Court. While accepting that 'in situ' partial specialisation has some advantages, Mr Díez-Picazo Giménez also underlined that, taken to the extreme, it would be contrary to the objective of increasing the number of judges in the chamber hearing the action, the purpose of which is to enrich the debate that the chamber has by hearing the viewpoints of judges from a diverse range of legal cultures.

To strike a fair balance between these various parameters, the General Court will need to conduct an analysis of the features of the litigation it handles, in order to determine whether there are sufficiently stable and homogeneous categories that lend themselves to being assigned consistently to particular chambers.

[58] In this regard, Mr Rennert has suggested specifically that a minimum of two chambers should be (alternately) responsible for each legal domain, while ensuring that there is a geographical balance between them.

Cases pending – Subject matter of the action

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Access to documents	40	37	38	32	59	65	76	30	30	27
External action by the European Union	2	3	1	3	2	4	2	2	5	5
Accession of new States			1	1						
Agriculture	61	40	51	51	56	42	43	43	22	20
State aid	178	151	146	243	215	241	256	219	278	289
Overseas Countries and Territories Association			1							
Citizenship of the Union										1
Arbitration clause	18	15	13	17	30	23	27	27	22	24
Economic, social and territorial cohesion	32	24	13	15	14	15	6	2	3	2
Competition - Company mergers	13	11	9	6	5	12	8	10	11	25
Competition - Agreements, decisions and concerted practices	190	174	133	102	69	45	68	47	37	38
Competition - Public undertakings	1	1	1	1						
Competition - Dominant position	23	14	5	8	8	7	8	11	16	17
Culture			1	1	1	1				
Financial provisions (budget, financial framework, own resources, combating fraud)	2	1	1	5	7	10	10	9	10	8
Company law				1	1	1	1	1		
Law governing the institutions	41	41	50	84	79	85	96	103	180	175
Education, vocational training, youth and sport	1	1	2		3	3	3	1	2	1
Energy	1	1	1	1	3	4	9	4	9	13
Registration, evaluation, authorisation and restriction of chemicals (REACH Regulation)	7	8	14	14	10	8	14	14	10	12
Environment	18	13	18	18	5	7	12	8	12	14
Area of freedom, security and justice	3	1				7	2	1	2	1
Taxation	1		1			2		2		
Freedom of establishment				1				1		
Free movement of capital								1		
Freedom of movement for persons	1					1			1	
Freedom to provide services	1									
Public procurement	43	42	36	34	35	24	27	22	15	18
Restrictive measures (external action)	89	106	107	108	103	61	62	60	72	67
Commercial policy	35	41	45	58	40	36	35	40	41	53
Common fisheries policy	25	16	17	5	2	1	1	2	2	
Economic and monetary policy	3	4	18	9	3	24	116	127	138	155
Economic and monetary policy - Supervision of credit institutions										1
Common foreign and security policy	1	1	3	1		1	1		1	1
Industrial policy				2						
Social policy	4	4		1	1	1	1	1	1	
Intellectual and industrial property	361	389	465	485	400	448	370	322	274	338
Consumer protection			1	2	2	2	1	1	1	2
Approximation of laws			13		1	1	4	6	4	1
Research and technological development and space	7	7	8	9	17	19	9	3	3	6
Trans-European networks			3	2	2		2	2	1	2
Public health	5	15	16	17	4	7	9	13	11	12
Tourism			1							
Transport	1		5	3					1	3
Customs union and Common Customs Tariff	15	15	7	9	5	5	1		2	
Total EC Treaty/TFEU	**1223**	**1176**	**1245**	**1349**	**1182**	**1213**	**1280**	**1135**	**1217**	**1331**
Total CS Treaty	**1**	**1**								
Staff Regulations	48	27	44	40	39	208	187	162	141	179
Special forms of procedure	36	33	36	34	46	65	41	36	40	44
OVERALL TOTAL	**1308**	**1237**	**1325**	**1423**	**1267**	**1486**	**1508**	**1333**	**1398**	**1554**

This shift towards a more focused allocation of cases in certain subject areas is compatible both with Article 3(1) of Regulation 2015/2422 and Article 25 of the Rules of Procedure of the General Court, which provides that the General Court 'may make one or more Chambers responsible for hearing and determining cases in specific matters'. It should be noted, in that regard, that this provision was introduced when the new Rules of Procedure of the General Court, which entered into force on 1 July 2015, were adopted and that the reasons given in the draft rules, on this point, were that '[a]n increase in the number of judges or the arrival en masse of disputes in a particular area are significant events which might justify a decision to adapt the criteria for assigning cases accordingly. That is why the General Court proposes that the current Article 12 be supplemented by expressly providing that it may entrust one or more chambers to hear cases in specific areas. It is

therefore a matter of making it perfectly clear that adapting the system in place is possible when the circumstances so justify'.

Lastly, even if mechanisms exist and are implemented for that purpose, [59] as full and steady a balance as possible will need to be ensured between judges' workloads, bearing in mind how variable the cases in which they act as judge-rapporteur can be (in terms of volume and of complexity). Account should also be taken of the particular scenario of large groups of related cases and the workload some judges are likely to have due to sitting on certain particularly difficult cases. A review of this kind would seem to be particularly appropriate in the context of the reduction in the average workload of judge-rapporteurs and the establishment of new specialised chambers.

Developing mechanisms for ensuring consistency in the case-law

Referrals to extended compositions of chambers with five judges

Since the reform of the General Court began, there has been an increase in the number of cases assigned to five-judge chambers, something which users of the court have judged favourably. Whereas, in 2016, the General Court disposed of 12 cases using this type of formation, that figure rose to 87 in 2018, representing 8.6% of cases completed. However, in 2019 the number of cases heard by five-judge chambers went down: 59 cases were closed by an extended chamber, accounting for 6.7% of cases completed. Although that proportion increased during the first three quarters of 2020 (8.6%), the fact remains that chambers with three judges remain by far the General Court's most common court formation (80% of cases closed during the first three quarters of 2020, 85% of cases closed since 2018).

That finding can be explained, essentially, by the way in which cases are assigned at the General Court. Under Article 26 of the Rules of Procedure of the General Court, as soon as possible after the document initiating proceedings has been lodged, the President of the General Court assigns the case to a chamber according to the criteria published in the Official Journal, which provide that this is a chamber of three judges.

A case may be referred to a chamber sitting in an extended composition '[w]henever the legal difficulty or the importance of the case or special circumstances so justify.'[60] Such a referral is likely, to a certain extent, to extend the length of time taken to deal with a case, which may have the effect of discouraging the use of such a mechanism. Indeed, it is initially on the basis of the preliminary report drawn up by the judge-rapporteur and communicated to the three-judge chamber that the latter decides to propose to the plenum that the case be referred to an extended composition. A note must then be prepared by the judge-rapporteur for the plenum, explaining the need to refer the case to a chamber with five judges (or even to the Grand Chamber). If the plenum validates the referral to a chamber sitting in an extended composition, that chamber in extended composition, which consists of the original three-judge chamber plus two other judges from the chamber, must meet (again, with respect to the initial three judges) to examine the case and discuss the guidance proposed by the judge-rapporteur in his or her preliminary report.

The examination of a case by a bench of five judges will always generate more varied and sustained discussions during deliberations. It clearly enhances the representation of the legal systems, the quality of the decision and the authority of the decision. Assessments made by two external advisers

[59] The assignment of cases considering the exemption from the rotation-based system arising from the need for a balanced distribution of workload, regular monitoring of judge-rapporteurs' portfolios, the possibility of reassigning cases pursuant to Article 27(3) of the Rules of Procedure.

[60] Article 28(1) of the Rules of Procedure.

whom the Court of Justice consulted partly differ as to the degree to which this court formation should be used: in the view of Mr Rennert, this is the 'ideal' formation for the General Court (with the exception of cases that are particularly urgent), while Mr Díez-Picazo Giménez believes that it should be reserved for settling complex points of law, with the three-judge formation remaining the main format used.

In seeking a balance between these two approaches and taking account of the fact that the General Court's resources allow for a more systematic handling of cases by extended formations, it will be for the General Court to amend the rules relating to its internal functioning, in the sense that cases involving certain subject matter where the issues are more complex and of greater importance would automatically be assigned to five-judge chambers, especially in the field of competition law and state aid. Such assignment of cases in these fields have, moreover, already been used in the past at the General Court.

The initial allocation to a five-judge chamber would be without prejudice to the possible subsequent application of Article 28(4) of the Rules of Procedure concerning the referral of a case to a formation sitting with a lesser number of judges. Minor amendments to that provision of the Rules of Procedure could give the five-judge chambers the power, where the case presents no particular difficulty, to refer the case to a chamber of three judges without having to consult the plenum first (in a similar way to the devolution to a single judge provided for under Article 29(3) of the Rules of Procedure).

As the extended composition of the chamber includes a chamber in a three-judge formation, a single chamber meeting would suffice to examine the case, decide whether to refer it to a three-judge chamber and take the necessary procedural measures (a hearing, written questions for the hearing and other measures of organisation of procedure).

Referrals to the Grand Chamber and/or an intermediate Chamber

The importance of the point of law raised, the particular sensitivity of the case or the existence of diverging lines of case-law are all factors that may fully justify the referral of a case to the Grand Chamber comprising 15 judges. Yet the Grand Chamber of the General Court has not delivered any judgments since those handed down on 12 September 2007 in *API v Commission* (T-36/04, EU:T:2007:258) and on 17 September 2017 in *Microsoft v Commission* (T-201/04, EU:T:2007:289), [61] in particular due to the increasing workload the court was coping with before the reform was adopted and implemented.

Mobilising 15 judges to decide on very large-volume and factually complex cases, which sometimes take the form of related cases grouped together, may indeed take up significant resources and have an impact on the capacity for dealing with other cases.

Mr Díez-Picazo Giménez and several of the users consulted, however, were of the opinion that use of the Grand Chamber would allow the legal position to be clarified in the event of divergences between chambers or of the existence of wider-ranging issues.

It is necessary to endorse that finding and also to observe that the legal, commercial and political importance of certain cases brought before the General Court justifies a more frequent use of that chamber in those situations.

[61] Since then, only two orders of inadmissibility have been adopted by the Grand Chamber, on 7 September 2010 in *Norilsk Nickel Harjavalta and Umicore v Commission* (T-532/08, EU:T:2010:353) and *Etimine and Etiproducts v Commission* (T-539/08, EU:T:2010:354), and only one order of removal from the register, on 14 February 2019 in *VFP v Commission* (T-726/16, not published, EU:T:2019:837).

At the same time, the creation of an intermediate chamber, composed of nine judges, for example, could also be an appropriate forum for ruling on cases that raise new and complex points of law or for modifying existing case-law, particularly in the areas in which specialised chambers have been created. Such a measure, which would require a change in the Statute, was proposed by Mr Rennert. [62] His idea is that these would be 'joint chambers', made up of judges assigned to chambers specialising in the subject concerned. On the other hand, Mr Díez-Picazo Giménez was more sceptical about the usefulness of such a chamber, and preferred to entrust the Grand Chamber with the role of maintaining consistency in the case-law, in view of its greater authority.

Fostering a prompt, active and smooth case management process

Some indicators (development of measures of organisation of procedure, reduction in the length of the stage of the procedure covering the drawing up of the preliminary report) already show that the General Court's new resources have led it to adopt a more active approach to conducting its procedures. The users consulted welcomed this development, but also made some suggestions that might contribute both to quality and responsiveness in managing the procedures.

Written part of the procedure

Second exchange of pleadings

It is important to note that not all cases justify a second exchange of pleadings occurring as a matter of course. [63] Active management and a review of the case file from the first exchange of pleadings would make it possible either to avoid the second round of written pleadings (by adopting measures of organisation of procedure aimed at clarifying certain aspects of the file, where appropriate) or to focus the second exchange of pleadings on the relevant aspects of the dispute. This could be achieved, at least as far as certain subject matter is concerned (cases involving restrictive measures, access to documents or the civil service were mentioned), by making more systematic use of the possibilities available under Article 83 of the Rules of Procedure of the General Court. Under this article, the General Court may decide that a second exchange of pleadings is unnecessary because the content of the case file is sufficiently comprehensive or may specify the points which the reply or rejoinder should address. As some users have pointed out, for more complex cases, the convening of meetings to prepare a case for hearing, on the basis of Article 89 of the Rules of Procedure of the General Court, could also contribute to better management of procedural issues and to ensuring that the second exchange of pleadings focus on the essential aspects of the case. All of these measures relating to the proactive management of the procedure echo the recommendation made by Mr Díez-Picazo Giménez and consist of envisaging ways of reducing the length of the written part of the procedure.

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[62] He would in that case no longer consider a Grand Chamber of 15 judges to be useful. The chamber of nine judges would replace the Grand Chamber.

[63] It is interesting to observe that the new Rules of Procedure of the General Court that entered into force on 1 July 2015 put an end to the possibility of a second exchange of pleadings in intellectual property cases. That measure is, in part, the cause of the substantial reduction in the length of proceedings (from 19.3 months in 2015 to 13.6 months in 2020 as regards cases disposed of by a judgment).

Stayed proceedings

The above analysis reveals a growing and significant proportion of cases with stayed proceedings among the quantity of cases pending. The duration of the stay in proceedings is excluded from the statistics relating to the length of proceedings, which is fully justified in an assessment of the court's efficiency but must not conceal the consequences of this practice for those seeking justice. It is true that the staying of a case, on the basis of Article 54 of the Statute and Article 69 of the Rules of Procedure of the General Court, makes it possible, in the interests of the proper administration of justice and in compliance with the rules of jurisdiction and judicial hierarchy existing between the first instance court and the appeal court, to ensure the consistency of the case-law of the EU judicature and to ensure its authority.

However, the very large number of cases stayed before the General Court – nearly 30% of the cases pending – is a cause for concern. Firstly, when proceedings are stayed, a substantial part of the court's workload is put on hold, with a consequent easing on resources and perhaps a temporary excess capacity; this is followed by the subsequent and instantaneous reappearance of all or part of that workload upon the resumption of the proceedings that were stayed, possibly during a peak period of work for the judges involved. Secondly, before choosing a 'test' case and staying the proceedings in cases with an identical or similar subject matter, it would be appropriate to assess whether the audi alteram partem principle can be fully observed after stayed proceedings are resumed. Thus, in cases brought in parallel, where the legal characterisation of the facts relates to the conduct of several parties (such as the finding of an agreement within the meaning of Article 101 TFEU), choosing a test case and staying proceedings in other related cases should be avoided. Such a legal characterisation cannot be made without all the parties who have brought an action having been heard. On this point, it should be noted that some users expressed their concerns both about the designation and handling of test cases and the variability between different chambers' reasoning for decisions taken in that regard. Other users, although in favour of this practice, emphasised the importance of the choice of test cases (which must cover all the relevant pleas and arguments raised), of the completeness of the answers given by the General Court in the test judgment and of giving priority to hearing test cases.

Joinder of cases

A number of users rightly pointed out that managing the joinder of cases earlier would avoid the duplication of efforts in related groups of cases, and that simplifying the handling of confidentiality in commercial disputes involving business secrets would lead to significant efficiency gains in cases that are by nature complex and time-consuming.

Prompt identification of actions manifestly bound to fail

The court's efficiency would be enhanced by the prompt identification of instances of inadmissibility, lack of jurisdiction and manifest lack of any foundation in law by the President and by the immediate preparation for the chamber of judges of any draft orders closing the proceedings by a central and specialised body under the authority of the President (composed of administrators from the Registry and/or legal secretaries). This kind of processing would save the registrar from having to serve the application and the defendants from having to prepare a plea claiming lack of jurisdiction or inadmissibility. The approach would also offer advantages in terms of consistency in the interpretation of the admissibility requirements for direct actions.

Re-evaluation of internal deadlines

In view of the reduction in the average workload per Judge-Rapporteur resulting from the General Court's new resources (including the change in the way in which the judges' offices are staffed), a re-evaluation of the internal deadlines (in particular for submitting the preliminary report) is needed, as certain users have observed. The benefits of shortening the time limit for submitting the preliminary report on the length of proceedings are discernible in intellectual property cases; in September 2018, the General Court reduced the time limit for submitting the preliminary report by 25% for those cases. This time limit should be shortened even further in the field of intellectual property and extended to subject areas where, as a general rule, cases are of a moderate volume (staff matters, in particular, for which the time limit for submitting the preliminary report is 4 months at the General Court, whereas it was 6 weeks at the Civil Service Tribunal, but also several non-commercial disputes falling within the category of 'other direct actions', such as access to documents or restrictive measures), to an extent that is consistent with the characteristics of those proceedings. By way of comparison, even though the litigation dealt with by the General Court has certain particular features to be taken into consideration, it should be noted that the standard internal time limit for the submission of the preliminary report at the Court of Justice is 6 weeks as regards references for preliminary rulings and actions for failure to fulfil obligations, and 8 weeks in respect of direct actions and appeals (irrespective of the subject matter).

In order to ensure that internal deadlines have an effect in practice, the President of the Court should monitor compliance with those deadlines within the chambers more regularly, at each meeting of the Conference of Presidents of Chambers, which is, moreover, one of the purposes of this meeting.

Oral part of the procedure

Measures could be envisaged to ensure the greatest possible added value for the holding of hearings. Under Article 106 of the Rules of Procedure of the General Court, the procedure before the General Court includes, in the oral part, a hearing arranged either of the General Court's own motion or at the request of a main party. Any request for a hearing made by a main party must state the reasons why that party wishes to be heard.

The hearing is an important event in the procedure. It brings the parties to the dispute and the chamber hearing the action into immediate contact and helps, in important and/or complex cases, to shed light on the court's understanding of the case. It is therefore a factor affecting both the quality and the acceptability of the court's decisions in the eyes of the parties involved, in particular the party that is not successful.

On the other hand, the hearing is something that incurs costs both for the parties concerned and for the institution. It has an impact on judges' workloads and extends the length of the proceedings. [64] Yet some of the users consulted stated that their perception was that sometimes the oral argument was merely a repetition of the submissions and arguments set out in the written pleadings. It is therefore important to create the conditions in which holding hearings in cases where such hearings are of no use can be avoided and in which, when holding a hearing is in fact useful, it can be restricted to covering the elements relevant to settling the dispute.

[64] In 2019, the average length of proceedings in cases closed by a judgment with a hearing was 22.7 months and in cases closed by a judgment without a hearing it was 15.1 months (i.e. 33.5% less). Although this difference is partly due to the greater complexity of cases requiring a hearing, it should nevertheless be noted that another reason was the addition of another stage to the procedure (setting the date of the hearing), which alone was responsible for extending the length of proceedings by 2.4 months in 2019.

Recommended courses of action for improvement include: greater use of the opportunity to give a decision by reasoned order under Article 126 of the Rules of Procedure where the action is manifestly lacking any foundation in law, requiring a more detailed statement of reasons in the main parties' requests for a hearing in order to enable the court to assess the merits of those requests and to ensure that only the elements justifying a hearing are actually included in the hearing, and developing the practice of replacing a hearing with written questions to the parties by way of measures of organisation of procedure, in order to get clarifications on very precise elements.

V. SUMMARY AND OPERATIONAL CONCLUSIONS

The reform of the European Union's judicial architecture was necessary from the point of view of providing reinforcement for the General Court and enabling it to manage its workload on a lasting basis. However, no definitive conclusions can be drawn as yet with regard to the General Court's efficiency, the effectiveness of doubling the number of judges or the use and effectiveness of the resources, as provided for in the second subparagraph of Article 3(1) of Regulation 2015/2422.

There are many reasons for this:

- the final phase of the reform was implemented in September 2019, which does not leave a sufficient gap to be able to make a definitive analysis of its consequences in this report;
- in view of the very nature of the court's work and the judicial process, the arrival of new judges and adaptation of certain working methods do not provide immediate results;
- the public health crisis made it impossible to hold hearings between 16 March and 25 May 2020, meaning that the 2020 results are not representative.

The analysis carried out in this report has highlighted certain positive trends, recognised by the participants (agents and lawyers) in the proceedings before the Court who were consulted. The trends are:

- a significant reduction in the length of proceedings;
- a more intensified investigation of cases;
- more frequent referrals of cases to extended chamber formations.

These positive trends must, however, be put into the context of the significant reduction in the average workload per judge. Measures must therefore be implemented soon, in the interests of litigants, in order for them to be able to reap all of the benefits of the reform of the General Court, with the aim of:

- extending the reduction in the length of proceedings to cover types of cases for which the length of proceedings has thus far been reduced only slightly or has not changed at all (such as, mainly, cases involving state aid and the civil service);
- implementing a more proactive and streamlined management of the stages of the procedure, so that all the measures allowing cases to be dealt with as quickly and efficiently as possible can be taken as early as possible;
- increasing the number of referrals to extended chambers and the Grand Chamber, thereby contributing to the consistency, quality and authority of the case-law (around 85% of cases are still dealt with by three-judge chambers).

The following measures are likely to enable the General Court to attain those objectives.

Case assignment

- Creating new specialised chambers according to the specialisation model already introduced for intellectual property and staff cases;
- intensifying the use of existing mechanisms to ensure as steady and full a balance as possible between judges' workloads.

Formation of judges

- Providing for the automatic devolution of cases relating to particular complex matters (such as competition and state aid) to a chamber of five judges;
- intensifying the use of the Grand Chamber or allowing the use of an intermediate chamber (for example, a chamber with nine judges) in the event of divergences in the case-law between the chambers of the General Court or where the case involves particularly important issues.

A prompt, active and smooth management process

- Carrying out a systematic, prompt and centralised review of the possibility of dismissing actions that are manifestly inadmissible, vitiated by a manifest lack of jurisdiction or manifestly lacking any foundation in law by an order before service of the application on the defendant;
- carrying out a specific and thorough examination, in each case, of the need to allow a second exchange of pleadings and, if the latter is considered necessary, specifying the points to which it should relate;
- carrying out a specific and thorough examination of the reasons relied upon in support of requests for a hearing made by a main party and, when a hearing is held, developing the practice of specifying the points on which the oral pleadings should focus;
- limiting stays of proceedings to circumstances in which they are necessary for the proper administration of justice, having regard to the legitimate interests of the parties;
- shortening some internal deadlines, in particular the time limit for submitting the preliminary report;
- more regular monitoring, by the President of the General Court, to ensure that deadlines are respected within the chambers and procedures carried out correctly.

Redefining how jurisdiction is shared between the Court of Justice and the General Court is not necessary at present. In the light of the foregoing analysis and the particularly positive results recorded by the Court of Justice in 2020, which are reflected in a significant reduction in the number of pending cases, it appears both possible and appropriate to wait until the increase in the number of judges of the General Court has produced all its effects – in particular in the light of the changing organisation and working methods envisaged above – before formulating, where appropriate, a request for a legislative act seeking to amend the Statute on the basis of the second paragraph of Article 281 TFEU, as provided for in the third subparagraph of Article 3(1) of Regulation 2015/2422. Above all, the growing use by the General Court of extended chambers of five judges and the experience concerning the application by the Court of Justice of the mechanism whereby the Court determines whether an appeal should be allowed to proceed may serve as a basis for considering a possible extension of this mechanism to other areas of litigation.

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ANNEX II

GENERAL COURT

OF THE

EUROPEAN UNION

Luxembourg, 20 October 2020

The General Court welcomes this opportunity to submit comments on the draft report provided for under Article 3(1) of Regulation 2015/2422.

The General Court largely supports the conclusions of the draft report and endorses the prospects for development outlined. It agrees with the diagnosis of the Court of Justice and welcomes the analysis undertaken, in particular in the sections concerning measures aimed at contributing to the Court's efficiency and the assessment of the effects of the reform. It also shares the view that that analysis is difficult given the short period for implementation under review and the instability of the composition of the Court since 2016. The draft report rightly observes, moreover, that the health crisis related to the Covid-19 pandemic necessarily affects the results achieved in 2020.

At this stage, the General Court has been able to make significant progress in terms in particular of the length of proceedings and the more frequent referral of cases to extended formations of the Court, but it remains in a transitional phase, seeking to further exploit the potential of the reform adopted by the legislature. Most of the prospects for development put forward in the draft report represent a positive contribution to that development. It must be pointed out in that respect that some of the possible approaches echo numerous measures that have recently been adopted and which should indeed be reinforced. The other suggestions will be the subject of further discussion in the near future.

In terms of possible approaches in relation to 'streamlining the allocation of cases', the General Court wishes to emphasise that the partial specialisation of Chambers does not appear, in itself, necessarily to be incompatible with the retention of the generalist profile of judges of the General Court of the European Union. Specialisation is, moreover, certainly not alien to the General Court since, in addition to the specialisations introduced in 2019 in respect of civil service law and intellectual property law, the allocation of a large number of cases on the basis of the connection between them has enabled the General Court, for many years, to introduce a temporary and flexible specialisation in the handling of certain disputes. Experience shows that specialisation can indeed improve the quality, consistency and expeditiousness of judicial decisions, but not every case will lend itself to it. As recommended in the draft report, the General Court will draw initial lessons from the formal specialisation introduced in September 2019, while developing the tools required to manage the judges' workload, before assessing the appropriateness of establishing further areas for specialisation within the Chambers.

The ‘development of mechanisms for ensuring consistency in the case-law’ has naturally received the General Court’s full attention. Its policy of referring cases to extended formations of the Court, including to the Grand Chamber, and the establishment of an intermediate Chamber, have been under consideration since the summer of 2018. In the light, for example, of the 125 cases referred to five-judge formations of the Court in 2020 (compared to a yearly average of fewer than 10 in the period 2010-2015 preceding the reform), it must be noted that there is now an underlying trend at the General Court of referral to such formations, the full potential of which has yet to be achieved. This development is likely to strengthen the authority of the General Court’s rulings, as well as the widest possible representation of the various legal systems within the formations of the General Court. In anticipation of possible changes to the judicial architecture of the European Union, the General Court will, in particular, give further consideration to an intermediate Chamber, drawing on the lessons of completion of the final phase of the reform and the experience of the partial specialisation introduced in September 2019.

The third strand of prospects for development, ‘fostering a prompt, active and smooth case management process’, puts forward many proposals which are already being examined or will be examined in further depth over the coming months. The proposals concerning, in particular, the proactive investigation of cases at an early stage and the management of stayed cases are a priority. Another priority for the General Court, not addressed by the draft report, will be the completion, led by its Vice-President, of ongoing discussions concerning the readability and length of its judgments. This exercise will aim to further concentrate the General Court’s reasoning on the key points of a dispute in order better to meet litigants’ expectations.

In that context, the General Court would point out that the account actually taken of the nature of the disputes brought before it, that is to say, direct actions involving inter alia the definitive finding of facts that are often of considerable complexity, will be a measure of the success of any measure implemented. In particular, the central role of the hearing cannot be underestimated. It must be noted in that regard that primary law confers on the General Court the specific task of offering litigants effective judicial protection against the acts of the institutions. The General Court will continue to do its utmost to accomplish that task in the shortest possible time. However, it must always remain at the service of the parties and be attentive to them. It is they who, within the parameters laid down by the rules of procedure, decide to bring their disputes before the General Court and who, ultimately, determine the content of those disputes.

The General Court would also point out that it has, since 2015, undergone a period of restructuring and thus of instability requiring it continually to review how it operates. Despite this, the General Court has been able to reduce its backlog of pending cases. It is nevertheless important that it should once again experience a period of calm and serenity, so that it can concentrate on processing cases and fulfil the role that litigants expect of it.

The General Court will proceed with resolve to achieve the objectives established by the legislature and our institution. The European Union is a union based on the rule of law. It is therefore essential that our institution should be in a position to ensure respect for the rule of law both in the short and in the long term. The General Court will therefore ensure that it is in a position to accompany the Court of Justice when the time comes to redefine the respective roles of the two courts, as observed in the final paragraph of the draft report.

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