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Follow-Up Note on Another Missed Opportunity for the Administration of Justice Across Europe

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Last week, the Council gave itself another shot at improving the functioning of the General Court of the European Union (the 'General Court'). And once again, it failed. Following an already disappointing episode in March 2014,[1] the Council again placed the equality between member states at the top of its priorities, by doubling up the number of judges at the General Court. This may admittedly help the General Court reduce its backlog but was certainly not the "*most cost-effective*" way to do so. There was, indeed, a much easier way out.

By way of a reminder, reforming the General Court has been on the table for several years. Everyone agrees this reform is now urgently needed to reduce the General Court's backlog and enable it to face the increasing number and complexity of cases. In March 2014, the Council failed to move forward because member states could not agree on which ones would get to appoint a second judge. Following this sad episode, the President of the Court of Justice amended his initial proposal and presented a modified version – the so-called '*Skouris II*' to the Council. *Skouris II* takes member states at their word and suggests an increase in number of judges at the General Court not by 9 or 12 – as was initially envisaged – but by 28.

The Council eventually accepted this idea, but emphasized the need to keep the reform at an acceptable cost. In an attempt to promote the "*most cost-effective*" means to reform the General Court, the Council's Revised Proposal ('Revised Proposal') therefore compensates the additional costs by two key measures: the eradication of the Civil Service Tribunal by its incorporation within the General Court and a freeze in the General Court's administrative costs by reducing the number of *référendaires* and assistants per cabinet. This would happen in three successive phases:

In a first phase, 12 additional judges would join the General Court, without any change in the current structure of the judges' cabinets. By September 2015, the General Court would thus count 40 judges and around three times that number of *référendaires* – 120 in total – to tackle the General Court's backlog.

In a second phase, the Civil Service Tribunal would be incorporated within the General Court and the seven judges of this Tribunal would all join that Court. By September 2016, the General Court would thus count 47 judges and around 141 *référendaires* to tackle the General Court's backlog, a backlog however increased by the Civil Service Tribunal's workload.

Finally, in a third phase, nine additional judges would join the General Court. At this point

however, any additional administrative costs would be frozen. In plain language, this means no additional *référendaires* or assistants and, at best, a reallocation of the existing staff among cabinets. In September 2019, the General Court would thus count 56 judges and around 112 *référendaires*, that is to say two *référendaires* per cabinet instead of three.

The Revised Proposal will probably help the General Court reduce its backlog. However one cannot but wonder whether this was the "most cost-effective" way to meet that objective.

There was a much easier way out though: adding 28 *référendaires* instead of 28 judges. This would have been the "*most cost-effective*" approach for two reasons. First, in terms of effectiveness, *référendaires* are those whose impact on quantity is the highest because they focus on the most time-consuming tasks: they prepare the work for their judges, under their supervision, and judges decide on that basis. Increasing the number of *référendaires* thus appears as the most evident solution to quantitative issues.[2] Second, in terms of costs, while a whole cabinet costs around EUR 0.82 million per year,[3] a *référendaire* costs a bit more than EUR 100.000 per year, *i.e.*, about eight times less.

Increasing the number of *référendaires* would have also been less disruptive for the organization of the General Court. This approach would have required no other transition than the time needed to recruit and appoint the new *référendaires*, a matter of a few months without any impact on pending cases. By way of contrast, the appointment of additional judges requires member states to propose their candidates, the Article 255 committee to review their suitability for the function and then the Council to appoint them … or restart the whole process for those candidates eventually turned down by the Article 255 committee. Quite a long way then. Plus the incorporation of the Civil Service Tribunal: transfer of (pending) staff cases to the General Court, transfer – to the Court of Justice – of the General Court's current competence to hear appeals in this area, transitional rules, etc. Finally, more cases and fewer *référendaires* begs the question of who will do what at the General Court in September 2019. In reducing the number of *référendaires* per judge, does the Council expect judges to carry out the research and drafting traditionally entrusted to *référendaires*?

In conclusion, the Council had a simple alternative on its plate, but chose the more complicated – and expensive – one. Another missed opportunity.

This post originally appeared on the Kluwer Competition Law blog.

1. Note on a Missed Opportunity for the Administration of Justice Across Europe
2. Aside from the performance of the cabinets, see M. VAN DER WOUDE, 'Pour une protection juridictionnelle effective : Un rappel des objectifs de 1988', Concurrences, N°4-2014, pp. 9-12, spec. p. 11 (« *doubler le nombre de juges ne sert pas à grand-chose, si ceux-ci ne disposent pas d'équipes performantes* »).
3. The *Skouris II* proposal estimates the overall cost of 28 *cabinets* at EUR 22.9 million, *i.e.*, EUR 0.82 million per cabinet per year (see Council, interinstitutional file no. 2011/0901B (COD), document 14448/14 of 17 October 2014, p. 11). The Council's Revised Proposal itself is not public.

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