



30.11.2017

WORKING DOCUMENT

on ECA Special Report 14/2017 (Discharge 2016): Performance review of case management at the Court of Justice of the European Union

Committee on Budgetary Control

Rapporteur: Ingeborg Gräßle

SUMMARY

The Court of Auditors (ECA) assessed the performance of the Court of Justice of the European Union (CJEU) case management process, in particular whether the procedures in place promoted the efficient handling of the cases lodged and whether their timely resolution could be enhanced. In addition, the ECA sought to examine the CJEU's assessment and accountability tools, which the European Parliament showed particular interest in.

For the purpose of assessing the CJEU performance, the auditors examined the management of cases by the Court of Justice and the General Court. Also, analysed the duration of the key steps of closed cases. They assessed the efficiency of case management in individual cases through a sample of cases targeted to particular issues. The auditors also analysed the support services to the judicial process, such as translation, IT, research and documentation, and examined whether the CJEU had assessed if there was any efficiency gain potentially resulting from a change of its language practices.

The access to ongoing cases was refused by the CJEU on the basis of Article 35 of the statute of the CJEU on the secrecy of the deliberative process. Therefore, ECA could not independently assess the impact of factors, such as complexity of the cases and the resources available, on the parts of the case management process related to these documents.

Overall, the ECA concluded that there is potential to further enhance performance by a move towards more active individual case management. It suggests the CJEU to:

1. Measure performance on a case by case basis by reference to a tailored timeframe, taking into account of the actual resources employed;
2. Move towards the development of a system of reporting on the specific numbers of cases meeting expected time-frames rather than average length of types of cases;
3. Implement a policy allowing for a more flexible allocation of existing référendaires to help mitigate problems arising from factors related to the management of resources or organisational issues;
4. Raise awareness of the importance of the timely nomination and appointment of judges;
5. Complete the cost-benefit analysis of the impact (organisational, budgetary and in terms of case duration) of a change of the current practice in the General Court to use languages other than French for deliberations;
6. Implement fully integrated IT system to support case management.

Recommendations by the rapporteur

The European Parliament:

1. Welcomes the Court's report, and endorses its remarks and recommendations;
2. Criticises the CJEU for refusing the access of ECA to all the documents relevant in a case, only allowing the auditors to consult publicly available documents; reminds the CJEU that

Court Members as well as its auditors are bound by confidentiality and professional secrecy in the performance of duties¹; regrets that référendaires could not be interviewed despite their crucial role in the Court's work;

3. Notes with regret that the General Court from 2012 onwards has repeatedly exceeded the reasonable period of time within which a litigant is entitled to expect judgement to be delivered; invites the Court to come to the budgetary control committee to clarify the situation and to explain the appeals;

4. Notes that following the reform of the CJEU judicial structure, the allocation of Judges to the Chambers is made according to the caseload in different areas; is interested to know how this allocation is made, whether specialised Chambers are in place for certain areas and to have statistical data on the progress of files under the new system;

5. Regrets that the ECA excluded from the sampling the cases which took longer than twice the average duration; is of the opinion that not only the typical cases are relevant to assess the performance;

6. Suggests that the working languages in the CJEU, in particular the deliberations, to be enlarged to EN, FR and DE which are the working languages in the European institutions; encourages the CJEU to look for best practices in the European institutions to implement this reform of the language practices;

7. Notes that the référendaires are very influential in the performance of the CJEU but their role and regulatory rules remain unknown to the outside world;

8. Is concerned that in the overview of the most frequent factors affecting the duration of the written procedure at the General Court, the reception and processing of procedural document at Registry counts for 85%; asks whether the Registry has enough means to work;

9. Is concerned about the length of cases in the General Court where confidentiality issues are raised;

10. Takes note of the process to assign cases referred to the Courts; asks the Court to provide the rules stipulating the procedure of assignment in both Courts;

11. Notes that in 2014 and 2015 around 40% of cases in the General Court were assigned outside the rota system, which makes the system in itself becoming questionable; at the same time, raises doubts about the discretionary allocation of files within the General Court; regrets the lack of transparency in the procedure;

12. Is concerned that the judicial vacations is the most frequent factor affecting the duration of the handling of cases in the Court of Justice; proposes that hearings and deliberations on a broader range of cases - other than those with specific circumstances - are to be permitted during that period;

13. Notes that the sickness, maternity/parental leave or departure of the référendaires also

¹ Please see the Code of Conduct for Members of the European Court of Auditors in article 6 and the Ethical guidelines for the European Court of Auditors applying to the staff in paragraph 4 concerning professional secrecy.

have an impact in the duration of cases; asks the Court to consider possible alternative methods to overcome temporary absence and ensure the smooth progress of work;

14. Is of the opinion that resources are not shared proportionately among the Courts taking into account their respective workload; suggests that the “cellule des lecteurs d’arrêts” in the General Court to intervene at a later stage in the case;

15. Calls on the Member States to make sure that the decision of nomination of new judges is taken well in advance of the date of departure to ensure the handover and smooth transition of the workload;

16. Is concerned with the Court’s approach of “one-size-fits-all” applying to the various steps in the process; advises the Court to adapt the deadline set to take into account the typology and the complexity of cases;

17. Notes that intellectual property issues count to a relevant amount of cases in both Courts; encourages the Court to analyse ways of simplifying the procedures for these cases and consider a pre-review by the research and documentation services in the Court.