



**EP Legal Affairs Committee Hearing, 24 April 2013
The Reform of the Court of Justice of the EU**

“The Legal Profession and the Reform of the Statute of the Court of Justice”

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Speaking Notes

Introduction

I am delighted to have this opportunity on behalf of Bar of E&W to address such a distinguished audience.

1. The Legal profession welcomes:
 - a. New procedural rules of the Court of Justice – welcomes rationalisation.
 - b. E-curia electronic filing system for pleadings is a useful tool for practitioners regularly before the Court.
 - c. Reduction in average time for preliminary references down to under 18 months is good news.

Forthcoming Challenges

2. **Quality/ PROFESSIONAL BACKGROUND** of Judges being sent by Member States to the Court:
 - a. Breadth of experience is critical, especially for those being appointed to the Court of Justice, as the scope of EU law is ever-widening – crime, asylum, family law are all expanding areas but Member States tend to think in terms of traditional fields of EU law alone for their appointments;
 - b. National nomination of Judges to Luxembourg should be transparent and based on merit, seeking the best candidate and not necessarily a national of the relevant country – a communautaire approach is essential on this issue.
 - c. Legal profession (including CCBE when visiting Parliament in Spring 2012) supports the broad thrust of Ms Thein’s draft report re proposed supplementary judges to relieve delays at the General Court. They plainly must be chosen on merit, possibly with say 3 Member States fielding a candidate for each supplemental post and the Article 255TFEU vetting committee placing them in order of merit.

3. Training for judges.

Being realistic, those appointed to Luxembourg will seldom have all the skills required. A tried and tested way of improving the quality of those appointed is to provide for formal training (Continuing Professional Development) related to the art of judging, substantive EU law, new areas of substantive law (crime, asylum, family etc) which might take various forms:

- a. Judicial pupillages (*stages*) with national court judges of a Member State other their own, prior to arriving at the Court;
- b. Formal mentoring of new judges by more experienced judges;
- c. Regular sharing of good practice within groups from different chambers and of differing seniority.

4. Quality of work product:

- a. Focusing as tightly as possible on providing practical workable interpretations for national courts; guidance for the future;
- b. In exercising the powers in the new procedural rules not to have an oral hearing and not to have a written Advocate General's opinion, that due priority is given to the quality of the judgment;
- c. Using the oral hearing as an opportunity to test the viability of the canvassed solutions – i.e. using the oral hearing as the first stage of the Court's deliberation on the case;
- d. General Court may well need one or more judges to act on rotation as dedicated procedural judges for all files before the Court to oversee the list and to keep files moving, taking timely decisions on all procedural issues;
- e. General Court is contemplating revising its rules of procedure which is positive – but some features such as, apparently, permitting a closed procedure where one party does not have sight of the evidence in his case, needs open reflection and debate, not just within the Court, but much wider.

Legal Profession is there to assist with these challenges

5. Is there a role for the legal profession?
 - a. It has issued CCBE Practical Guidance for Advocates before the Court of Justice in Preliminary Reference cases;
 - b. Greater interaction needed between Court and the profession – the Practical Guidance is a result of listening to the concerns expressed informally by judges. The CCBE does have infrequent meetings with the Court (next is 21 October) but these need to be broadened and deepened;
 - c. In the medium term, logic is plainly in favour of a Rules Committee where the stakeholders (Judges, Registry, Member States, EU Institutions, legal profession) openly consider the functioning of the Court and make suggestions to improve this. Currently, under Article 253 sixth para, rules of procedure only require the approval of the Council (i.e. Member States).

Conclusion

6. Need:

- a. Finest candidates to be chosen by Member States to be Judges with training to further improve the skill set of those appointed;
- b. Careful balance of quality and efficiency in the work of both courts;
- c. To aim for a situation in which all *acteurs de la justice* work together for the common endeavour of a better system of justice for the EU.

7. A practical step which might be taken is that Member States adopt a policy of requesting the Court to consult with both the European Parliament and with the legal profession prior to giving their approval to revisions to rules.

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