unione europea
e diritti

The Organic Growth of the EU Judiciary: The Case of the General Court of the European Union

Marc van der Woude*

1. The General Court of the European Union (General Court) is a relatively young court. It was set up in 1989 as the Court of First Instance of the European Economic Community (EEC) with a limited competence in a few areas and evolved over the years into the General Court of the EU with a general competence to deal with nearly all cases brought by individuals and companies whose rights are affected by measures taken by the European Union (Union or EU). Since 2024, it is also competent to answer preliminary reference questions posed by national courts in 6 specific subject matters.[1]

By examining the General Court's historical development, it is possible to identify broad patterns that not only explain the needs of the EU's judicature in the past, but that may also be relevant to assess the direction in which the court is likely to evolve in the future.

Accordingly, this editorial will briefly trace the origins and organic development of the General Court (2). Moving on from this historical context, an analysis of both past and current trends in the types of cases brought before the General Court will allow to identify some patterns (3), before ultimately attempting to outline a probable trajectory for the future of the General Court and its role within the Union (4).

2. The Court's evolution must be understood in the context of the economic and political challenges of the 1980s. At the beginning of the 1980s, the European integration project entered into a new phase. Against the backdrop of economic downturn, the European Commission, under the leadership of

* President of the General Court of the European Union.

[1] Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

Jacques Delors, proposed a series of measures to create an internal market of the 10, soon to be 12, individual markets of the Member States.[2] The European industry was keen to contribute to this project, but also had its own wishes and requests. These included the need for increased judicial protection in competition law matters in which the Commission started to impose severe sanctions.[3] Industry felt that in such quasi-criminal cases, it should be entitled to judicial protection at two levels. This demand coincided with the fact that the Court of Justice's workload continued to increase, compelling it to consider structural reforms.

The combination of both factors led to the establishment of the Court of First Instance in 1989.[4] Over time, the scope of its jurisdiction gradually expanded to virtually all cases in which acts of the EU institutions and bodies affect the rights of physical and legal persons. It gradually became the administrative review court of the EU, a status that was formally confirmed by the Treaty of Lisbon that entered into force on 1 December 2009.[5] It changed the name of the jurisdiction from "Court of First Instance" into "General Court". The English version, through its adjective "general", implies that its jurisdiction no longer depends on gradual, *ad hoc*, transfers of competence from the Court of Justice, but that, as a rule, its competence concerns all direct appeals brought by individuals and legal entities against the actions or omissions of the European institutions and bodies. The Treaty of Lisbon also enlarged the access to justice under Article 263, paragraph 4 of the Treaty on the Functioning of the European Union (TFEU). Henceforth, for acts of a regulatory nature that are not subject to any measures of execution, the applicants are only required to demonstrate that they are directly affected by the act in question.

As the range of issues under the General Court's purview expanded, its workload became increasingly complex and burdensome: a plethora of legal matters, ranging from intellectual property disputes to competition law and civil service cases to access to documents, were continuously lodged, exerting mounting pressure on its resources. These challenges were further exacerbated

[2] For instance, the White Paper on the completion of the internal market in June 1985 by Lord Cockfield and his team. It proposed an action plan to remove no fewer than 300 barriers to the free movement of persons, goods, services and capital.

[3] Commission Decision 86/398/EEC of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149 — Polypropylene) and related judgments, such as Judgment of the Court of First Instance of 24 October 1991, Case T-1/89, *Rhône-Poulenc/Commission*.

[4] Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities (88/591/ECSC, EEC, Euratom).

[5] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

by the Union's enlargement in 2004, which added new resources to the General Court but also induced the need for additional adaptation efforts. The European Union Civil Service Tribunal (Civil Service Tribunal), created in 2004,[6] brought some relief, but the nomination procedures for this specialized court composed of 7 judges became increasingly politicised and, hence, paralysed its proper functioning.

In this context, the General Court expressed concerns about its ability to manage the ever-increasing workload. In 2009, it proposed the creation of a specialised court in trademark matters. However, given the difficulties encountered in nominating judges for the Civil Service Tribunal, this project did not get the support of the Court of Justice, which, instead, proposed to increase the number of judges at the General Court. The discussions within the Council ultimately led to a solution in 2015, pursuant to which the Civil Service Tribunal was to be abolished and the number of judges at the General Court was to gradually double.[7] Article 48 of the Protocol (No. 3) on the Statute of the Court of Justice of the European Union[8] was amended and now provides that the General Court shall consist of 40 judges as of 25 December 2015, 47 judges as of 1 September 2016, and two judges per Member State, i.e. 54 judges, as of 1 September 2019.[9] Nevertheless, the reform was not fully implemented until 2022 and, even today, this number is rarely reached in practice, due to the difficulties experienced by Member States in nominating candidates in a timely manner.

The structural reforms enacted by the legislator implied a major investment in the proper functioning of the EU judiciary, so as to shorten the length of proceedings, reduce its backlog of cases and increase the authority of its judgments. The General Court reacted to these challenges by adopting a series of reforms. Firstly, in order to safeguard the consistency of the case law in areas of law that accounted for a significant proportion of incoming cases, such as staff and trademark cases, it introduced a form of specialisation by allocating these cases to separate chambers. Secondly, in order to intensify the degree of judicial scrutiny and increase the authority of its judgments, the General Court took measures to promote the referral of important cases to larger panels of judges. Such cases are now referred to panels of 5, instead of the standard panel of 3

[6] Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom).
[7] 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.
[8] Hereinafter "Protocol (No 3) on the Statute".
[9] Article 1, paragraph 2 of Regulation 2015/2422.

judges that prevailed before the reform of 2015. Cases are now also sent to the Grand Chamber of the General Court, which is composed of 15 judges, or before the Intermediate Chamber, which was created in 2024 and is composed of 9 judges. Thirdly, the General Court has set up an internal review system that closely monitors the evolution of cases and, in particular, the very large cases, such as the ones regularly filed in the field of competition and financial supervision.

In the meantime, another issue arose. As the issues at the General Court were being addressed, the Court of Justice began to encounter challenges, as it witnessed an even greater workload in both preliminary reference and appeal cases. This prompted successive reforms pertaining to both categories of cases.

The first step was made in 2019, when the legislator adopted, as proposed by the Court of Justice under Article 281 TFEU, a system of prior approval of appeal in certain legal areas.[10] Although all decisions of the General Court may, in principle, be appealed to the Court of Justice on points of law, Protocol (No 3) on the Statute was revised in order to limit the possibilities of appeal against a decision of the General Court concerning a decision of an independent board of appeal of 4 offices and agencies of the Union to cases which raise issues that are significant with respect to the unity, consistency or development of Union law.

This system was extended in 2024 and now relates to ten areas defined in Article 58a.[11] According to the present version of that provision, appeals against decisions of the General Court relating to a decision of an independent board of appeal of one of the Union's bodies or agencies, such as the European Union Intellectual Property Office, the European Chemicals Agency, the Single Resolution Board or the European Banking Authority, are subject to prior admission by the Court of Justice. The idea behind this reform is that these boards of appeal offer a quasi-judicial protection and, therefore, an appeal before the General Court warrants adequate judicial review at two levels. It should be noted, however, that the system of prior approval of appeals also applies to contractual matters in cases relating to contracts containing an arbitration clause within the meaning of Article 272 TFEU. The introduction of this system of prior approval of appeals marks an important moment in the evolution of the General Court. In the areas concerned by this reform, it *de facto* became the

[10] 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.
[11] Regulation (EU, Euratom) 2024/2019.

judge of last resort. This implies a major departure from its initial position as Court of First Instance.

The second step taken by the Court of Justice in addressing its ever-increasing workload related to the activation of the mechanism set out in Article 256, paragraph 3, TFEU, which provides that the General Court is competent to answer preliminary reference questions within specific areas delineated in the Statute. In 2024, the General Court became competent to address preliminary ruling questions in 6 distinct areas of law: the common system of value added tax; excise duties; the Customs Code; the tariff classification of goods under the Combined Nomenclature; compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services and the system for greenhouse gas emission allowance trading.[12] The Court of Justice shall nevertheless retain jurisdiction to hear requests for a preliminary ruling that raise independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the European Union. This residual competence of the Court of Justice mirrors its role in the subject matters covered by the system of prior approval of appeals. The overarching responsibility for ensuring the unity and consistency of the EU legal order continues to lie with the Court of Justice.

The reforms of 2024 are a pivotal moment in the ongoing development of the General Court and mark the commencement of a new phase. Indeed, until this point, the General Court had been primarily regarded as the Union's administrative judge, granting judicial protection against the actions of the EU administration. Since 2024, the General Court has been assigned a broader mission that transcends the individual cases brought before it. It must ensure, in the aforementioned 6 subject matters, the uniform interpretation of EU law.

Thus, a new question arises: How should the Court be defined in light of the profound changes it has undergone?

Before trying to answer this question in the abstract, an analysis of the nature of the disputes currently brought before the Court may provide additional guidance.

3. The litigation before the General Court essentially mirrors the actions and priorities of the European Union, albeit with a certain delay due to the two-month period for bringing an action for annulment under Article 263 TFEU. Consequently, the traditional issues that dominated the Union's early years—particularly those concerning market regulation and competition law—have lost

[12] Pursuant to Article 50b of Protocol (No 3) on the Statute.

in relative importance in terms of the workload of General Court. The nature of the litigation before the General Court has indeed evolved significantly over the years.

Firstly, the cases have become increasingly varied. This is due to the fact that the activities of the General Court reflect the activities of the bodies, agencies and institutions of the EU, which have over the years became more important in both quantitative and qualitative terms. Mentioning that EU law now affects all areas of national law is stating the obvious. More relevant for the purposes of this editorial are the following two interacting phenomena: EU secondary law is not only embodied increasingly in regulations rather than directives, but it is also increasingly applied at EU level by the EU itself. Whereas in the past EU law used to be applied almost exclusively by national administrations, the current rules confer significant executive powers to the EU administration itself. This administration not only includes the European Commission, but also the many agencies and bodies operating in specialised matters, such as the registration and authorisation agencies for trademarks (EUIPO), food safety (EFSA), medicines (EMA) and chemicals (ECHA) or regulators, such as the European Central Bank (ECB) in financial matters and the European Agency for the Cooperation of Energy Regulators (ACER) in the energy sector. This direct administration is very relevant for the General Court, because the decisions of these bodies and entities can be challenged only before it and no longer before national courts.[13]

A second and related factor that has contributed to the diversity of litigation before the General Court concerns the response that the EU has given to the many crises that the EU has undergone over the years. The 2008 financial crisis, for example, catalysed a major shift. In its wake, the Union took significant steps to establish and consolidate a banking union, by creating the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM), including the Single Resolution Board (SRB) and the Single Resolution Fund (SRF). Within a few years, the volume of litigation concerning banking and financial matters surpassed that of competition law, marking a substantial change in the General Court's docket. The cases lodged before the General Court were also varied, ranging from the SSM cases addressing the exclusive competence of the ECB for prudential supervision to the determination of the SRF ex-ante contributions.

[13] See, for example, Judgment of the Court of Justice of 19 September 2024, Joined Cases C-512/22 P and C-513/22 P, *Fininvest and Others/ECB and Others.*

Finally, the Covid-19 pandemic, by contrast, had more limited effects on the Court's caseload. Curiously enough, the case law it generated was primarily confined to the domain of state aid. The Member States were compelled to support certain companies that provided key services. A notable example of this support are the series of cases brought by Ryanair challenging with some degree of success[14] various national measures adopted by Member States to support airlines during the pandemic.

Overall, the crises outlined above were ultimately overcome without having a significant impact on the General Court. The cases which it had to adjudicate mainly concerned economic regulation, which has been at the core of the General Court's activities from the outset. However, the events of the present decade, and in particular those of 2022, marked a clear turning point in this respect.

Firstly, the war in Ukraine led to the adoption of a large number of restrictive measures by the European Union, resulting in an influx of litigation and, hence, a notable increase in workload. Although the General Court has been dealing with restrictive measure cases since the first decade of this century, the cases related to the war in the Ukraine are of different magnitude. They affect the EU's security and propelled the General Court into the realm of geopolitics. The General Court was thus forced to adapt itself to this new environment in which rule of law considerations had to be balanced with the need to act in the context of an aggression by a third state. This balancing exercise is reflected in various judgments, including those handed down by the Grand Chamber, particularly in cases such as *R T France.*[15]

Secondly, the crisis surrounding the rule of law has emerged as a complex and increasingly significant area of litigation. Following the adoption of Regulation 2020/2092,[16] the conditionality of receiving European funds based on strict compliance with the rule of law has given rise to a new category of cases, each raising delicate legal questions. The *Medel* case and the numerous appeals lodged by Hungarian universities reflect this growing body of jurisprudence.[17] These cases introduce complex issues of legal and political balance, positioning the General Court at the centre of a debate over the fundamental values of the Union, as enshrined in Article 2 of the Treaty on

[14] See, for instance, Judgment of the General Court of 10 May 2023, Case T-34/21, *Ryanair and Condor Flugdienst/Commission (Lufthansa; COVID-19).*
[15] Judgment of the General Court of 27 July 2022, Case T-125/22, *R T France/Council.*
[16] Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget.
[17] Order of the General Court of 4 June 2024, Joined Cases T-530/22 to T-533/22, *Medel and Others/Council.*

European Union (TEU). Once again, the General Court entered a new area of law that differs greatly from its initial activities.

Thirdly, the climate crisis has also impacted the docket of the General Court in a manner that contributed to the diversification of its judicial activities. On the one hand, the latest modification of the Aarhus regulation in 2021 has facilitated access to the EU judicature by broadening the possibilities for NGOs to challenge internal review decisions taken by the EU bodies before the General Court.[18] This applies not only to individual administrative acts, but also to general measures. On the other hand, as EU regulation in the environmental field gradually gains importance, economic operators are increasingly contesting measures that constrain or guide their activities.

In contrast, the fourth recent development is more closely related to the General Court. It relates to the regulation of digital markets, particularly the Digital Markets Act (DMA)[19] and the Digital Services Act (DSA).[20] Several operators in the digital sector have already challenged the legality of certain provisions in actions brought against the Commission's designation decisions under the DMA[21] and the DSA.[22] Beyond their legal scope, these acts also have a geopolitical dimension. Despite these legal frameworks being primarily concerned with regulation within the digital sector, they seem to play a significant role in the broader tensions between the European Union and its strategic partners.

Finally, over and above these challenges in the field of direct actions, the General Court is, as mentioned above, becoming active in 6 specific legal areas in which it is competent to answer preliminary reference questions. It has in the meantime delivered its first judgments and orders in almost all 6 matters.

[18] Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.
[19] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).
[20] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).
[21] Judgment of the General Court of 17 July 2024, Case T-1077/23, *Bytedance/Commission*.
[22] Judgment of the General Court of 19 November 2025, Case T-367/25, *Amazon EU/Commission.*

4. After this historical overview of the General Court and the brief overview of the litigation brought before it, it is relatively easy to say that the Court of Justice and the General Court are judicial bodies whose size and missions are adapted to the needs for judicial protection that evolve over time. They must respond to the need for judicial protection within the EU, as required by Article 19 TEU. This simple answer ignores, however, several facts.

Firstly, changes in the nature and volume of judicial work may compel the General Court and the Court of Justice to adjust their working methods. The reforms of 2015 and 2024 have considerably impacted the functioning of both courts. As regards the General Court, its responsibilities are much larger than initially conceived in 1989. It is no longer a first instance court whose primary responsibility lies with establishing the facts. Since the reforms of 2019 and 2024, it not only has *de facto* the final say on the interpretation and application of EU law in direct actions brought in ten specific legal areas, but it is also responsible for the uniform interpretation of EU law throughout the Union legal order in six specific domains. This increased responsibility implies that it must adapt its internal working methods in order to ensure the consistency of its case law. To this end, the General Court must operate collectively as a group.

Secondly, the new competencies also mean that the General Court must interact with a new group of stakeholders: the courts of the Member States. Together with its national colleagues, the General Court must ensure an adequate judicial dialogue in order to ensure the proper functioning of EU law in the six legal areas concerned by the transfer. This shared responsibility goes, in my view, beyond the proper functioning of Article 267 TFEU. The judges of the General Court are committed to have a continuous discussion with their national counterparts and to engage in informal exchanges on the evolution of the law in these six areas.

Thirdly, the reforms also impact the Court of Justice. It will have to get used to the idea that responsibility for ensuring the uniform interpretation of Union law is shared not only with the national courts that apply it and refer questions on its interpretation, but also with the General Court, whose judgments will become a constituent part of the "*acquis communautaire*" on the same footing as its own. The transfer of competencies implies that the Court of Justice must gradually delineate the boundaries of its jurisdiction. On the one hand, this entails that the Court of Justice must specify the nature of the questions that continue to fall within its jurisdiction, i.e., what are precisely the independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the European Union that the Court of Justice addresses itself? On the other hand,

under which conditions will a judgment of the General Court compromise the unity and consistency of Union law? The answers to these two questions will determine the division of tasks between the two courts, thereby shaping the future development of the EU judicature. They will also assist the Court of Justice in defining its role as the constitutional court of the Union, which bears the final responsibility for the evolution of the EU legal order.

In light of this, EU judicature will probably evolve, in the long term, in a direction in which the Court of Justice acts as a constitutional court, interacting with its national counterparts to define the scope of the EU legal order in relation to national legal orders. Meanwhile, the General Court will become the first port of call under Article 267 TFEU for less delicate questions. It cannot be ruled out that General Court's competence in preliminary reference matters will follow the same organic path as in direct appeals. Even so, this would be a long process with many obstacles to overcome. One of the major problems will concern the right to appeal decisions of the General Court before the Court of Justice. It will be difficult, if not impossible, to transfer preliminary competencies to the General Court in legal matters where the court's decisions can be challenged before the Court of Justice. The uniformity of EU law is an absolute concept implying that the court that has the final say in preliminary reference matters must also be the court that has the final say in direct actions. Furthermore, the reform of the EU judicature should not lead to a situation in which individuals and companies no longer enjoy judicial protection at two levels. Indeed, this two-tier protection was precisely one of the reasons for creating the General Court in the first place.

Taking these two constraints into account, it could be envisaged to transfer new preliminary reference competencies from the Court of Justice to the General Court in legal areas where the EU administration does not have executive powers. In the absence of decisions that could be challenged before the General Court, there would indeed be no risk of interaction between actions under Articles 263 and 267 TFEU. Consumer protection law could be one of those areas. In addition, transfers could also be considered for subject matters covered by the system of prior approval of appeals, particularly where quasi-judicial boards provide adequate initial judicial protection.

Nevertheless, organic growth has its limits, which are set by the treaties. This means that, in the long term, reforming the EU judiciary will require amending the treaties. At this stage, however, that is a distant prospect and it is premature to comment.