REPORT

Identification of the participant

Last name: Bellulo
First name: Liza
Nationality: French
Functions: Master of requests, Council of State
Duration: appointed in February 2017

Identification of the training programme

Host institution/court: Court of Justice of the European Union
City: Luxembourg
Country: Luxembourg
Dates of the training programme: 19 to 30 November 2018

SUMMARY

The training particularly included the opportunity to attend five hearings, the execution of which confirms that the oral phase of the procedure helps to prepare the ruling of the Court of Justice of the European Union (CJEU) in addition to the written procedure, regardless of the level of the judgment panel. One of them, the Wightman case, was exceptional in nature, as regards its challenges as well as the accelerated procedure that it resulted in.

Moreover, the numerous exchanges with the judges and legal secretaries have enabled, beyond a better knowledge of the challenges of the most recent case law and the reforms initiated since 2012, to completely understand the work done by the Court to deal with a reference for a preliminary ruling and to compare the legal practices as regards the conducting of hearings, streamlining of the written procedure, the drafting techniques of the judgments as well as the communication vis-à-vis the press and legal professionals.
I. Schedule of the training programme

1.1. The beginning of the training programme coincided with the forum of magistrates, which brings 150 district judges and appeal judges from all the Member States together every year. In the context of the “ruling” of the Vice-President of the CJEU to order Poland, on the basis of Article 279 TFEU, to suspend the enforcement of the law lowering the retirement age for Supreme Court judges, the issue of independence of the judiciary was also addressed. This provisional measure preserves the effectiveness of the infringement procedure initiated by the European Commission (Case C-609/18), based on the two recent Court judgments, which, on the basis of the first paragraph of Article 19 (1) of the Treaty on European Union (TEU) and in the light of Article 47 of the Charter of Fundamental Rights, interpreted the scope of the principle of independence of national judges by virtue of their duties as judges of the European Union law (27 Feb 2018, Trade Union Association of Portuguese Judges, C-64/16, points 29 to 44; 25 July 2018, Minister for Justice and Equality, C-216/18 PPU, points 48 -54). During this same week, Poland announced to reconsider this reform, at least in parts.

While stressing the importance of discussion between the judges, as particularly demonstrated by this case, the CJEU noted that it was governed by rules. It thus invited the judges to inform them about the matters of law and fact sufficient to help it assess its own competence (in order to exclude situations which are purely internal or which do not fall within the scope of application of the Charter due to lack of “implementation” of the EU law) and admissibility of issues (quality of the court within the meaning of Article 267 of the Treaty on functioning of the European Union (TFEU), exclusion of hypothetical disputes, etc., also refer to point 2.1), or even take a stand on the interpretation of the EU law referred to in Article 94 (c) of the rules of procedure of the CJEU and the recommendations updated in last July.

1.2. The training programme was later dedicated to formal or informal meetings with the President of the Court, six judges and advocate-generals, about twenty legal secretaries (within the framework of the joint ACA program, or that in addition to these personal contacts) and the different services of the Court, which are summarised below, as well as the monitoring of five hearings (refer to the following point and point 6 of the good practices).

1.3. In different training programmes, the challenges related to hearings, ranging from the plenary assembly of the Court, exceptionally combined with the chamber of three judges of the General court of the EU, were as follows:

- Wightman case (C-621/18, plenary assembly of the Court): the issue of law as regards the possibility for the United Kingdom to unilaterally revoke the notice of its intention to exit the European Union. It was decided to initiate an accelerated procedure as regards the practical and political implications of this case, prior to the approval of the UK Parliament on 11 December 2018, the withdrawal agreement as well as the guidelines set out for the negotiation of agreement on relations between the United Kingdom and the European Union (EU), which, in principle, will enter into force from 1 January 2021.

The hearing particularly addressed the admissibility of the preliminary question asked by the Scottish Court of Session on the occasion of a declarator. While the declaratory action is a
tradition of the British law, the UK Government and the European Commission expressed their concern at the hearing that its implementation in this case does not impart a constructed or hypothetical dispute character to the preliminary question, or is not able to circumvent the only option offered by the treaty of Article 218 (11) TFEU, which is not applicable in this case, in order to ask the Court for an advisory opinion. The questions of ten judges and the Advocate General were concerned with the existence of a dispute, the extent of this action in UK law, the admissibility of which had already been challenged in the UK High Court, and then focused on the conditions under which the European Council could, if necessary, take a decision.

If not mentioned in Article 50 TEU with regard to the assumption of withdrawal of the intention to exit the EU notified under paragraph 2, the judges and the Advocate General have tested several assumptions of the parties, the European Commission and the Council legal service acting on behalf of the European Council, as regards the general economy of the Treaties and their purpose, or, more specifically, the provisions of Article 50 of the TEU, and the work of the Convention on the future of Europe. They thus expressly and alternatively referred to a positive decision of the European Council, taken by consensus, according to the decision-making rule laid down by default in Article 15 (4) TEU (which implies that, in the absence of such a decision, the entry in force of an agreement to withdraw or extend the two-year period by implementing Article 50 (3) TEU, the United Kingdom would leave the Union on 29 March 2019) or objection to such a dismissal, independently drawn from the customary law inspired by Articles 65 and 68 of the Vienna Convention on the Law of Treaties (which implies that, in the absence of any objection, the United Kingdom would retain the Member state status), or an interpretation independent of Article 50 of the TEU in the light of certain aims of the Treaty, in particular the principle an Union that is ever more closely bound. In the second point of these assumptions, they questioned the rule of applicable majority, depending on whether these stipulations are combined with Article 15 (4) of the TEU (laying down the consensus rule), or that one expresses by analogy with Article 50 (2) (in accordance with a majority rule qualified for the conclusion of the withdrawal agreement and an approval by the European Parliament).

- Blaise case (C-616/17, Grand Chamber of the Court): farmers, sentenced in the Criminal Court of Foix under Article 322-1 of the Criminal Code for damaging the property belonging to others, in this case the “Round up” drums, invoked the state of emergency in order to alert the public of the hazardous nature of this product, under article 122-7 of the same code. The district court referred a preliminary question regarding the invalidity of Regulation (EC) No. 1107/2009, for the purpose of determining whether the provisions governing the issuing of marketing authorisations for products containing glyphosate and certain co-formulants, in particular polyoxyethylene amine, respect the precautionary principle. The CJEU can only decide if its response is likely to have a concrete effect on the solution of the dispute, part of the hearing concerned the enforceability, in this case, of the state of emergency as regards the case-law of the Court of Cassation requiring in particular the demonstration of a real and imminent danger, or, failing that, on the impact of a possible invalidity of the regulation on the prosecutor's submissions during the judgment or on the length of the sentence established by the criminal court. The judges also asked the parties why they had not opposed the marketing authorisation laid down by France rather than the regulation as a whole. The parties and the Member States also asked the Court to decide their level of control (normal or restricted to a manifest error of assessment). The Judge-Rapporteur and the Advocate General focused their questions, beyond

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admissibility, on the possible scope of “cancellation” of annulment, and tested the robustness of the theses of applicants and the European Commission by directly confronting their respective interpretations of the regulation, the validity of which was contested, particularly by withdrawing it from the limited context of the product in question.

- **Amazon EU case** (C-649/17, First Chamber, five judges): this preliminary question in the interpretation of *Bundesgerichtshof*, essentially deals with the adherence of the German provisions requiring online operators to provide a contact number under all circumstances within the framework of the pre-contractual negotiations for the conclusion of an online contract in view of the provisions of Article 6 (1) (c) of the 2011/83/EU directive. The question was raised in the context of a dispute filed by the German equivalent of the DGCCRF against Amazon on the grounds that this company provides the consumers only with an online discussion mechanism or a reminder at very short notice on the number indicated by the consumer, and does not communicate any landline number. The directive stipulates that the information must be provided to the consumer so that he can call his potential co-contractor for discrepancies in different language versions, as regards the nature of the obligation to communicate a landline number (“where applicable”, “where possible”, or where this number is “available”) for specific purposes of processing the information requests. In the absence of a clear and predominant version of a text, the debate focused on the use of various methods of interpretation (taking into account the full harmonisation nature of the directive; interpretation in accordance with the freedom to provide service, the derogations to which are, in principle, strict: general economy of the Directive, teleological interpretation in terms of the objective of consumer protection, recourse to preparatory work). In view of the questions raised, it seemed to me that, in the absence of a clear text, recourse to preparatory work was not the preferred method of interpretation. I interpreted the reasons better by consulting a reference article on these questions (Koen Laenerts and José Gutiérrez-Fons, *To say what the law of the EU is: methods of interpretation of the Court of Justice*, AEL 2013/9 Academy of European Law, EUI Working Papers, European University Institute). An exception is, however, reserved for certain categories of preparatory work, in particular the Convention on the Future of Europe, taking into account the structuring of this work, its publicity and the interest of having it for the provisions of primary law that are derived from it, or the explanations of the Charter of Fundamental Rights, to which the Treaty assigns a specific status.

- **Hochtief solutions case** (C-620/17, Chamber of five judges). This preliminary ruling of the court of first instance considers to determine, in the context of a series of disputes¹, whether the

¹ In the context of a preliminary rule, during the first phase of the dispute (C-218/11), the CJEU had held that, in view of Articles 44 (2) and 47 (1) of the 2004/18 directive, the provisions of the Hungarian law requiring the absence of a deficit result of a candidate for a public works contract, were irrelevant and not proportionate in assessing the economic and financial capacity of the applicant to carry out such work. Since the request of the court of Appeal that carried out the removal was rejected despite this judgment been pronounced under the preliminary ruling procedure, the company appealed in cassation. The Supreme Administrative Court, without pronouncing on the merits, dismissed the appeal as the plea was raised before the Public procurement arbitration commission, which performs the functions of a court of first instance. Following the rejection of its application for review, the company carried out a third action, seeking compensation for its damage resulting from the infringement of the European Union law, in turn resulting from the rejection of its application for review of the judgment of the Court of Cassation, before a court of first instance of common law.
principles of effectiveness and equivalence would require an application to reopen the proceedings under Hungarian law to take into account a judgment pronounced under the preliminary ruling procedure of the CJEU despite, on the one hand, the intervention of the latter prior to the judgment of the Supreme Administrative Court, the review of which is mandated, and on the other hand, the irrelevant principle drawn from the case-law of the same supreme court, pleas which would not have been raised before the court of first instance. The hearing concretely illustrated the difficulties faced by the EU Judge in the absence of sufficiently accurate elements resulting from the reference judgment as regards the scope of national law and the elements of the dispute. In this case, the only interpretation of the twelve preliminary questions, notified as they are to the Member States and to the institutions for the purpose of their intervention, does not determine whether the parties dispute the distortion of the terms of the original dispute by the Supreme Administrative Court itself - to which a preliminary question would not allow, assuming that it is proven, to resolve - or invite, more fundamentally, the Court of Justice to partly reconsider the authority of the final judgment by extending the scope of the judgment of the Grand Chamber Kühne and Heitz (13 April 2004, C-453/00, points 26 and 27), which deals only with the review of final administrative decisions, or to kindly accept the rules of foreclosure of pleas. The CJEU has already ruled on this last subject in the context of a dispute filed by the same applicant in the main proceedings (judgment of 7 August 2018, C-300/17). The judges of the Court also faced difficulties to sought clarification from the parties and participants, as regards the pleas raised in national disputes and the scope of application to reopen the proceedings under Hungarian law.

- CCI métropolitaine Bretagne-Ouest vs. Commission case (T-754/17, General court of the EU, Chamber of three judges). The applicant, manager of the port of Brest, seeks the annulment of the decision of the European Commission declaring its incompatibility with Article 107 TFEU of the aid scheme prior to the Treaty of Rome constituted by exemption from tax on companies destined for ports, resulting from ministerial decisions of 11 August 1942 and 27 April 1943. The hearing focused particularly on the admissibility of the appeal, contested by the Commission (see below). Questions were also asked to ascertain whether the applicant maintained his first plea and to ask him to clarify the insufficiency of the reasons given in respect of certain paragraphs of the contested decision with regard to the classification of the aid scheme (demonstration of the effects of the same on business, ancillary and inextricable or distinguishable nature of economic activities of the port as regards the services of general interests lacking the economical character such as the harbour master’s office.

II. The hosting institution:

Without coming back to the well-known tasks assigned by the Treaties to the Court of Justice of the European Union, I will refer to the recent developments that characterise the execution of their tasks by the Court and the General Court of the EU.

2.1. The Court intends to concentrate on its fundamental task of responding to the most important preliminary questions.

The preliminary questions represent more than 72% of the cases submitted to the Court and are part of an essential task of discussion with the national courts. During a recent period, the Court has been able to reconcile its objective of reducing the time taken to reach a judgment, reaching
an almost incompressible level, taking into account the translation deadlines, from 15 months - and less than 3 months for emergency procedures, by increasing its processing capacity to answer the growing number of questions. A multiplication of figures can thus be observed from 2000 to 2015 (from 224 in 2000, the number of preliminary questions reached 400 between 2011 and 2015), the acceleration then being more gradual but significant (500 preliminary rulings in 2017, a further increase in their numbers is still expected for the year 2018).

In order to make the best use of these strained pleas, and to mobilise the translation and interpreting services, representing 44% of the jobs, only to the extent strictly necessary, the Court mobilises three different methods:

2.1.1. It strengthens its analysis, prior to its competence, the admissibility of preliminary questions and appeals, as well as previously addressed questions of law. The Registry and Direction research documentation identify those cases at an early stage that are likely to result in treatment by order, on the basis of Articles 99, 150, 181 and 182 of the Rules of Procedure, before undertaking translations in 23 other languages. These may be cases of lack of incompetency, inadmissibility, but also of questions, the answer or solution of which can clearly be identified from the case-law, or questions that admit of no reasonable doubt. A Judge-Rapporteur and a General Advocate examine the choice proposed by these services, and if their analysis is convergent and if the president or vice-president validates this guideline, drafts order subject to a simplified collective deliberation chamber of three judges. In 2017, 19% of the cases resulted in a court order.

2.1.2. The Court has requested a revision of the Statute to implement a mechanism for preliminary acceptance of certain appeals, with regard to disputes that must be the subject of an appeal before an independent Chamber of an agency (trademarks, plant variety, chemical products rights) and likely to be brought before the General Court of the EU. The court also intended to transfer the competence to the General Court of the EU, to give judgment at the first instance on appeals relating to the failure to recover State aids, certain actions for failure to fulfil obligations, and on actions for annulment initiated by the Member States against the decisions of the Commission regarding the lack of efficient execution of a judgment given for failure to perform obligations by the Court, except where the case calls for a basic decision or where exceptional circumstances justify it. It temporarily renounced it, the European Commission and some Member States having expressed reservations, particularly regarding the still incomplete reform of the General Court of the European Union.

2.1.3. The Court is frequently exempted from hearings for the most straightforward and simple cases. From 1 January 2013, as per the rules of procedure, it is mandatory for the parties and the Member States to justify their “applications for hearing of oral arguments” within three weeks, whether for preliminary rulings or appeals (Article 76), without prejudice to the ability of the Court to hold a hearing if it considers it necessary in the absence of such a request. Moreover, the Advocate General may decide not to deliver an opinion on conclusions pursuant to Article 20 of the Statute. 56% of the cases recorded in 2018 were exempted according to statistics provided as on 31 October.

2.2. The General Court of the European Union will have 54 judges in September 2019. From 2020 onwards, it will have to report the quantitative and qualitative benefits to the
institutions, resulting from these increased resources, while meeting the growing demands of the regulatory litigation.

2.2.1. Initial trends can be observed, particularly in terms of reducing the time taken to address the appeals and development of collegiality. Unlike the Court which frequently takes decisions as regards the formation of Grand Chamber (about 50 cases per year since 2013, i.e. 7% of the cases, the figure of 80 being presented for the year 2018) and within a panel of five judges (51% of the cases in 2017), the Tribunal takes decisions, in principle, with a panel of three judges, and since its creation, has resorted to the Grand Chamber only thrice. By progressively increasing the Tribunal's processing capacity, the reform seems to have allowed to resort to the chambers of five judges, more frequently than in the past, in particular with regard to anti-competitive practices and State aids; they were 1.1% of all cases in 2015, maintained themselves at 4.4% for the first six months of 2018, and at 10% for the current cases. These developments enable to complete the work that is incomplete since some years, to ensure overall consistency in the processing of cases by delegating a coordinating task to a Vice-President of the Tribunal. Appeal to Grand Chamber should, however, remain very exceptional; on the one hand, a decision taken by thirty judges would not be obvious, on the other hand, the guiding role of the case law in principle remains vested in the Court.

2.2.2. However, the Tribunal has to face new difficulties. The decisions taken by the Member States and the EU institutions are progressing (State aids, ECB acts, failure to act) and regulatory litigations are becoming more complex, involving the European Commission and the agencies having more substantial resources (tax rulings such as those granted to Apple and Starbucks, contesting increasing amounts of fines for anti-competitive practices, prudential regulation, data protection).

At the same time, the case-law of the Court of Justice tends to impose an increasingly high standard of judicial review, be it financial penalties, in the wake of the ECHR judgment (27 September 2011, Menarini Diagnostics, No. 43509/08) or complex economic assessments. Thus, the recent judgments certify the progress of the analysis of selectivity in state aids (CJEU, gr ch, 21 December 2016, World Duty free, C-20/15 P, point 79), the movement of the cursor between the analysis of the object and that of the discount and rebate effects, or, at the very least, the attention paid to a response to all arguments stating that an economic study has been conducted "as per the best practices", when the European Commission relies on it to characterise a wrongdoing (CJEU, gr ch., 6 September 2017, Intel, C-413/14 P, points 141-147), in the further alternative according to the Commission. The Court thus requires more than just verifying the consistency and credibility of an economic study (gr ch, 15 February 2005, Tetra Laval, C-12/03 P, point 39).

2.2.3. The debate over the appropriateness of the de facto specialisation of certain chambers within the Tribunal as regards the intellectual property, given, on the one hand, the significance of the "legal judge" system that still holds strong, and the role of the Court (Article 25 of the Rules

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2 To address the Microsoft case (T-201/04), a question relating to the public's right to access the statements of case of institutions (API vs. Sweden case, T-36/04) and the anti-dumping duties in the litigation at the WTO called bananas

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of Procedure), maintaining a close conjunction, and on the other hand, questions from judges as regards the type of criteria that may be used to assign it to the special chambers.

III. The law of the host country. IV. The compared law aspect of your training programme. V. European aspect of your training programme.

ACA guidelines appear to be drafted for the training programmes conducted within the national supreme jurisdictions of the EU, which is by far the most frequent case. As regards a training programme at CJEU, I propose to fill in these sections by addressing, on the one hand, the focus of the Court on national laws, and on the other hand, the decision-making process within the Court – which is not sufficiently familiar to the national judges, as they have not had the opportunity to work within the Court or to establish close relations with CJEU.

3.1. The focus of the Court on national laws

With regard to its fundamental task of communicating with the national judges and the requirement to take into account the constitutional identities of the Member States, whether it arises from the obligation derived from Article 4 of the TEU or from a desire to develop the recognised common principles, particularly in the field of fundamental rights, the Court has been reinforcing its means since some years to better understand the national laws. Its target it not to interpret the national law – the national courts is exclusively responsible for this task. The Court rather intends to rely on the national examples of dealing with new legal issues and to make a relevant decision with a Union of 27 Member States where the EU law is uniformly applicable.

The following elements may be cited for this purpose:
- the comparative law notes of the research and documentation department, drafted for requirements of the most important cases brought to the grand chambers, and which are planned, in the long term, to be made public after the judgment has been pronounced or, at the very least, to be made available for the national courts;
- the quarterly monitoring that take into account the most striking judgments of the national supreme courts, as well as the decisions taken by the courts following a preliminary ruling. They are also made available on the ACA site.
- the fact that 80% of the library collections (11 kilometres in length, 490,000 notices) are devoted to national laws, comparative law and the law of third States, a discussion undertaking the possible partnerships with the libraries of the national supreme courts.

Moreover, the Court wishes to draw ideas from the good practices of national supreme courts. It thus shows an interest to maintain its own case-law register, for the classification of the administrative case-law of the Council of State, more precise in its structure and attributing to multidisciplinary researches, or broadly speaking, for the work of research and documentation centre.

3.2. Formulation of the judgment

The formulation of the judgment follows a path different from the one known at the French Council of State.
In the Court of Justice, the preliminary ruling is iteratively drafted, according to the following procedure:

- the “general meeting” allocates the case at a very early stage, which brings together all the members, a panel of three judges, five judges or the grand chamber (15 judges), way before a first solution is outlined in the view of the discussion. At this stage, on the basis of a "preliminary report" of the Judge Rapporteur, the Court decides as to who assesses the importance and novelty of this questions raised. At this stage of drafting guidelines to resolve the dispute, the report does not propose any deliberations on the merits. On the contrary, it suggests procedural measures: a judgment panel, the possible omission of the hearing of oral pleadings and/or the conclusions of the Advocate General, as well as, where appropriate, the measures for organisation of the proceedings, written questions communicated to the parties before the hearing or oral questions to be addressed at the hearing. In the event of agreement between the Judge-Rapporteur and the Advocate General on these proposals, which corresponds to the most frequent case, the report shall be circulated for registration at the general meeting on Tuesday afternoon within 15 days, for validation without discussion. Any judge may, however, file a memorandum reference to a superior judgment panel or speak at a general meeting. In case of disagreement between the Rapporteur and the Advocate General, the file is discussed during this meeting;

- even if the procedure is primarily written, the hearing is nevertheless a significant step of discussion of the judges and the Advocates General (Refer to point 6 hereinafter);

- the deliberation is initiated on the basis of conclusions by the Advocate-General\(^3\). In practice, the Judge-Rapporteur informs the other members of judgment panel, about his intention to follow them entirely, to deviate them from time to time, or to propose a contrary ruling. The president of the judgment panel to which the case is assigned conducted a “round table discussion” as regards these guidelines. According to this first deliberation, the Judge-Rapporteur prepares a “reason draft”, to which his peers, and particularly the president of the judgment panel playing a role more or less comparable to that of our assessor, respond with a written note, one week before an oral deliberation is conducted. In principle, the judgment draft evolves only on formal aspects, as a result of a second contribution by the readers of judgments, and later that of legal-linguistic experts.

In the Court, in the absence of a conclusion of an Advocate-General and with regard to both, the already mentioned case allocation mechanism, and the type of the dispute (direct actions), the preliminary report established the judgment guidelines at an early stage, along with a detailed analysis of pleas, its division as well as the arguments in their favour. It is very common that it is already accompanied by a reasons draft, which will evolve in the light of the hearing and also structure the deliberations.

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\(^3\) They are communicated to the members of the judgment panel three to six weeks after the hearing, with further delay of four to six weeks required for translation before they are distributed to the public in all the official languages of the Union.

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VI. The aspect of “good practices” in the court visited

Three sets of good practices particularly aroused my interest during the training programme: the role of hearing in deliberations, the communication of the date of pronouncing the judgments to the press and to legal professionals, and the streamlining of the written procedure.

6.1. The role of hearings

The role of hearings in the Tribunal and the Court must be replaced in its legal context:
- even if the procedure remains written primarily, it is nevertheless of a mixed nature, with an oral phase playing a significant role in discussion of the judgment panel and the Advocate-General. This practice reflects the diversity of legal traditions represented in the Court as well as the process of drafting preliminary rulings, which is characterised by a significant delay between the hearing and the pronouncing of judgment and conclusions of the Advocate-General. As regards the Court, its nature as the Court of first instance, ruling on direct actions, involves the hearing into its case investigations;
- Article 83 of the Rules of Procedure encourages the Court to address the main issues of the law raised by the case, at the hearing, in order to subsequently avoid any re-opening of investigation. The parties or participants (EU institutions or Member States) can rely on it to request a new hearing if the Advocate General's conclusions are based on an "argument" which was not discussed by the Court. the parties;
- In the context of preliminary rulings, it is essential for the Court of Justice to have a clear understanding of the scope of a provision of national law in order to assess the admissibility of questions, as attested by the Wightman and Blaise cases, or when the court's decision did not provide him with adequate information as well as the case illustrated by Hochtief case (Refer to paragraph 1).

For all these reasons, the hearings are transcribed, provided at the request of a single judge, and made available for consultation at the Registry, on request of the parties.

The hearing also plays an important role for the Court for reasons of expediency.

For the most important or the most sensitive cases, it confers an additional legitimacy on courts, sometimes perceived as remote from national territories. The Court and the Tribunal control the consequences of the time taken to process the cases in view of their significantly greater pleas than those of the national courts and the streamlining of their organisation. Thus, the speaking time for the pleadings is fixed in advance and is strictly limited (from 10 to 15 minutes, 30 minutes exceptionally for the high-profile or very complex cases), the responses must be filed within five minutes. Requests for "concentration of pleadings" on a plea, on a point of law, a response to the statements of case of other parties or written questions from the Court or the Tribunal are common. They allow the pleadings to have specific purposes in the matters strictly

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4 Refer to, for example: Order of 24 September 2010, Kerstens/Commission (T-498/09 P, point 38)
5 In principle, the hearings are conducted several weeks before the judgment is pronounced (Tribunal), three to four months before the dissemination of the Advocate General's conclusions and six months before the judgment (Court), in that respect the Judge-Rapporteur and the Advocate-General conduct the debate with the parties, the President and the other additional participating members of the judgment panel
necessary to clarify the deliberations in addition to the written procedure (Article 61 (2) of the regulation of the Court; 89 (4) of regulation of the Court).

Moreover, the Court is keen to remain a melting pot to combine the national traditions that grants the judges with a more or less active role during the hearing. In principle, a judge of the Roman law tradition, unwilling to reveal his position even indirectly, by asking his parties to take a final position on these assumptions in the interpretation of law, to request the litigants to reformulate their conclusions or pleas or even to ask them to specify their interpretation of a normative provision that was omitted from the debate or to take into account a case-law prior to the closing of the writing stage. The reopening of the written investigation, when required and, in other cases, to allow the parties to react to the conclusions of the public rapporteur who does not maintain contact with the judgment panel, shall be considered to be more advantageous. On the contrary, other legal traditions make the hearing an important step of the deliberation and allow the judge to interrupt the parties, to ask them to provide evidence at the headquarters, and to reveal their personal positions at this stage of the case to compel the parties to improve their arguments, or even to change them. The judges of the Court and the Tribunal have, over time, borrowed from both these traditions, while remaining careful not to anticipate the future deliberations, and without necessarily wanting to authorise dissenting opinions, as done with the European Court of Human Rights. I have observed it with particular interest in the case of the port of Brest, in a panel of three judges, all a part of the Roman law tradition. During the hearing, the President of the panel ensured that each of the elements of the law relevant to the dispute is addressed, and extensively solicited the parties.

These contextual elements explain that the procedures of conducting a hearing in Luxembourg do not include an identical transposition in all the national systems, particularly in France. However, in view of the limited sample, in my personal capacity, I retain the five hearings that I attended, some potential advantages of expansion, under certain conditions, and according to the type of litigation, the practice of oral questioning of the parties by the judgment panel beyond the framework of the interim and investigation procedures called “at the bar” procedures, arising under Article R. 623-2 of the code of administrative justice. In principle, the circumstances that the procedure undergoes before the French administrative court, is exclusively in written form and the period between the hearing and pronouncing of the judgment, which is much shorter than in Luxembourg does not seem to be an unconquerable obstacle in this respect. In some areas of pleas with excess of power at the first and last instances, to a certain extent, an oral questioning can help with the case investigations.

Firstly, it allows reinforcing the analysis of admissibility issues of public order, requiring the examination of the elements of law and fact, as I observed in Luxembourg. This question was likely to determine the outcome of the dismissal in the Blaise case, concerning the deterioration of glyphosate containers. It can also assume a legal interest of principle. It is thus quasi-constitutional in the Wightman case, so that the only mechanisms for consultation of the Court provided for by the Treaty, are not circumvented, taking into account the requirement of an effective law remedy, as illustrated by the CCI of Brest case.

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6 The Commission argued, first, that the KIC was not individually affected, in the absence of a decision to recover such aid, or of an act, such as an approval, distinguishing it as a beneficiary of the aid, and thus linking it
In such circumstances, especially when the written procedure is streamlined, the hearing becomes a privileged place to plea on an absolute refusal.

Secondly, the hearings enable to reinforce the contradictory and to lay the groundwork, if not for turnovers, at least for developments of case-law, by asking the parties to submit their observations. To a lesser extent, they may request the parties to clarify or adapt the scope of their submissions and pleas (direct actions, appeals), particularly when a new decision relevant to the handling of the case occurs between the closing of the writing and the hearing stage. It also involves working with different methods of interpreting the law, which will lead to contradictory results, as observed in the case of Amazon, or to introduce such assumptions in the debate that were not considered and which may base the solution (for example, a normative provision or a case-law that would have strategically or accidentally been omitted in the observations) without constituting a public order plea. In all these assumptions, the oral questions are asked from a procedural point of view, more economical than re-initiating the investigation extending the judgment deadlines. Their game could be reserved, as the case may be, for the most important developments or the most sensitive cases for the general public.

Thirdly, without going as far as the investigation at the bar of the court, the equivalent of which, at the European level, would be the appearance of parties, that have been tested and compared in a direct and dynamic manner, certain types of litigations can cause arguments between parties during the hearing. This is particularly the case for litigations of the economic regulation, privileged areas of “living law” (application of the principles of precaution, bioethics), or also for monitoring of execution of decisions of Council of State pronouncing judgments at the first and the last instances. The hearing could also be used to react to an amicus curiae filed pursuant to Article R. 625-3 of the same code, given the observation that this procedure has no equivalent at the European level. However if the Court or the Tribunal so authorises, the parties and participants may handover the responsibility of answering questions related to scientific or economic studies, to the experts.

Lastly, under certain circumstances, oral questions may provide a better understanding of the need to modify the effects of judgments over time, in the past or the future.

6.2. The communication before the date of reading the judgments or decisions

As done by the CJEU, the Council of State also communicates the date of its hearings and resorts to press releases to increase the dissemination of their most important or most sensitive judgments for public opinion. It even has a spokesperson, a development that is not being considered at present at the CJEU.

to a closed circle of operators (see CJEU, 27 February 2014, Stichting Wonnpunt, C-132/12 P) entitled to the maintenance of the exemption and, secondly, that the contested decision of the European Commission did not have the character of a regulatory act devoid of execution within the meaning of Article 263 TFEU, which may be challenged directly before the General Court. The tax assessment notice or the collection certificate may be challenged in the national courts and where appropriate, give rise to a preliminary question on invalidity (CJEU, gr ch., 6 November 2018, Scuola Elementare Maria Montessori Srl, C-622/16 P to C-624/16 P, points 38 and 61-63).

7 For this point, refer to CE, Sect., 19 April 2013, Angoulême Chamber of Commerce and Industry, No. 340093, published in the Recueil

Activity co-funded by the Justice programme of the European Union
The CJEU implements an additional good practice in which the date of delivery of its judgments is communicated to a list of persons concerned, fifteen days in advance. This information is particularly appreciated by the general print media and legal professionals that the press office summarises the challenge by a question of law formulated in a simple and interrogative manner.

At the same time, the Court also announces in advance, the forthcoming broadcast of a press release (7 to 8% of cases) or “rapid information” (judgments that are important to a Member State, but not necessarily for the entire Union).

The implementation of this practice is facilitated, on the one hand, by the nature of the procedure followed before the Court, which involves scheduling the deadlines for translation of conclusions and judgments several weeks in advance, and, on the other hand, by the importance of its resources in the service of relations with the public (eight press officers with strong legal training and a network of relations with the press and legal journals in a given sample of Member States).

6.3. Streamlining of the procedure

The procedural regulations and the subsequent practice enable the CJEU to actively manage the written or oral procedure (case management), which is also explained by the budget and calendar constraints of the multi-lingual criteria and the absence of specialised bar. Thus:
- if there is no provision to request for a statement of case summary, as is authorised by the French code of administrative justice, the regulation of procedure enables the Court, to restrict the number of memorandum and observation pages (Article 58) of the replies and rejoinders (Article 212) at the Tribunal;
- in terms of quality, the Tribunal, which is responsible for direct actions except the failure to fulfil obligations, the subject-matter of replies may be restricted to certain questions (Articles 83 (2); 126 (2), 175 of the regulation); the new pleas being prohibited unless revealed during the procedure (Article 127 of the regulation of the court, Article 84 of the regulation of the Tribunal);
- for reasons identical to those justifying several oral questions at the hearing, the use of written questions is frequent, this practice being broader than the only way used to react to a plea that is likely to be get dismissed automatically;
- practices develop as regards the management of case secrets or the document confidentiality in the litigations related to freezing of assets in the area of PESC, on the basis of Articles 104 to 108 of the regulation of procedure of the General Court of the European Union revised in 2016 (non-confidential summaries, on-site consultation at the Registry restricted to advocates, or withdrawal of documents in case of a disagreement relayed to the non-confidential summary, the assumed risks of the institution or the Member State.)

VII. The advantages of the training programme

Beyond the abovementioned feedback, the training programme offered an excellent opportunity to establish direct contact with the judges and the general advocates as well as their legal secretaries, particularly valuable for the following reasons:
- to assess better, the common points and differences in the organisation of legal processes, and their reasons, which is likely to promote an excellent mutual understanding (institutional environment and positioning, drafting techniques, terms of preliminary ruling);
- to take account of all these elements to boost the thinking process on the development of our own practices;
- take note of the latest developments in the case-law of the Court and the Tribunal,
- to keep each other informed of the discussions on the case-law and the communication of judges, beyond this training programme.

The reduced format of meetings is an important factor of deciding the quality of these exchanges.

**VIII. Suggestions**

The availability of the President of the Court, the four judges and several legal secretaries and other staff members of the Court, who hosted us in a brief session, as well as the quality of the preparation and monitoring of the training programme by the protocol Division, is remarkable and greatly appreciated. This Division was so attentive in their monitoring that the programme was adapted during the training programme in order to better meet the specific requirements of the administrative law judges (assistance at a Tribunal hearing, common interpretation session, with a judge, a judgment of the Tribunal to compare the drafting technique and the case-law, in a very classic litigation of administrative law, suited to comparisons on the basis of its theme and by the simplicity of facts, while remaining interesting on the decided point of law). The following suggestions should be appreciated on this basis.

**Two substantive suggestions:**
1) If the duration of the training programme does not allow considering an allocation in a team of legal secretaries for observation, the exchange around one or some recent judgments of the Grand Chamber, in the form of an informed comment of a judge or a legal secretary shall particularly be valuable. Some of the abovementioned judgments could be used for this type of exercise.
2) A presentation of the function of the Judge-Rapporteur in the preparation of the hearing and the advantages of the hearing in the investigation of the case, in the form of a feedback from a legal secretary who walked with judges of different nationalities, illustrated by specific and concrete examples, would enable to make the most of the hearings.

**A practical suggestion:** the programmes of the previous training sessions of ACA could be published in advance so that the trainees can specify their expectations better in June-July for the month of November, and express their willingness to attend specific identified hearings when the calendar of the training programme weeks is made public.