THE FUTURE OF THE JUDICIAL SYSTEM OF THE EUROPEAN UNION

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Editors' Preface

The jurisdictional arrangements under which the European Court of Justice (ECJ) and the Court of First Instance (CFI) function – still with remarkable efficacy and a high level of consumer satisfaction – were made for a political and legal order very different from the European Union of today. The need for radical changes, to help the Courts cope with an increasing, and an increasingly diverse, case load, has been a topic of debate among academic friends and admirers of the Courts for a number of years. The issue got onto the political agenda, because of the challenge the impending enlargement of the Union poses for the existing institutional system as a whole, and because the Intergovernmental Conference (IGC) which completed its work in December 2000, was seen as the last practical opportunity for responding to that challenge.

The task of negotiating jurisdictional reforms within the framework of the IGC was entrusted to a group of "Friends of the Presidency", composed of government lawyers from the Member States, and working under the guidance of the Legal Services of the Council and the Commission, and of Court representatives. The "Friends" did their job so well that their proposals were seemingly accepted as uncontroversial by the Heads of State and of Government at their December meeting. The draft Treaty of Nice, accordingly, includes significant changes to the Treaty provisions on the Courts, as well as a new Protocol containing a uniform Statute which is to be annexed to the TEU, the EC Treaty and the Euratom Treaty, replacing the present separate Statutes. The changes may not go as far as some observers may have wished but, in our view, they represent a solid gain, and perhaps the IGC's most unequivocally welcome achievement.

Impetus was given to the reform process by two texts of distinguished provenance which appeared in the course of the preparations for the IGC. The earlier of these was a Paper emanating from the ECJ and the CFI themselves. This was entitled 'The Future of the Judicial System of the European Union' and contains 'Proposals and Reflections' prepared by the two Courts. It became publicly available in the early summer of 1999. The other text was the Report of the Working Party, which had been established by the Commission in May 1999, with a remit 'to review the various possible courses which may be taken in order to maintain the quality and consistency of case law in the years to come, bearing

in mind the number and present duration of proceedings and foreseeable developments, in particular in the light of new jurisdiction conferred upon the Court by the Amsterdam Treaty and the forthcoming enlargement'. The Working Party (also known as 'the Group of Wise Persons'), was largely composed of former Members of the ECJ and the CFI, and chaired by former President Ole Due. It reported in January 2000. The paper on 'Reform of the Community courts', which the Commission presented to the IGC, followed up some of the proposals put forward by the Group of Wise Persons.

This volume is organised in two Parts. Part One (much the longer) is entitled, "The Debate". It presents the issues that were discussed during the run-up to the IGC, in the focus of the two key documents that were identified in the previous paragraph, the Courts' Paper and the Working Party Report. There are three Sections in Part One. Section A comprises the proceedings of a conference organised by the Centre for European Legal Studies (CELS), Cambridge on 3 July 1999, and held at the Møller Centre, Churchill College, which took as its starting point the Proposals and Reflections presented in the Courts' Paper, but ranged well beyond them: we have included a number of individual contributions, together with a synthesis of the points made in the course of the discussion. Section B of Part One consists of a commentary on the Working Party Report by its Chairman, former President Ole Due. In Section C, we have collected the two key documents in the debate, together with the final text of the latest amendments to the ECJ's Rules of Procedure (alluded to in the Courts' Paper, and since approved by the Council), and the Commission's additional contribution to the IGC on "Reform of the Community Courts" (distinctly less bold in its approach than the Wise Persons). Part Two of the volume, entitled "The Outcome at Nice", presents the concrete *acquis* of the debate, in terms of the amendments to the primary law on the Courts that will come with the entry into force of the new Treaty. Section A of Part Two offers a general appreciation of the agreed amendments, while Section B contains the annotated texts of relevant provisions.

Our purpose in compiling this volume is to provide a relatively permanent repository for a rich stock of ideas, which might otherwise disappear from view. Some of those ideas – it will be seen – found their way onto the IGC's table as proposals for the amendment of the Treaties, and ultimately into the text of the draft Treaty of Nice. However, it was unrealistic to expect the Union's judicature to be reformed root and branch by the late IGC. Radical change, so far as needed, is a project for the medium term. We are anxious that the insights generated under the stimulus of interchanges at the CELS conference, and those to be found in the Courts' Paper and in the Report of the Wise Persons, be available to enrich the future debate.

We are very grateful to the individual contributors, for the time and trouble taken in preparing their original presentations and in revising these for publication; and indeed to everyone who took part in a conference discussion of great range and depth, to which it has been a struggle in our synthesis, to do substantial justice. Special thanks are due to Advocate General Francis Jacobs, who encouraged CELS to organise the July 1999 conference, and supported it with his active participation; and to Lord Justice Schiemann, who kindly agreed to chair the conference, and kept the debate running smoothly forward. We are also very grateful to the Court of Justice and the Commission for allowing us to include the documentation relating to the reform of the Courts. Finally, our warm thanks go to the CELS Secretary/Administrator, Diane Abraham, for arranging the meeting on 3 July, and the collection and revision of conference papers, with her usual efficiency.

Alan Dashwood
Angus Johnston
Cambridge, January 2001

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Part One: The Debate

A. THE COURTS' PAPER

I. Introductory Comments

Helping the Court to Function Effectively

ROSS CRANSTON QC MP
Solicitor General

As one of the Law Officers, I come across European Community matters every day. I have had to become, not an expert, but someone familiar with an area of law with which I did not have a great deal to do previously. There is no doubt that EU Law has great importance, and that the Court of Justice has a vital role in relation to our own law. In this contribution, I offer a few general comments of an introductory kind. I should say that, unlike most of those at the conference, I cannot speak authoritatively, because as a Department we do not take the lead on this matter. That is taken by the Foreign Office, and we still have not fully made our final response to the Courts' paper. There is a great deal of correspondence going back and forth between the Foreign Office and other Departments like the Lord Chancellor's Department, the Home Office and, you will be interested to hear, the Treasury, because financial matters always loom large in discussions these days.

A first point is that the United Kingdom is a friend of the Court. We value its contribution. We value the contribution it has made to the development of the European Union. And we know that it is going to have a vital role to play in the future. We have always taken (and this applied under the previous Government as well) great care about the cases that we bring before the Court, and we always put our best legal resources into fighting the cases that we do bring. As I say, we do believe in the Court.

The second point is this: we want to the Court to function effectively. The consistent application of EU Law across Member States is clearly in the interests of the Union as a whole, and it is in the interests of this country, and of institutions in this country, and of entities – businesses and citizens – too. So, we take the comments and the concerns in the Courts' Paper very seriously. As I mentioned, this is being discussed in depth at the present time. While we generally support the Courts' Paper – and, I repeat, I cannot now say what our detailed reaction will be – we are considering the precise proposals for procedural changes with care. As regards financial resources, we always have to

balance many competing concerns. However, we have said that we are generally supportive of the need for additional resources for the Court, provided that the case is properly and fully argued. I would just say in passing here – this is not in my brief – that there is always a difficulty in the area of judicial administration of arguing for more resources, because over a number of years the judicial administration literature has demonstrated that the solution does not always lie in calling in more resources to deal with the problem. Often it is a matter of using the existing resources in a more efficient way; but, as I say, we generally support the need for additional resources.

The third point I would make is that changes of some sort are inevitable to meet the demands over the coming years, and the Courts' Paper is a good basis for consideration of the case for making changes. Many of the issues are not new. The UK Government has already supported greater autonomy for the Court in deciding on its own Rules of Procedure. The UK argued at the last IGC for changes to the Treaties, to allow the Courts' Rules of Procedure to be amended by a qualified majority vote in the Council, rather than by unanimity, as at present. Another concern, which will be touched on by some of the contributions to this volume, is the extended jurisdiction under the Treaty of Amsterdam. A special concern that the Home Office has, for example, is with asylum cases, and the need for very speedy resolution of such cases. To some extent it is the old adage that justice delayed is justice denied, but in cases like these that have political sensitivity, there is a special need for processing them rapidly. The Courts' Paper, of course, recognises this area of difficulty, and we have raised the matter with them.

There is clearly a lot of thinking and discussing still to be done. The contributions that follow are bold in some of their ideas and proposals for change. I would encourage that, but I would also say that there is a need to be realistic in your expectations. It is unlikely that all the changes that are desirable will be achieved. The trick will be to identify the truly essential changes.

II. Views from Luxembourg