



## ACADEMIC ARTICLE

# COVID-19 and the Courts. The Case of the Court of Justice of the European Union (CJEU)

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COVID-19 has put forth the value of proactive and good Court administration. The Court of Justice of the European Union (CJEU) ensures the uniform interpretation and application of the European Union law. It is a complex supranational organisation, and its workings involve 24 languages. Shifting from risk management to crisis management is an arduous task in such an environment. Nevertheless, based on previous experiences and alerts, the Court took advantage of the established crisis management plans to counter the Covid-19 pandemic. This article aims to offer insights into how the Court manifested its preparedness, remained resilient and managed the crisis by enhancing its contingency plans, using its teleworking experience, benefiting from a modernised IT infrastructure, and applying its procedural rules intelligently. It will also examine how the Court envisages consolidating the judicial and administrative changes in the future.

**Keywords:** Court Administration; Business Continuity; Risk Management; Crisis Management; Court of Justice of the EU

## 1 Introduction

At the beginning of 2020, the Court of Justice of the European Union ("CJEU" or the "Court" or the "Institution" hereafter) perspectives – very much as for other supreme jurisdictions – were to keep things at a regular rhythm, aiming to reduce the number of pending cases and plan the computer applications to facilitate the task. If something mattered more, this was Brexit and its consequences on the Institution's structure and competences. Worldwide at the same time, Courts were focusing on advanced technologies as a hope to tackle the ever-increasing burden for jurisdictions. Trends for judicial formations were to be at the forefront of technology, on the bandwagon of Artificial intelligence, blockchain and predictive justice.

Pandemics had already been in the consideration lists of courts. Plans had been established,<sup>1</sup> but the lack of impact felt beyond Asia and the Arab peninsula after the SARS and MERS incidents soothed fears of a significant event. The rapid expansion of the contamination has

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<sup>1</sup> Joint Technology Committee (JTC) established by the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM) and the National Center for State Courts (NCSC), 'An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators' (2016).

shifted jurisdictions away, not only from future planning but also from the everyday working rhythm. Projects for a broader improvement of the technological infrastructure were suspended, and resources were reorientated towards rapidly establishing an environment for remote working. Strict procedural rules that constituted the backbone of case management had to be adapted to crisis management requirements in virtualised environments. Furthermore, despite its destructive and disruptive force, COVID-19 has confirmed the value of proactive and good Court administration.

In the case of the CJUE, continuity plans, untested certainly under real circumstances, proved excellent preparation. The pandemic's final dimensions and its persistence beyond any reasonable expectation forced the Court's administration to redraft the previous versions of strategies rapidly. It also accelerated the implementation of responses and protective measures in several domains that were not necessarily taken into account in earlier risk assessments.

The Court has managed to navigate through a challenging year, maintaining a balance between the productivity and well-being of its staff. During the whole period, to safeguard the health of the persons involved in hearings who had to be present on-site, the Court practised restricted access to its premises. Remote working remained the main pattern. The Institution sustained both jurisdictions' judicial activity to an almost normal level with an inventive spirit and appropriate preparation.

## **2 The level of preparedness of the Court**

The CJEU consistently prepared for a pandemic well in advance. The preparation was accomplished entirely by the Institution's services since the Court, being a supranational organisation, does not have superior administrative supervision, contrary to national jurisdictions that their corresponding Ministry of Justice covers to elaborate contingency plans. However, seen in retrospect, this probably allowed for a more autonomous and timely reaction to the risks as they appeared, even if the particularities and intricate structure of the CJEU add to the difficulties.

### **2.1 The Institution's structure**

The Court is a complex organisation<sup>2</sup> with a staff of 2200, two jurisdictions (the Court and the General Court), 91 Members (27 Judges, 11 Advocates General, 1 Registrar at the Court of Justice, 51 Judges and 1 Registrar at the General Court), a General Directorate of Multilingualism covering translation and interpretation needs in all EU official languages and finally a relatively small administration, assisted by an in-house medical service. The structure adds to the length of procedures, primarily because of the commitment to maintain the multilingual outcome.

### **2.2 Business continuity plans**

Previous stringent circumstances created a logic of preparedness for the worse, which, during the current crisis, gave birth to a flexible and swift adaptation of the solutions. Back in the 1990s, a first crisis related to the presence of Asbestos in the buildings upset the services of the Court and provoked a massive removal of services outside the traditional premises. The latter was done in an orderly manner and created the belief that part of the administrative tasks was to keep the Court vigilant vis-à-vis unexpected adversities. The Court developed and maintained a crisis management plan, adapting it gradually to counter threats as added, including terrorism and pandemics.

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<sup>2</sup> [https://curia.europa.eu/jcms/jcms/P\\_80908/en/](https://curia.europa.eu/jcms/jcms/P_80908/en/) [accessed 28 February 2021].

The management of the crisis caused by the Covid-19 pandemic has benefited from previous work that has its origin in “avian flu”. In January 2006, following the presentation of a report by the Interinstitutional Medical Group, the Secretaries-General of the institutions agreed to coordinate their actions concerning the establishment of service continuity plans in the event of avian influenza risks. The “EU Interinstitutional Network on Business Continuity Management”, coordinates ever since the possibilities for cooperation in Business Continuity Planning. In 2007, the Court extended the continuity plan to include the “avian flu” risk. When the risk of the influenza A (H1N1) pandemic appeared, the Court was able to rely on the continuity plan and the measures already in place (like the existence of a stock of protective equipment). In December 2009, further continuity plans for each service were formalised and the operational units set up.

The guidelines of the Institution’s business continuity policy have remained stable over time: pragmatism; identification of the essential activities of the Institution; the constitution of a crisis management centre and operational cells; documented procedures; informing staff and stakeholders; inter-institutional cooperation; liaison with the authorities of the host State, following the national measures taken. The objective pursued was to ensure either the Institution’s regular functioning or at least a minimum functioning in exceptional circumstances while distinguishing trivial from major incidents.

The Institution’s senior management was involved in elaborating the service continuity plans. A site dedicated to crisis management has been posted on the Institution’s intranet to inform staff of the primary documents and instructions. A classification of the services’ main activities (critical, essential or necessary) was compiled according to the Institution’s continuity criteria depending on the length of disruption at stake.

Assessment of the successful implementation on previous occasions of anticipating risks resulted in the creation of two key committees, delegated with the task of supervising the activities of the Court in case of emergency: a) the Crisis unit chaired by the Registrar of the Court as a strategic committee having the power to undertake crucial decisions, regrouping high ranking officials and b) the Crisis Management Committee (CMC), composed of representatives of operational services and the Registries, entrusted with the task of coordinating the domains of activity of the Court rapidly and flexibly. Alongside these committees, the Court has created operational cells within each service, liaising with the coordination instances and implementing the necessary measures.

In close collaboration with the national authorities, a “particular intervention plan” (PPI) and an “internal emergency plan” (PUI) were established in 2012. The PPI is an external contingency intervention plan, which plans the intervention, on the site of the CJEU, of external resources, under the responsibility of the competent national structures. The PUI (which later evolved as PUC) is the blueprint of actions to be taken in case of an emergency to control the impact within the Institution.

Since 2008, all departments have participated in an annual exercise to identify, analyse and manage the Institution’s risks. Two crisis drills were organised at the Court in 2014 and 2018.

### ***2.3 Managing the 2020 crisis and business continuity***

Even if no one could imagine the extent of the problem and before it became evident that China’s pneumonia cases represented a global threat, the Court had completed its preparedness. The CMC had been working throughout the previous years. Parenthetically, the CMC met in November and December 2019 to update the contingency plan, consolidate the business continuity plan and actualise the operational cells in all services. On 18th December 2019, it established the infrastructure and operational procedures to allow the CMC members to coordinate via videoconferencing. All committee members were equipped with a laptop, capable

of remote access to their respective domains of activity and, more importantly, offering the possibility to hold virtual meetings. The committee was given the capacity to send messages to the Institution's staff and Members via SMS and email both via the official addresses and the private ones. It tested the whole setup successfully in January.

When the COVID-19 started taking menacing dimensions in Europe, preparedness paid back. Upon realising the risks that the new virus presented, a gradual adaptation to the new realities was taking place, following the Court's medical service's advice. The groundwork for managing this crisis started at the beginning of February with CMC's first meetings. New tests of SMS alerts and virtual meetings were undertaken. Standard messages were prepared in the event of a partial or total interruption of the Institution's activity. The plan for equipping the staff with material allowing for remote work was accelerated, and the capacity of remote connections reassessed.

24th February marks the formal start of crisis management. The Court convened the first meeting of the Crisis Unit and sent an SMS message inviting staff returning from risk areas not to call in for work at the Court premises for two weeks. The Crisis Management Center (CMC) and the various services' operational units were mobilised and undertook preparations to establish a large-scale remote working regime and preventive and health protection measures. The crisis management strategy has been guided by the fundamental requirement to protect people and ensure the continuation of judicial activity. In addition, numerous external and internal communication operations were carried out, and the Registrar of the Court provided the Administrative Committee with regular information on the management of the crisis.

Immediately afterwards, Luxembourg, Germany, France, and Belgium took measures restricting persons' movement and imposing sanitary limitations. Following that, in line with all other European institutions' policies, the Court activated its plan on 13th March 2020, after having considered the necessary adaptations, one week ahead of the national lockdown. The mechanisms put in place aimed to limit the work likely to be carried out in buildings to the sole tasks necessary for the minimum exercise of tasks, particularly the judicial activity. The staff was ordered not to enter the Court buildings, except in ad hoc and necessary cases. Instead, generalised remote work was applied.

The business continuity process at the Court activated in response to the COVID-19 pandemic, based mainly on extensive teleworking arrangements in place with effect from Monday, 16th March, guaranteed the continuity of the judicial operations fundamental to the functioning of the European Union, entrusted to the jurisdictions.

The Presidents of the Court of Justice and the General Court informed in time the Members of the jurisdictions, their cabinets and the registries of the decisions and instructions for the organisation of judicial activity and continuity. The Registrar of the Court informed the Administrative Committee<sup>3</sup> regularly on the management of the crisis.

Some of the first measures concerned using external communication channels to guarantee the capacity to send messages to the parties on the Curia site, press releases, and posts on Twitter and LinkedIn. Internal Communication was planned via SMS, official messages and communications to staff by professional and private email addresses. Awareness was centralised on a dedicated intranet site (CJEU-InfoAlert).

Virtual meetings and other forms of online conferencing, more or less informal initially, have also been used to exchange information. Measures have been adopted to protect all the people who work in the institution, on the one hand, and to allow, as far as possible, the

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<sup>3</sup> A standard Committee composed of Members of the institution and the Registrars charged with strategic guidance on administrative matters.

continuation of the activity – in particular judicial, in line with the efforts of the European health authorities in their fight against the spread of the Coronavirus.

The Court benefited from an extensive migration to a modern computer operating system, replacing the traditional desktop computers with portable devices capable of remote connection to the Court's network. Appropriate teleworking was thus effective for approximately 80% of the staff. At this time, the Court was three months short of upgrading the equipment of all the staff. Soon afterwards, it managed to put an accelerated plan that equipped the rest of the personnel adequately by the end of May.

A hectic unofficial preparation preceded the concrete measures against COVID-19. Fears of a generalised lockdown forced the Court's services during the beginning of March 2020 to accelerate efforts to dematerialise the operational support in administrative and judicial domains and convert paper-based workflows to electronically managed circuits.

Further in the year, at the end of the judicial holidays, the Court had to decide on other applicable protocols. To conciliate business continuity with preserving people's health, it was decided to maintain generalised remote working. Access to the Court's premises was organised as it was during the spring situation, subordinating it to line managers' authorisation for as long as it was necessary to execute tasks requesting physical presence, mostly related to hearings. Social distancing, personal protective equipment and health precautions remained compulsory.

Additional measures were taken throughout the crisis to ensure continuity of operation at risk from factors not initially foreseen in the continuity plans. All services are in the process of their actualisation. An essential aspect for controlling risks became the maintenance of the efforts in place for the continuous introduction of new and increasingly efficient technologies making it possible to facilitate further remote work, the dematerialisation of flows and the conservation of efficient channels for remote communication.

### **3 Timeline of the different phases of responses to the pandemic**

The reactions of the Court depended heavily on the decisions taken by the national authorities. The initial optimism that the constraints could be alleviated in summer was replaced by the realisation that normalcy was running late and that the virus's tenacity was never seen before, at least in the contemporary era. The Court was no exception to that, but because of its precautionary approach, it has managed to maintain relative stability as for the degree of limitations, often anticipating the national lockdown phases. The period up to the end of 2020 was not without problems and constant changes. The established preparedness facilitated the staff and the Institution Members' acceptance of a continuous adaptation to the novel circumstances. Most importantly, a careful organisation proved to be the key to preserving general health. The proportion of staff infected by COVID-19 remained small, close to 0,5 per cent, without any dramatic outcomes.

Following the oscillating general policies of the Member states and most importantly in alignment with Luxembourg's measures, several phases of organising the Court's functioning were observed. Nevertheless, the Court has maintained an essential degree of initiative and autonomy. It managed to be a step ahead of the corresponding Luxembourgish decisions in the matter, applying in some cases, as it happens at the beginning of 2021, stricter rules and protocols compared to national policies. In retrospect, the fluctuations of the reactions to the pandemics were less marked. The year of the pandemic can be analysed in 7 periods that required each successively a change in the organisation of the workings of the Court:

1. The first phase announced on 13th March and put in place from the 16<sup>th</sup> – later extended up to 24th May, coincided with a strict lockdown in Luxembourg. Both jurisdictions'

hearings were suspended, and access to the premises was restricted while significant administrative changes occurred, as will be explained later.

2. Second phase: a partial resumption of activity occurred from 25th May up to 16th July. The Court's services had prepared this partial resumption of activity on-site well before 25th May, by three task forces entrusted with, respectively, the planning of hearings, video conferencing, and finally, security health/medical precautions, aiming at a gradual resumption of activity.
3. The third phase covered the judicial holidays (16th July up to the end of August): The administration actively incited staff to use their holidays. Since presences at the Court were, by definition, less numerous, measures were eased, leaving it to individuals to organise their attendance on the premises, always respecting social distancing and sanitary precautions. Teleworking remained, of course, the principal mode of organising the activity of the Institution.
4. Fourth phase: September to November. While the Court reverted to stricter rules after the summer holidays to avoid a spread of the pandemic, it kept the option to reassess the situation after the third week of September. Unfortunately, Luxembourg's epidemiological indices, obviously linked with the homecoming of the population from holidays, overturned the perspectives of return to normality. The Court implemented PCR testing for Members and staff involved in hearings. In parallel, it repeated the annual campaign for seasonal flu vaccination.
5. Fifth phase: November to mid-December. After the holidays, the homecoming reversed the hopes for positive evolution and forced the Court to maintain access limitations to its premises up to the Christmas season's approach.
6. Sixth phase: end of year holidays into 2021. The advent of the Christmas holidays led to an easing of travelling abroad restrictions. Still, in the case of the Court, this was combined with the courageous decision to maintain the restrictions up to mid-February despite a relative appeasement of Luxembourg's general measures.
7. The 7<sup>th</sup> phase into 2021 was marked by the planning for vaccination and a new approach with controlled access to the Court premises but still providing remote work equipment.

#### 4 Jurisdictional issues

The two jurisdictions adopted the required adjustments of procedures immediately after lockdown. They communicated them to concerned parties via email and potential parties via the Court's website and social networks. Very quickly, the week following the Court's "shutdown", measures meant to optimise the usage of resources were adopted by the presidents of the two jurisdictions.<sup>4</sup> This way, the Court managed to maintain its normal rhythm of deciding cases and delivering judgments. The overall number of cases resolved amounted to the same as in 2019. In parallel, procedural measures compensated for the inability to hold hearings. Written questions to the parties replaced the debates that would typically take place in courtrooms. Deliberations amongst judges were in the first period conducted through written procedures via secure email, later replaced by secure videoconferencing.

Both jurisdictions postponed all hearings for pleadings. Nevertheless, the judicial activities and work in the services were maintained under workflows as close as possible to those applicable in normal times, adapted inevitably to the exceptional circumstances. To this end, the Crisis Unit and the CMC have steered the implementation of appropriate measures, such

<sup>4</sup> Gaudissart M-A, 'La Cour de Justice de l' Union Européenne Face à La Crise Sanitaire' (2020) 1 R.A.E. – L.E.A. pp. 97–107.



as employing secure videoconferencing systems allowing in particular remote deliberations. As a result, The Court maintained the hearings to deliver judgments or read Advocate General conclusions.

Following a relative easing of restrictions by the government of the Grand Duchy of Luxembourg, the Crisis Unit proposed to the Administrative Committee on 22nd April 2020 a set of new measures to orchestrate the gradual resumption of activity on the premises of the Institution and, in particular, the possibility of planning hearings, eventually remotely. A “Resumption of hearings” task force had been created to plan hearings by the two jurisdictions from 25th May to 15th July and examine the measures to be implemented to allow the organisation of hearings in sanitary conditions to ensure the optimal protection of the people involved. The new “Hearings Protocol”, implemented on 12th May 2020, summarises all the provisions concerning the guidelines to be observed in courtrooms by people who attend the hearings and staff, notably interpreters, involved in the organisation.

One of the hearings of 25th May offered the possibility to one of the participants to plead from a distance. This new modality presented significant technical and interpretation challenges. The Visio-conferencing Task Force, set up in March to study the possibilities of holding meetings, deliberations and, ultimately, hearings by videoconference, was tasked with deepening the examination of the technical conditions that may allow hearings to be held with parties or agents remotely.

The pandemic has led to a decrease in the number of cases introduced and in face-to-face activities. For example, the number of cases brought from 1st January to 30th September 2020, respectively, before the Court and the General Court, was 496 and 665, compared to 737 and 712 during 2019. Also, the postponement of hearings and visits has had repercussions on the workload of the services most concerned, forcing them to diversify their tasks.

The jurisdictions resumed hearings partially at a measured rhythm. When to be held *in situ*, hearings integrated hygienic standards.

#### **4.1 Videoconferencing**

Following the works of the taskforce “Videoconferencing” and in respect of the principles adopted by the committee “Rules of procedure”, distance Videoconferencing was put in place when attorneys could not be present for hearings. However, this did not prove easy to apply in complex cases.

This hesitating exit from the previous almost complete halt of operations went very well, thanks to careful preparation work and the efficient collaboration of all actors involved.

Resuming hearings obliged the services to organise in detail the new realities and involved close coordination with all the Court services principally concerned (directorates of interpretation, information technology, Registry, internal services). Precautions were taken as for the access to buildings, and shunting towards the courtroom concerned was organised. Practical measures like respecting social distancing, limited canteen facilities, distancing in the courtrooms and blocking of seatings, elimination of meetings with the parties before the hearing, even the possibility for party representatives to plead without gown if so wished were put in force.

The hearings’ management involved implementing procedural measures of organisation to verify the parties’ interest to attend a hearing. Indicatively, at the General Court, 69 hearings had been planned for 8th June to 15th July. The period between 8th June to 12 was problematic since the General Court held just two hearings out of the 14 scheduled, but the return to relative normality was achieved as from 15th June.

#### 4.2 Use of e- Curia

Since its launch in November 2011,<sup>5</sup> E-Curia, common to the two jurisdictions, has enabled the filing and service of procedural documents electronically. This application aims to promote both increased paperless document flows to and from the Court of Justice and the General Court with noticeable gains in speeding up the procedural phases and strengthening case management quality through a harmonised and secure process.

At the General Court, the use of e-Curia was made mandatory from 1<sup>st</sup> December 2018. Some exceptions were provided to comply with the principle of access to justice (especially when the use of e-Curia proved technically impossible or when legal aid is requested by an applicant not represented by a lawyer). The compulsory use of e-Curia ended the management of mixed, paper and digital, formats. It eliminated the need to scan documents filed in paper format. It has also ended the recurring difficulties encountered when receiving or serving voluminous documents by fax.

At the Court, the use of e-Curia is strongly encouraged but cannot become compulsory. While the General Court deals only with direct actions – in which an agent or a lawyer must always represent the parties – the Court of Justice deals with various types of actions (references for a preliminary ruling, direct actions, appeals, requests for opinions) involving different types of actors: agents and lawyers, of course, but also national courts and tribunals, university professors, persons authorised by national rules to represent the parties to the main proceedings and, in some instances, the parties themselves. Imposing the use of e-Curia in all circumstances would be disproportionate. It could lead to a possible restriction of access to justice, as some of the actors mentioned above do not necessarily own a computer (or do not have access to the Internet) and often appear only once in front of the Court of Justice.

The increase of remote work in the Member States and the easing of the conditions for creating an account operated by the Court have resulted in the surge of use of e-Curia in 2020. Around 80% of the total lodgments made to the Court of Justice and 95% of the General Court's total lodgments were through this means.

#### 4.3 Caseflow at the Court

As a result of the crisis, at the Court level, all hearings were postponed to a later date; 60 cases were considered urgent, and one Urgent Preliminary Request was kept in progress. The Chamber in charge of the latter decided not to hold a hearing and to put questions to the parties for written answers instead. Written procedures replaced the traditional deliberations.

Deadlines remained as indicated in the guidelines concerning the caseflow management. For all cases planned to be resolved without Advocate General opinions (mostly cases of chambers of three judges) for which a hearing had already occurred or was not considered necessary, the drafts of the judgments were handed down according to usual rules.

For cases planned to be resolved following a General Advocate opinion for which a hearing had already occurred or was not considered necessary, the drafts of the judgments started being prepared immediately after the opinion was handed down, in the language accessible by the Chamber concerned. *(In all previous situations, once the draft was handed down, deliberation of the Chamber was immediately planned by written procedure until a change of situation could allow a face to face meeting.)*

For all cases for which a hearing was already fixed, the Court envisaged replacing the oral procedure with questions for written answers.

For mature cases, the usual route was followed by remote means. In contrast, in cases where the written procedure was still open, the preparatory work was anticipated to facilitate deliberations.

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<sup>5</sup> Marco Fabri contributed greatly to the development of the e-Curia.



For completed cases, hearings meant specifically for grouped pronouncements of judgments were organised at specific dates. Judges and members of staff (e.g. interpreters) concerned had to observe increased sanitary precautions.

Despite the increased digitisation of the judicial process, the Court's Registry was still called upon to treat a relatively high number of acts of procedure lodged by ordinary post. All relevant original documents and records, often bulky, have to remain securely at the Court and be digitised before they can be further processed. It was, therefore, necessary to establish new operative processes for the dematerialisation of documents in pending cases and, on the other hand, register, scan and treat all elements of procedure delivered to the Registry by ordinary post. At the beginning of the confinement, not all Registry staff had equipment capable of remote access to business applications. Quickly, however, the Registry addressed the main issues related to the jurisdiction's core functioning. The majority of tasks became manageable online, except those requiring a physical presence in the Registry premises were thus deferred for later. The Registry staff was allowed to pay brief visits to the Court and scan documents before transmission to services to cope with this burden. In this way, the Registry kept up with the case management of all cases lodged from the lockdown date onwards, independently of whether they were submitted electronically or by post.

One of the problems that had to be tackled was the need to inform all parties involved in pending cases concerning the cancellation or postponement of hearings. Since some of the parties, especially in preliminary requests, do not have an e-Curia account and serving by regular post was problematic, much creativity was invested in tracking parties' contact details and serving via email.

Finally, to meet deadlines, all services involved shortened treatment time and readied their part of the work much earlier.

#### **4.4 General Court**

At the General Court, the compulsory use of the e-Curia application by the parties<sup>6</sup> facilitated the Registry's remote work. All filings were accessible remotely. The Registry served electronically all outgoing documents and acts of procedure, except for the ones to be served by post in the case of parties not having an e-Curia account, for which dispatching was feasible only by being present at the Court.

However, the obligation to conserve an authentic paper version of the case file forces a backwards-compatible procedure for printing the corresponding files.

The entire General Court Registry has started working remotely as of 13th March. Teleworking was not previously practised in that service. People equipped with laptops on that date constituted the Registry activity's core until full equipment allowing balanced distribution of remote work was attained. Registry's activity has never stopped but has been reduced to the treatment of the more urgent cases.

The General Court is looking now into the objectives for the future to consolidate the performances of 2020. Shortening the length of procedure, an increase in the number of cases disposed of and modernising the procedural rules are listed.

### **5 Evolution of administrative adaptations over time**

This novel situation brought forth the need for administrative adaptations never seen before, affecting all the Court's departments.

As from the first day of the limiting measures, the CMC, having the task to oversee the coordination among services, continued meeting virtually once every two days but gradually

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<sup>6</sup> Coulon E, 'Numérisation Du Processus Judiciaire: Un Pas de plus Avec e-Curia Obligatoire Devant Le Tribunal de l'Union Européenne' [2019] L'observateur de Bruxelles, no 117 pp. 42–46.

adapted the frequency to continually changing realities. Temporary solutions to several topics remained as core elements of the organisation throughout the crisis.

Significant modifications took place at the core administrative level, reshuffling the traditional processes. In the first place, projects aiming at digitalising archives and services pending for several years were quite quickly implemented just before closure; from then onwards, it became possible to access applications and handle issues remotely. This was undoubtedly also due to the fortunate fact that most administrative systems were at a level of maturity that allowed file handlers to work from home as if they were at the office, e.g., accounting, human resources, salary payment applications. Still, several adaptations complemented the core systems to cater for areas where workflows were not previously dematerialised.

In all cases, the brief period just before the lockdown was a very intense one. New working methods had to be invented. Simple alternatives were designed permitting the online request for holidays through an external link – catering thus for people that would not have direct access to the Court systems.

An example of the organisation in a hurry is the creation of an entirely new service to automatically issue certificates for colleagues who had to cross borders to come to the Court. Many of the Court staff reside in the neighbouring countries, Germany, France, Belgium. All adaptations needed to be implemented and tested while the staff was still at the premises.

Several diffuse problems came to the surface, however. For example, the Court had already a sufficient stock of protective material (masks, disinfectants, gloves). Nevertheless, since replacement had to be envisaged, the possibility to acquire new equipment was confronted with intense competition and the limited availability of certified goods. Despite this, the Court managed to get hold of supplementary material.

Access to the Court premises was permitted for short periods to dematerialise work or deal with issues that could not be handled at a distance. Beyond protective installations and personal protective means, entering the Court premises was subject to temperature checks. The Court also took sanitary precautions guaranteeing social distancing while moving within the Court buildings. The Court has opted not to identify critical/essential roles. Instead, it entrusted the line managers with the task of authorising staff to be present when needed. A very weak percentage of the staff was present at any time on-site. Similarly, the presence of external service providers in the buildings was authorised solely to perform specific and necessary tasks.

## **6 Core administrative issues re-engineered during the crisis**

Several aspects of the Court's administrative organisation were continuously adapted as an impact of the pandemic and the requirements for reducing health risks. From the medical procedures' adaptation to simple protocols for cleaning and decontaminating spaces, practically all administrative activities had to be modified.

In an internal document, the Registrar of the Court presented on 19th June 2020<sup>7</sup> an overview of managerial measures adopted during the crisis and the perspectives and lessons to be drawn. It is specified therein that the crisis management strategy has been guided by the fundamental requirement to protect people and ensure the continuation of judicial activity. This strategy was deployed around five objectives: a) adopt adequate sanitary protection devices, b) facilitate adaptation to the specificities of remote work, c) ensure that management of the Institution's resources is adapted to the circumstances, d) provide staff with the appropriate support, e) maintain the right level of communication regarding the activity of the Court.

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<sup>7</sup> "Management of the COVID-19 crisis: assessment, lessons and perspectives".

### ***6.1 Management of the Institution's resources in times of crisis***

All heads of services were asked to report systematically on the management of the Institution's resources. They were also invited to draw the inventory of the activities impacted and not impacted by the remote working regime, the tasks whose continuity could not be ensured, changes in objectives and priorities, and potential difficulties caused by the crisis.

Based on the reports presented by the administrative services, the Registrar of the Court quickly established, already from 7th April 2020, a first assessment of the continuity of services in the generalised remote work context. It was confirmed that most of the essential administrative services could be accomplished. However, specific tasks had to be suspended because they depended on activities that could only be carried out on-site or by physical presence. These included organising and interpreting hearings, seminars, visits and protocol activities, external missions and events, face-to-face training courses, recruiting competitions, and logistical tasks. (supplies, maintenance, moving, logistical support, handling).

Similarly, activity was affected because of a partial lack of computer equipment permitting remote work. Initially, the sectors with the most significant deficit in equipment were the registry offices, translation and the Library, which had to adapt or even postpone non-essential activities. Thanks to the gradual availability of laptops at the end of May, around 95% of the staff had the appropriate technical equipment for remote work.

Besides, the Institution's management had taken measures which reshuffled the working environment. These included revised criteria for assigning work, increasing the degree of delegation, reducing formalities, and simplifying and dematerialising workflows.

In addition, several collaborative initiatives have been put in place to use the resources of the areas most affected by the decrease in activity for the benefit of other departments of the Institution. The workload reduction allowed the departments concerned to concentrate on fundamental or strategic issues and professional development activities.

Overall the Court can pretend to very satisfactory results with regard to the pandemic management.

As a return to regular operation is probably not possible before the summer, the Registrar invited the services to share the acceptable practices adopted by the heads of service to support staff. The synthesis will be shared at a forthcoming meeting of directors to conclude elements that can be rapidly implemented.

### ***6.2 The Library***

The pandemic modified users' attitude towards legal research. Thus the Library accelerated its transformation, benefiting from the new strategy adopted in 2017 and continuing its transformation from a structured repository of books and periodicals in print to an e-knowledge management documentation centre. In this context, it pursued its objective of increasing digital resources acquisition (databases, electronic books and periodicals). The Library has set up an "e-resources" task force to speed up electronic resources enrichment and improve access.

### ***6.3 Informatics***

At the beginning of the pandemic, staff and services have resorted to non-standard collaborative tools and communication applications to remedy the difficulties encountered. Meanwhile, the Directorate of Informatics (DTI) worked to identify solutions that met users' needs but eliminate the risks to the security and confidentiality of staff and offered solutions that are now part of the Institution's architecture. Further developments are planned in this domain for a digital workspace, which considers the different security levels desired for online activities.

Despite the exceptional context due to the pandemic and the implementation of a new maintenance contract, the stability and continuity of all the services provided by the IT systems were maintained and even improved. Multiple technical operations were completed during the year to enhance existing systems' stability, and a new Computer Centre of greater capacity became effective in 2020.

Essential services to the judicial or administrative activity were practically uninterrupted. The telephony services were upgraded to include soft-phone solutions via the laptops.

The IT work plan was adapted from the crisis's onset to prioritise operational activities and the mobility program. It was reinforced to bring the generalisation of tools allowing staff to work from home in conditions comparable to office work settings. The hardware, software and human resources were strengthened to meet the new service requirements during the crisis. Video conferencing, allowing meetings, hearings, and deliberations with participants from remote sites, was standardised. The system of videoconferencing in support of hearings was installed in a total of six Courtrooms. The remote pleading service, set up to help manage the crisis, was nominated for the Award for Good Administration 2021 and will be presented to the Ombudsman shortly.<sup>8</sup>

In 2020, following its digital strategy, the Institution continued to develop its project of an integrated case management system.<sup>9</sup> This project, SIGA, the importance of which is further enhanced as a result of the crisis, aims to set up an integrated case management environment that will replace the majority of the current judicial applications used by the Court of Justice and the General Court. In addition to renewing technology, the future system ambitions to change the paradigm from a set of non-directly interoperable applications towards a transversal end to end approach to judicial activity. The tender for a solution of Adaptive Case Management was finalised with the signing of the contract and the launch of the first work packages.

At the individual level, the Court is currently preparing to lend additional IT equipment (wide external screen and keyboards) to staff to make working conditions more agreeable.

#### **6.4 Human Resources**

The generalised remote working was an essential vector for accelerating administrative procedures' dematerialisation and simplifying and digitising workflows. Gains in efficiency have been made and continue to be sought through the greater use of modules of the inter-institutional staff management system called SYSPER II. The extra modules that were put in production during the crisis allowed to streamline the management of selection procedures, the automatic generation of documents and the establishment of reliable, exhaustive and up-to-date statistical data providing a complete view of the Institution's staffing situation.

The Court also had to account for the peculiar situation of the staff being mostly expatriates. The Court's staff was, of course, worried about their family at their place of origin. In general, the in house psychologist and the social assistant had to take care of the concerns of people in difficulties. Colleagues on holidays were caught by travel limitations and had to work their way back to Luxembourg via complicated alternatives. In one case, the Court's administration had to intervene with the External Action Service colleagues and diplomatic authorities in a remote country to repatriate one member of staff with its family.

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<sup>8</sup> Ombudsman launches 'Award for Good Administration 2021' | Press release | European Ombudsman (europa.eu): <https://www.ombudsman.europa.eu/en/press-release/en/134844> [accessed 28 February 2021].

<sup>9</sup> This is a priority objective of the Institution, in line with a recommendation made by the Court of Auditors in its report special No. 14/2017 on *the Review of performance in management cases at the Court of Justice of the European Union*, published in September 2017.

As for changes affecting the working conditions, flexitime arrangements – facilities provided to approximately 1/3 of the staff in the pre-Covid period – were suspended as non-functional due to remote working. Part-time working that was extensively used by the staff in order to conciliate work with family life in the pre-covid period was much less used during the lockdown.

#### 6.4.1 Improvement of working conditions

In the context of conciliation of work and family life, since 2004, the Court had established policies on working conditions that contributed to a quick adaptation of the staff to the Covid-19 reality. Teleworking, which had been introduced long ago as a standard work pattern for a limited number of staff members, towards the end of 2019 was adapted to cater for the occasional needs of working remotely. On a rotating basis, at any moment, approximately 10% of the staff were working from home. Several services and work profiles were allowed to telework in a full- or half-time pattern. A good percentage of staff had thus been trained to work at a distance while maintaining total productivity. Remote working, therefore, was nothing new for the Court.

The pandemic put forth the need to improve working conditions and the staff's well-being while maintaining and implementing the Institution's efficiency and effectiveness. Of course, it is evident that, on the social level, the pandemic has hindered everyday relations amongst persons, but at least those were partially replaced by intense Communication and the use of technological tools. On the other hand, staff became more autonomous, and even if dematerialisation was a question of individual reorganisation, to begin with, the convergence of practices and bringing together experiences became an asset.

A staff survey on living and working conditions during the health crisis, the return to work and the essential changes to retain sustainably was launched in close collaboration between the administration and the Staff Representation Committee. This survey's responses, which recorded a very high participation rate (59.3%), sparked the reflection towards the adaptation of working arrangements, accompanied by more performance-based management, combined with autonomy and increased staff accountability.

The staff became gradually conscious of the remote work parameters and found ways to conciliate professional and family life. However, attention was drawn to the need to find the appropriate balance between those two aspects and maintain the necessary professional and social contacts, especially for new arrivals, and take care to preserve cohesion, the feeling of belonging and a sufficient presence of agents. Obviously, one of the benefits of remote work is saving the commute time between home and office.

Of particular concern were and remained the complications that arose from the arrangements made by European governments about border-crossing, which was continually changing. The administration adapted quickly and issued the necessary certificates.

Line managers were invited to adopt their practices to the pandemic circumstances and consider parents facing schools' closures due to coronavirus contaminations.

Follow-up work on the authorisations given to work outside the place of employment is in progress.

Other processes and campaigns that depended already on electronic means, like the annual assessment and the career progressions, were organised without a particular problem. Particular care was taken in order to make sure that assessment reports reflect correctly the difficulties that staff members encountered during the pandemic.

#### 6.4.2 Virtual onboarding and other career issues

One of the most challenging aspects of the administrative work was recruiting new staff members and integrating trainees. While during the first period, a standstill was necessary, the needs of the services gradually imposed solutions of virtual onboarding. Perspective new

officials were accepted to join the Court provisionally from their residence until the possibility to move to Luxembourg was given. Virtual onboarding was based on an electronic workflow for recruitment requests, collecting necessary data and documentation, and preparing contracts. In this framework, new officials and agents taking office were informed remotely on their statutory entitlements and duties. This way, it was made possible for them to integrate into their service and become operational quickly, especially after obtaining the working equipment allocated to them.

Similarly, trainees were admitted to start their training period from abroad. In parallel, the selection procedures, which could not be organised during the first stages, remained problematic until recently. Online participation of candidates is not fully compliant with previous standards of exams based on physical presence. Nevertheless, careful planning allowed the organisation of written exams on the premises of the Court recently.

#### 6.4.3 Training

Training sessions that had to be suspended during the first period of strict confinement gradually resumed towards the end of spring and progressively were transformed into fully-fledged online structured courses. As the Court's administration realised that the crisis would last longer than expected, awareness-raising actions and training in preventing and detecting psychosocial risks were organised and made broadly available. A series of seminars for senior management, tackling, in particular, the issues raised by managing at a distance, were organised.

The Training and Development Unit (FDU) has set up a wide range of online training and e-learning, which not only replaces face-to-face training but will undoubtedly complement it in the future normal functioning of the Institution. Finally, a "training observatory" was created to provide pertinent insights.

#### 6.4.4 Medical issues

Another novel issue was the need for medical recommendations as the situation evolved. The Court communicated regularly and promptly specific medical information via the Intranet content management system and other channels. Beyond regularly issuing recommendations to the CMC's intention, the Medical service established several Protocols, which were rather successfully applied, especially for tracing suspect and confirmed cases of COVID-19 infections amongst members or staff. In close interaction with the Luxembourgish authorities, the specifically designated internal medical and administrative instances continually monitored the persons who tested positive and their close contacts. All involved actors adapted Data protection policies to bring the evolving situation in line with applicable rules.<sup>10</sup> Consequently, tracking of revealed COVID-19 cases and their close contacts was implemented to conciliate privacy with proper monitoring of health condition and risks.

Overall, less than 100 cases were detected up to the end of 2020. This relatively small percentage of staff infected is undoubtedly a clear indicator of the tracing policy's success and social distancing measures' timeliness. All necessary restrictions were applied, and specific actions for decontaminating premises were undertaken. No disruption of the Court services and operations resulted from this occurrence.

The in-house psychologist compiled and regularly diffused videos to address issues relative to the stress produced by remote working and lack of social contacts. Given the growing demand from the staff faced with personal and professional difficulties, especially in the pandemic context, the Court has doubled the psychologist's occupation.

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<sup>10</sup> The European Data Protection Board, 'Statement on the Processing of Personal Data in the Context of the COVID-19 Outbreak.' (2020).



Meanwhile, Luxembourg decided a systematic possibility to undergo free COVID-19 tests for residents returning from holidays abroad. Nevertheless, the Court agreed to offer the option of PCR tests to a limited number of persons performing essential functions that required their physical presence at the Court. An extension of the contract for laboratory exams allowed for a quick adaptation of the medical service processes to guarantee limited exposure to risks. The medical service also had to prepare for rapid tests if a person external to the Court whose presence was necessary presented symptoms of illness. It had also tailored the established seasonal flu vaccination campaign to the new sanitary requirements imposed by the COVID-19 risks, which imposed the organisation of appointments so that contacts between successive presences were avoided.

#### *6.4.4.1 vaccination*

The Heads of Administrations of EU Institutions in Luxembourg (CALux) established a close collaboration with the Luxemburgish authorities at the beginning of the year to ensure that staff members and their families are included in the vaccination program. Together with the other institutions based in Luxembourg, the Court undertook to provide the information needed to align the vaccination for its staff to the vaccination campaign elements (prioritisation, schedule, logistics, availability of vaccines). Staff was dully informed on the way they would be considered for vaccination. Special care was invested for the cross-border personnel who, because of their affiliation to the EU Institutions' joint health scheme, risked not to be included in the vaccination campaigns of their country of residence.

Currently, the EU institutions in Luxembourg are evaluating the opportunity to organise an in-house Covid vaccination centre. If necessary, the Institutions could host vaccination lines within the Court premises in close collaboration with the Luxembourg authorities.

### **6.5 Communication**

The Communication directorate had to reshuffle their communication strategy to adapt it to the current situation. The staff was also asked to work remotely except for necessities requiring physical presence upon specific request and planning. Consequently, the directorate organised, together with the two Registries, the modalities permitting them to issue the authorisation to publish delivered judgments and upload press releases remotely.

The Intranet and Internet sites were kept up to date by the Communication Desk in cooperation with the Registrar's Office. The Directorate of Communication amended its working methods to update the information to the general public remotely. In parallel, emergency procedures for internal Communication were activated. Members and staff were kept continuously informed about ongoing and evolving conditions through a dedicated intranet page that was systematically updated. Policy changes were notified via SMS, official and private email.

The Court has continued to develop the use of social networks for communication purposes. Social media were actively used to inform the general public and the parties about the procedures and restrictions to access.<sup>11</sup> Subscriptions to the Court's LinkedIn account had tripled compared to 2019, and the number of followers on Twitter had increased by 25%. The number of views of multimedia animations on the Institution's Youtube channel has also seen significant growth.

On the other hand, the traditional celebrations for the Europe Day of 9th May took place exclusively on the Internet. A session of questions and answers, during which citizens were invited to ask questions through a hashtag #askCuria a few days before 9th May, was

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<sup>11</sup> CURIA – Parties before the Court of Justice – Court of Justice of the European Union (europa.eu) [https://curia.europa.eu/jcms/jcms/p1\\_3012066/en/](https://curia.europa.eu/jcms/jcms/p1_3012066/en/) [accessed 28 February 2021].

organised on Twitter. The directorate promoted actively digital products (virtual tour, animations, online brochures). These actions generated 593,000 “impressions” on Twitter.

A new permanent virtual pressroom was set up to meet the need to disseminate information on the Institution’s activity to the media in the circumstances created by the pandemic. The pressroom allowed the Court to organise, around the European Day of Justice, 25th October 2020, 11 briefings with journalists covering a total of 17 Member States.

The directorate also commissioned a new Media Monitoring System that creates a daily press Panorama to improve the Institution Members’ awareness. It results from a close collaboration with the Joint Research Center of the European Commission in Ispra, which made it possible to identify the Court’s specific needs and appropriately respond to them.

### **6.6 Protocolary activities**

All protocolary activities were cancelled. The only residual activity concerned the swearing-in of newly appointed Members, which was initially modified to require people’s smallest possible presence. Due to the uncertainties of the time, one new Advocate General was sworn in on 23rd March via videoconferencing in the presence of the President of the Court, the First Advocate General and the Registrar.

Reception activities to welcome visitors from several countries had to be suspended from March until the end of 2020. These activities were operative in the past in reaching a large public. They allowed diffusing information for citizens in general and legal professionals on the Court and the General Court’s mission, competencies, and case-law. Thus, the number of visitors admitted has sharply decreased: 2,617 people, in 92 groups, were received at the Court in 2020, compared to 17,136 visitors, divided into 707 groups, in 2019. Conference activities that were addressed to magistrates and constituted a privileged tool for strengthening the relations between the Court and national courts were also heavily impacted by the crisis. Only six days of seminars were organised, involving 143 participants, compared to 116 days for 2,852 participants in 2019. Instead, 12 webinars and nine virtual meetings were organised for virtual visitors totalling an audience of around 800 people.

The crisis has confirmed the conviction that the traditional form of visits cannot any more constitute the axis of informational activities towards the public. Travel restrictions make it more difficult to find an equilibrium to offerings to the EU citizens regardless of their place of origin. The Protocol directorate has studied information technologies’ potential and the new perception of the public vis-à-vis virtual meetings. This resulted in a pilot project to test the suitability of the content, technical use, and management of “remote visits” alongside traditional visits.

### **6.7 Multilingualism**

The Directorate General of Multilingualism, the most staffed service of the CJEU, comprises the Legal Translation and the Interpretation directorates. It assumes the complex task of translating and interpreting to and from the 24 official languages of the EU, which combine in more than 500 permutations. It sustained productivity despite the crisis and maintained a high quality in legal translation and interpretation.

#### **6.7.1 Translation**

In 2020, the translation services’ workload was reduced by 8%. Still, given the circumstances, the volume of translations that had to be handled (1.154.581 pages) was challenging. Thanks to personal investment and the ever more intense use of new technological tools, productivity has matched the demand. More pages were translated between 1<sup>st</sup> January and 30<sup>th</sup> September than entered, bringing down the stock waiting to be translated to 22000 pages

less than in 2019. The Legal Translation services' commitment allowed the Court to respect all the deadlines necessary for the proper conduct of proceedings in all languages and guaranteed timely dissemination of case law to citizens. Almost all translations of judgments of the Court of Justice were handed down on the day of publication. Regarding quality, the investment in IT, training, terminology, and quality assurance processes have maintained the standards very high.

#### **6.7.2 Interpretation**

As far as interpretation is concerned, past the interruption of hearings between 13th March and 24th May, a new *modus operandi* of participation in hearings was found to keep pace with a significant number of hearings, especially in the second semester. The new arrangements managed to bring together very closely and seamlessly litigants from remote locations. This situation involves not only a particular burden on interpreting but also requires significant technical operations. Remote sites are to be tested at two key moments, and organisational constraints involve several Institutions' services. Specific training had also been planned for all interpreters participating in these tests.

Despite the difficulties, 72 tests led to 45 remote sites' validation and enabled 40 "video" hearings at the Court of Justice and 36 at the General Court. Several hundreds of hearings were held since the resumption of the hearings on 25th May.

The novel situation necessitated establishing new working methods to guarantee judicial activity continuation despite the travel restrictions and respect for everyone's health. Only one interpreter occupies every booth, halving thus the number of languages normally available for a hearing. Some interpreters must work in a coupled room via remote interpretation for audiences requiring the interpretation of a significant number of languages. In addition, lawyers who cannot come to Luxembourg are allowed to plead by videoconference. If this is not technically possible, their pleadings are read by one interpreter and interpreted by the rest of the team.

Various working groups have also relentlessly pursued their evaluation of evolving methods, be it remote interventions or the impact of the new working methods on the quality of services.

The health and well-being of interpreters were not ignored. A permanent concern of the Court remains the adequacy of the internal procedures to guarantee that the quality of services complies with sanitary measures.

#### **6.8 Safety and security – Cleaning and disinfecting**

The Safety Unit kept in touch with the Luxembourgish authorities and their homologue services of other institutions to provide up to date information on adopted measures while also reviewing their procedures to conciliate traditional security issues with necessary health checks at the entrances of the buildings. Entry points were changing according to the severity of the restrictions, and internal flows, canteen facilities, the arrangement of interpreters' booths, placement of judges in the hearing rooms and security panels were studied and put in place.

This operation gave rise to further adaptations of previous ordinary processes and working in general, to the level of adjusting facilities to be handled without risking contamination (door handles, lifts, photocopiers). The interior service elaborated particular protocols for the cleaning and preventive disinfecting of spaces used.

The buildings and security department quickly drew up newer versions of the Institution's Contingency and Business Continuity Plan (PUC), taking into account the lessons learned from the latest crisis exercises and continuity management during the Covid-19 pandemic and getting inspiration from international benchmarks.

### **6.9 Data protection**

Several documentations and consultations concerned implementing specific measures in crisis management related to COVID-19 and raised new and sensitive questions on the processing of personal data of a medical nature or otherwise sensitive in a professional environment.

### **6.10 Internal audit**

In October 2020, the Internal Auditor handed down an ad-hoc report.<sup>12</sup> The report has praised the efforts put in place, but most importantly, it drafted the opportunities generated by the crisis. The internal audit service surveyed members of the Institution's senior management to examine the possibilities of exploiting the exceptional working and operating methods implemented by the various services in order to optimise the Institution's resources' workflow. The main objective was to take advantage of the crisis's opportunities by examining to what extent and under what conditions some of the best practices identified could be continued and even improved and maintained under normal working conditions.

The primary conclusions concentrated on greater remote working integration as a working method within the Institution. Indeed, the Institution has been able to continue functioning correctly thanks to the smooth running and excellent general teleworking results. Moreover, even the most reluctant management members have recognised remote working effectiveness and benefits.

Management made greater use of delegation, which reinforced the staff's sense of responsibility and autonomy. The suggestions for improvement and the initiative by the staff were very encouraging. Generalised remote working has reinforced the culture of trust and empowerment. Appropriate mastery of this culture can influence many aspects of the institution's future life, such as its attractiveness, quality management, well-being at work, or the integration of new generations. It is essential to continue to invest in the study of this topic, already initiated within the framework of initiatives concerning "quality management".

The crisis has led to closer and more effective collaboration amongst services, either formally, within the framework of the CMC and other task forces or informally as mutual assistance, on individual staff members' initiative. All the more so as the managers have shown to be more realistic and understanding of difficulties staff members were going through. Solidarity was considered a vital element of the staff's motivation and an enriching experience of a better understanding of other activities. The value of developing the versatility of staff, cross-functional poles of skills and pools of resources has been fully demonstrated.

On a technical level, the effective management of the crisis was possible thanks to an acceleration of the Institution's digital transformation. In addition to the mobility program's anticipation, the strengthening of infrastructure and the implementation of new videoconferencing devices, the various departments spontaneously developed new, paperless and simpler workflows. The crisis acted as a catalyst for digital transformation and overcame all-natural resistance to change. Developments that seemed unthinkable just a few months ago happened overnight. Workflows have been digitised and simplified, both within departments and cross-sectoral flows, as demonstrated by the new organisation of hearings for delivery of judgments and reading of conclusions, and digitisation centralised mail. Some validation circuits involving too many people have been shortened. In addition, many formalisms, sometimes excessive, have been removed or eased.

Besides, support for the new management methods was unanimous. Whether they have implemented new digital flows or not, all services categorically express their wish not to fall back to previous settings. All the services and domains of activity of the Court were concerned.

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<sup>12</sup> "Management of the crisis caused by the Covid-19 pandemic".

In order to perpetuate the new dematerialised workflows, often artisanal, it is essential to replace them with professional solutions, in particular by continuing the efforts already undertaken within the framework of current IT infrastructure modernisation projects. The crisis also acted as a catalyst for the implementation processing of the “electronic signature” solution.

To appropriately adapt to teleworking, the various departments have had to reorganise their resources and databases and review how information is shared. The crisis has shown the need to identify, better exploit, rationalise, and rapidly develop the Institution’s digital and virtual resources.

In addition, this report includes several avenues for improvement and recommendations, particularly with a view to the development of an efficient digital workspace.

Also, the internal auditor presents some proposals for improving the contingency plans and points out the usefulness of rechecking with other actors in the continuity of the Institution, the timeliness and consistency of certain aspects of its implementation.

He stressed, on this occasion, the need to conciliate the pursuit of objectives with comprehension for individual situations in the health context that endures.

### **6.11 *Interinstitutional coordination***

All EU institutions and agencies have adopted measures similar to the ones implemented by the Court. An inter-institutional network for information exchanges was set up under the aegis of CPQS, a specific Committee that is entrusted with preparing decisions of Heads of administrations and coordinating approaches amongst EU institutions was assigned.

### **6.12 *Future***

Crisis management has highlighted a series of opportunities for optimising the Institution’s workflows and resources. The Registrar of the Court examined, with the management and the internal auditor, to what extent and under what conditions, some of the best practices identified could be continued, even improved and extended, when normal working conditions will be reestablished. Several priority areas of work have emerged. As a result, an internal report presented, already in June, the priority areas of work that emerge from the consultations: a) integrate homework into the future working arrangements, b) continue the business of simplifying and digitising workflows, c) cave “virtual presence” tools in connection with the different sectors of activity, d) integrate the autonomy and empowerment of staff in the context of a broader quality approach.

The digital transformation has been accelerated but is far from being finalised. A project to develop a digital workplace that combines advanced functionalities of Communication, collaboration, efficiency in working methods, mobility, and information and knowledge management is essential. A new phase of the mobility program focused on improving and integrating the various communication devices underway at the Information Technologies Directorate to overcome the difficulties of Communication signalled by all services and to be able to offer new options for the organisation of partially virtual meetings and hearings.

The need for valid electronic signature for both jurisdictions and administrative services ensures the authenticity and integrity of electronic documents have been felt. To align with the same solution as that chosen by other institutions, the existing interinstitutional tool EU Sign has been retained. The agreement with the Commission was signed at the end of the Year, and the electronic signature tool will be rolled out in 2021. In parallel, the request for a transversal document management system is in the process of being satisfied. A pilot project to assess the HAN application used at the European Commission for document management

and transmission has given positive conclusions. The migration towards the system for the rest of the services started in December 2020.

A high-level working group has been tasked with examining all of the statutory, organisational, managerial and regulatory prerequisites for a future greater integration of remote work as a standard modality within the Institution. The group issued its conclusions, and the internal provisions in this matter could be amended subsequently.

Finally, a replacement of the traditional teleworking system by a new concept of a remote work regime, providing for a more flexible environment granting more autonomy to line managers in defining the conditions for the exercise of remote work by staff, is under preparation and will be adopted during the year 2021.

## **7 Conclusion – The need to consolidate and accelerate digital transformation**

The disruptive dimensions of the COVID-19 pandemic forced jurisdictions all over the world<sup>13</sup> to reinvent themselves.<sup>14</sup>

Developing contingency and business continuity plans and establishing an ongoing strategy to identify, analyse, and manage the Institution's risks have borne fruit in the case of the coronavirus pandemic. They made it possible to approach the crisis based on a stable business continuity policy known to all stakeholders.

During which risk management was transformed into crisis management, the definition of objectives evolves towards a management model based not so much on the physical presence in the office but deliverables well defined in number and quality.

To cope with this, the Court has up-to-date crisis continuity plans for all of its services. The CJEU, in the same way, was forced to assess its working methods and accelerate transformations – not only related to the judicial processes but equally to issues affecting the managerial aspects. Summarising what was related earlier, the Court has mastered the impact of the pandemic through significant developments which have made it possible to overcome the main difficulties identified in the first weeks of generalised teleworking.

The support services for judicial activity continued to work in 2020, in entirely exceptional circumstances given the health crisis, in order to achieve their respective objectives, grouped around the five axes of management: a) contribute to the proper functioning of the Jurisdictions, b) improve performance, c) facilitate access to information and the opening of the Court to the public d) manage multilingualism virtually, e) guarantee the compliance of activities with applicable regulations and monitoring of best practices.

The essential characteristic of the activities of service during the pandemic was adaptability. Beyond subscribing fully to remote working, the staff demonstrated an innovative and inventive spirit and the capacity to put homemade solutions to the service of their respective objectives.

All domains of the functioning of the Institution were affected. Procedural, organisational, communication, security, sanitary protection measures were adopted or adapted to cater for the new realities. In a matter of weeks, the Court had put in place developments that would have required years of work. Important administrative decisions have been immediately adopted following the CJEU lockdown, considering the services' capacity, the jurisdictions' priorities without losing staff needs from sight. Delegations of decision-making power and replacements were organised in time. Overall, the CJEU has demonstrated the resilience it was expected to have established through years of preparation.

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<sup>13</sup> Pollard M, 'The Courts and COVID-19' (2020).

<sup>14</sup> OCDE, 'The Functioning of Courts in the Covid-19 Pandemic' (October 2020).



For the services that were already on the route of computerising their records and workflows, Covid-19 has not made access to services more difficult. Internal users have not noticed a substantial difference in access to applications than established standards regarding service quality.

Given the exceptional circumstances of the COVID-19 crisis and the business continuity mode, the Court's administration demonstrated a high degree of efficiency. It remained operational and continues essential functions until relative normality will be reestablished. At the same time, it adds layers of transformed operations gradually.

In general, the crisis seems to have strengthened the links between the services. Exchanges within the Crisis Management Committee (CMC) have allowed all services to understand better and express their needs and cooperate effectively. The Satisfaction Survey launched by the Staff representation Committee proved the value of such cooperation and demonstrated strong support for the measures.

Regarding the management of the Institution's resources, the heads of service established periodic reviews accompanied by performance indicators, which made it possible to identify the pandemic's impact on the activities and the impact of the generalised remote work on the productivity of services. The reviews confirm that the various activities' results were very satisfactory, despite the difficulties identified in the first weeks, which were quickly overcome, and the suspension of specific tasks.

Overall, the Court proved to be well prepared to tackle the issues raised by the COVID-19 pandemic. However, most importantly, what can be understood is that the Court's authorities prepared their staff "to prepare" the change and embrace it. There were generalised solidarity and investment in converting each one's tasks in the new context.

If it is true that in the start, everybody was hopeful that the crisis would end in the summer, later, that over-optimistic impression was redressed and gave way to a structured approach to reinforce resilience.

In hindsight, crisis management can be viewed positively, even if the challenge now is to foresee when the crisis will end and what must be kept from the forced transformation of the CJEU administration.

Of course, everybody is aware that post-COVID-19, everything will be different and that changes will be broad, deep and lasting. The CJEU faces the challenges of mastering the new dynamics, maintaining and improving all positive changes and organising a smooth transition to the post COVID era. The Court will need to redesign and modernise processes and project the justice system in the digital age in a cyber-secure environment. In parallel, it owes to guarantee access to justice and appropriate working conditions.

The pandemic will modify radically and profoundly the Court's workings in the future, mainly since the crisis's persistence was an unprecedented challenge. The tendency to change is not just going to force the amendment of informatics tools. Procedural rules will follow the new organisational methods, simplify the approach and certainly provide for delegated acts that could adapt to the evolution of similar crises. All areas of activity need to adapt, including communication and formal exchanges. Indeed, the COVID-19 situation has shifted things towards modernising the administration of justice at the Court. The need for simplification, flexibility, less formalism, the quest for integrated systems accessible to habilitated users without intermediaries, the use of remote conferencing/virtual hearings and the inspiration from online Courts ideas are now on the table. The crisis is alleviating resistance to change and accelerating digital transformation. Moreover, there is no way back.

The quest for the future organisation will also have to do more with smart management and the new modes of working. All persons involved will have to be trained in the alternative modes of operation and collaboration and acquaint themselves with new ways of bonding

within services. New responsibilities in management will be reinforced, and remote management of teams will be a new skill. There are no tried and tested recipes for such a change. The public sector will have to use the means of exchanging on best practices and create a commonality culture in the quest for future operation modes.

### Competing Interests

The author is employed as a Head of Unit at the Court of Justice of the EU, the institution whose policies and actions are the current article's object. Nevertheless, this publication was authorised by the Registrar of the Court of justice.

**How to cite this article:** Costas Popotas, 'COVID-19 and the Courts. The Case of the Court of Justice of the European Union (CJEU)' (2021) 12(2) International Journal for Court Administration 4. DOI: <https://doi.org/10.36745/ijca.381>

**Published:** 06 May 2021

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