

Open letter addressed to the President of the Court of Justice of the European Union advocating for the Court to stream its public hearings

Dear President Lenaerts,

An important number of cases are heard daily at the Court of Justice of the European Union. The litigated issues influence the lives of millions of European citizens. From minorities' rights to the rule of law in rising autocratic regimes, from gender discrimination to the growing power of digital platforms. This week, the Court will hear another landmark case, the challenge of Google and Alphabet against a € 2.42 billion fine imposed by the European Commission for unlawful abuse of dominance. The relevance of such a case for the public at large can be seen not only in the high number but also the unusual diversity of intervening parties, ranging from the *Bureau européen des unions de consommateurs* (BEUC) to the German Federal Government.

And yet, in spite of the general principle whereby hearings are public¹, only a handful of us – be it academics, students, close observers and citizens – are ever able to make the trip to Luxembourg. In practice, the Court's hearings are intimate. To put the point more clearly, they are reserved to a cottage industry of professional journalists, lobbyists and lawyers in the know. In the absence of full publicity of the Court's hearings, a growing number of companies and media outlets monetize access to your Court via subscription services and dedicated reporting.

With this letter, we would like to formally call awareness of the Court to a simple reform: live streaming of the Courts' hearings, as it is becoming common practice in many national courts, and as it is already the case in the UK (e.g. the Supreme Court) France (i.e. *Conseil Constitutionnel*) or other international judicial institutions, like the European Court of Human Rights.

In the well-known historical chronicles of medieval France, justice improved when King Saint Louis developed a simple rule of practice: handing down justice under an oak, in broad scrutiny from society².

Today, justice is no longer served by Kings, but by independent courts. This is a major improvement. But EU citizens still do not see the oak. Put less metaphorically, we all hear justice is being done, but we do not see it being done.

At a time in which the rule of law is challenged across the Union, live streaming of the EU courts' hearings would, in our view, not only help the EU get closer to its citizens. It

¹ Article 47 of the Charter of Fundamental Rights and restated in Article 31 of the Statute.

² St Louis' contribution to the edification of the rule of law: https://www.ac-sciences-lettres-montpellier.fr/academie_edition/fichiers_conf/HILAIRE2012.pdf

would also bring the EU closer to its “*communauté de droit*”, that is its judges and lawyers. Only with the public watching, the promise to “hear the other side” is subject to effective oversight.

Such a course of action would also be capable of solving a growing logistical problem: it would allow landmark cases to be watched by many people at the same time, avoiding delicate situations such as that raised during the high-profile hearings in *Microsoft*³, the *People’s Mojahedin Organization of Iran*⁴, and that your Court might probably witness again this week in *Google and Alphabet v Commission*⁵.

In these cases, the unexpected afflux of a record number of visitors to the Court in the morning of the hearings put the Court under great pressure.

This is not a call for a major, costly reform. The costs of live streaming are minimal. In the digital world, online content broadcasting has become a commodity service.

In addition, the issue does not lend itself to much cost-benefit analysis. The default principle under the rule of law is that hearings are public. This is not a consequential problem. It is a deontological one. As a fierce defender of the rule of law, the CJEU faces a low-hanging opportunity to proactively turn that principle into further reality.

There is a decisive, compelling argument for the Court to embrace public openness of its hearings. As the awareness of the social costs of climate change increases, the Court can’t realistically expect carbon cost-minded citizens, companies and all other stakeholders to travel to Luxembourg to attend ‘public’ hearings.

This, we believe, would be a small but significant, tangible step towards a greener, better EU.

To stream its public hearings should be the first in a long series of measures aimed at opening up the Court to its EU citizens at a time of growing, and worrisome, populist attacks on the judicial branch across the EU.

We look forward to hearing from you,

Alberto Alemanno, Jean Monnet Professor of European Union Law, HEC Paris and founder of The Good Lobby

³ Judgment in Case T-201/04 *Microsoft v Commission* [2007] ECR II-3601.

⁴ Judgment in Case T-284/08 *People’s Mojahedin Organization of Iran v Council of the European Union* [2008] ECR II-03487; Judgment in Case C-27/09 *French Republic v People’s Mojahedin Organization of Iran*, [2011].

⁵ T-612/17.

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Letter open for signatures of support